

BRANSBIE BHAMU
versus
THE STATE

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 7 February 2013

Bail Pending Trial - Ruling

T K Hove, for the applicant
P Mpofo, for the respondent

MWAYERA J: The applicant approached the court with an application for bail pending trial. The applicant is facing four counts of theft of motor vehicles. The circumstances as outlined in State papers attached clearly shows that he approached the four complainants for purposes of hiring their vehicles which he in turn sold to one Phillip Samudzimu. The applicant in support of the application filed written submissions and also oral submissions were highlighted by the applicant counsel Mr *Hove*. Mr *Hove* pointed out that the applicant was a Zimbabwean of fixed abode and that he was a suitable candidate for bail. He further commented on the weakness of the State case wherein he pointed out that the applicant did not steal the complainant's vehicle but that he gave them to Mr Samudzimu a money lender as security hence the fact that the cars in question were all not sold but recovered from Mr Samudzimu.

The State on the other hand through Mr *Mpofo* opposed the bail application. The thrust of the State's argument is that the applicant is facing a very serious charge where upon conviction he is likely to be sentenced to a lengthy jail term. It goes without saying that the criminal hallmark that an accused is presumed innocent till proven guilty still obtains. Sight should not be lost of the purpose of bail. It is not meant to be a punishment to an individual for facing allegations albeit serious. The seriousness of the offence on its own therefore cannot be good ground for denying the applicant his right to liberty.

Central to bail application is the fact that the court has to strike a balance between the interest of administration of justice on the one hand (i.e. societal interest of ensuring that the individual avails himself for prosecution of the matter) and the right to individual liberty.

It is apparent from the State's response that besides alluding to the offences being serious there is no basis for opposing bail. The State case, is on the face of it weak regard being given to the manner in which the accused came to be in possession of the complainant's vehicles and also the fact that all the vehicles were recovered from an alleged money lender Mr Samudzimu. There is no way he could have not known all vehicles belonged to third parties for the registration books would have reflected the owners. If it was genuine buying and selling and not keeping as security for loans advanced the ownership issue could have arisen. This then leaves the State with a possible accomplice as an alleged buyer. The possibility of the matter being a civil claim from facts presented is not farfetched. This then shows weaknesses in the State case such that there is nothing that can induce the applicant into absconding. Given this background it follows that upon weighing the interest of administration of justice and the individual liberty the applicant is viewed as a suitable candidate for bail. The application for bail is accordingly granted.

T k Hove & Partners, applicant's legal practitioners
Attorney General's Office, respondent's legal practitioners