

TENDAI RUDOLPH KAMBARE

VERSUS

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 19 MARCH 2012 AND 5 APRIL 2012

Miss J. Gororo for the applicant
Mr L. Maunze for the respondent

Bail Pending Appeal

CHEDA J: Applicant applies for bail pending trial.

The allegations against him are that he is being charged with contravention section 113 of the Criminal Law Codification and Reform Act [Chapter 9:23] theft of a motor vehicle.

The facts as presented by the respondent are that on the 5th November 2010 he together with Raphael John Masuku hatched a plan to steal a Toyota Hiace Registration number ABQ 7743 which was in the possession of Enock Nyirenda a motor mechanic. On the day in question he approached Enock Nyirenda who was known to him and borrowed the said motor vehicle on the pretext that he wanted to use it to tour his motor vehicle from Drill Hall, Bulawayo. Enock Nyirenda gave him the vehicle and instead of using it for towing, "his vehicle" (which he did not have) he took it to Raphael John Masusku. The two of them made a duplicate key before applicant returned it to Enock Nyirenda. Applicant approached one Nephath Sibanda who had an accident damaged Toyota Hiace vehicle and offered to buy the shell which he did. The registration book of Nephath Sibanda's vehicle was being held by the Vehicle Inspection Department. Meanwhile applicant and Raphael John Masuku had stolen the Toyota Hiace from Enock Nyirenda during the night using duplicate keys. They then proceeded to clothe the Toyota Hiace shell obtained from Nephath Sibanda with new particulars and further uplifted the Registration book from Vehicle Inspection Department to authenticate the transaction. Richard

Maunganirwa etched the fake engine number thus falsifying the true identity of the stolen Toyota Hiace from Enock Nyirenda.

Applicant now armed with a supposedly “new look” Toyota Hiace, sold it to Theresa Michael Bell in exchange for a BMW and an unregistered Suzuki Commuter.

Thus way the commission of this crime was completed.

Applicant has submitted through his legal practitioners that he is denying this offence.

He further submitted:

- (1) that he has no intention of absconding as he has been out of custody from the time these allegations were made against him.
- (2) that he is not linked to the commission of this crime.

The respondent on the other side has argued that:

- (1) the offence is very serious and
- (2) that the key witnesses are related to applicant and his accomplice.

It is trite law that the seriousness of the offence *per se* without other factors can not serve as a justifiable reason to deprive a suspect of his freedom. The reason for this is the need to uphold and respect the hallowed constitutional right of every citizen to liberty. Therefore, the courts should be slow in depriving suspects of their liberty.

Having said this, it is essential to examine the role allegedly played by the applicant in this matter. He was deep in the centre of planning and execution of this offence.

There is enough evidence against him for the State to secure a conviction in my view. In light of this, he is unlikely to avail himself for trial bearing in mind the type of sentence he might get in the event of a conviction.

The application is dismissed.

Maronedze, Mukuku, Ndove and partners, applicant’s legal practitioners
Criminal Division, Attorney General’s Office, respondent’s legal practitioners