NORMAN MAPFUMO
versus
THE STATE

HIGH COURT OF ZIMBABWE
MAKARAU JP
Harare 17 and 24 July 2008

BAIL APPLICATION

Mr A Muchadehama for applicant
Mr A Masamha for respondent.

MAKARAU JP: On 31 March 2008, a silver C180 Mercedes Benz was stolen at gunpoint in Capton Park, South Africa. On 5 April 2008, the applicant presented the motor vehicle for customs clearance at Chirundu Border Post, en route to Zambia. He was in the company of another, a Zambian national, William Mbiya Kalala. The applicant presented the registration of the motor vehicle to customs officials and this was found to be false and not tallying with the numbers punched onto the body of the motor vehicle. He was arrested and charged with possession of a motor vehicle reasonably believed to have been stolen. Checks were later made with Interpol and a report of the robbery of the vehicle was made known. The applicant was then charged with the robbery of the motor vehicle. He now approaches this court for bail.

In his bail application, the applicant gives his personal details. These reveal that he is aged 50 and resides in Kuwadzana with his wife and three children. He is employed by the Zambian Embassy as a driver and it is in that capacity that he was approached by William Mbiya Kalala, now jointly charged with him, with a request that he drives the stolen vehicle to Zambia, leading to his arrest at Chirundu Border Post.

In the application, the applicant also protest his innocence and argues that he was not in South Africa on the day the vehicle was stolen, was not aware that the vehicle had been stolen and was simply driving it to Zambia as per the instructions given him by Kalala.

Finally, the applicant submits in his application that he is a good candidate for bail as he has no connection with the theft of the vehicle at all and gave the police his explanation regarding his possession of the vehicle. He assures the court that he will not abscond if granted bail and that he will not interfere with witnesses or the investigation of the matter.

The application for bail was opposed.

In opposing the application, the respondent highlighted how the theft of the motor vehicle in South Africa and its recovery in Zimbabwe while it was on its way to Zambia points to an organized international syndicate involving the theft of motor vehicles and there making the offence very serious. On the basis of the seriousness of the offence, the respondent further submitted that there are recognizable factors that the applicant will abscond and thereby avoid standing trial if granted bail.

That the charges facing the applicant are serious goes without saying. While it is trite that the seriousness of the offence on its own is not a basis for denying bail, in *casu*, the seriousness of the offence is coupled with the evidence linking the applicant to the offence which in my view is overwhelming. The applicant was driving the motor vehicle out of Zimbabwe at the time of his arrest. He was not acting merely as a driver but is the one who presented the false papers to customs officials in a bid to take the vehicle out of the country. He does not explain why Kalala could not do this for himself as both were traveling to Zambia in the same car. He thus associated himself with the car beyond mere driving. He alleges in his application that en route to Chirundu Border Post, Kalala had behaved strangely, seeking at one stage to disembark from the car and leaving the appellant alone with the vehicle. Kalala drove off in the motor vehicle while the police were looking at the documents yet the applicant submitted that he was driving the vehicle because Kalala could not drive.

It is trite that the procedure of bail seeks to balance two competing interests, the liberty of the accused and the proper administration of justice. In *casu*, it is my view that the liberty of the applicant must yield to the proper administration of justice. The applicant is facing a serious charge and if convicted, is likely to be sentenced to a lengthy custodial sentence. This is likely to make him abscond and avoid standing trial, to the prejudice of the proper administration of justice.

The applicant has submitted in his application that he has no intention of absconding. That may be true. He may not have any intention to abscond. However, the issue of whether the applicant is likely to abscond is not tested subjectively. The court is not enjoined to establish whether the applicant will actually abscond if granted bail. Rather, the court is enjoined to assess the circumstances of the matter and determine whether, objectively, there is a likelihood of the applicant absconding and avoiding trial if granted bail. These are the factors that the respondent's counsel referred to in his written response. The question to be answered

is whether in the circumstances, the applicant is likely to abscond. It is not whether the applicant is going to abscond.

In my view, the applicant is likely to abscond if granted bail. As submitted by the respondent and correctly so in my view, the theft and movement of the motor vehicle across borders points to an organized syndicate. The evidence shows that the applicant was part of that organization or was used in that organization which is present in at least three countries.

I have already alluded to the gravity of the offence that the applicant is facing. It has been the view of this and the Supreme Court that generally, the more serious the offence is the greater becomes the flight risk on the part of the accused. (See *Aitken v AG* 1992 (2) ZLR 249 (S)). Again I have above alluded to what in my view is the overwhelming evidence linking the applicant to the theft of the motor vehicle.

On the basis of the foregoing, it is my finding that the interests of the proper administration of justice outweigh the right of the applicant to his liberty in this matter.

In the result, I make the following order:

The application is dismissed.

Mbidzo, Muchadehama & Makoni, applicant's legal practitioners.

Attorney –General's Office, respondent's legal practitioners.