

THE STATE
versus
CLEMENCE MUVAMBWI

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 17 September 2014 and 16 October 2014.

Bail Application

A Mugiya, for the applicant
A Muzivi, for the respondent

BHUNU J: The applicant is facing one count of theft of a motor vehicle as defined in s 113 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]. The brief facts of the case are that the complainant is the owner of a Nissan Atlas Truck chassis number P4F23004991 and engine number TD27284491.

On 8 July 2014 he secured the motor vehicle in his garage at around 27:30 hours. The following morning he discovered that the motor vehicle was missing from the garage.

Acting on information police arrested the applicant on 3 September 2014 leading to the recovery of the motor vehicle parked at his house. The motor vehicle had been fitted with fake number plates belonging to his father's broken down Nissan Caravan. The car radio had been removed, windows tinted, front rims changed and reflective sticker stuck onto the car in an effort to disguise the motor vehicle.

The State opposed bail on the basis that the offence is serious and it has overwhelming evidence against the applicant which might tempt him to flee from justice. The applicant does not deny being found in possession of the stolen motor vehicle as alleged. In fact there is no factual dispute. His defence is that he bought the stolen motor vehicle from one Norest Jeché a relative of the complainant Persuade Jeché. He knew Norest as a car dealer operating from number 1 Seke Road Harare.

Following the purchase of the motor vehicle he claims to have acquired physical possession of the motor vehicle from Norest on 7 May 2014. While it is undesirable to turn bail proceedings into a trial of the applicant as determined in the case of *S v Dhlamini and Ors* HH 57-09, where appropriate it is necessary to ventilate the credibility of the evidence one way or the other in a bid to assess the strength or otherwise of the state case.

In this case it is virtually impossible for this court sitting as a bail court to overlook overwhelming evidence against the applicant placed at its disposal. The applicant admits being found in possession of the stolen motor vehicle in its disguised state. While he has claimed that he innocently purchased the motor vehicle from Norest he has proffered no cogent explanation why fake number plates belonging to his own father's disused motor vehicle were found fitted onto the stolen motor vehicle. The applicant's trial is imminent was set down for 24 September 2014. From the look of things it appears as if the applicant will have a mountain to climb convincing the trial court how he could buy a stolen motor vehicle disguised by fake number plates from his father's motor vehicle. He will also have to explain how he could have assumed physical possession of the motor vehicle on 7 May 2014 two months before it was stolen on 8 July 2014. He will also have to contend with the question why he did not follow the normal police clearance procedures up to the time of his arrest.

From the above facts it is not difficult to agree with the State that the offence is serious and likely to attract a lengthy custodial sentence. In light of the severe consequences likely to follow if convicted, the applicant cannot be trusted to stand his trial. For that reason it is unsafe to grant him bail without compromising the ends of justice.

It is accordingly ordered that the application for bail be and is hereby dismissed.

Mugiya & Macharaga, applicant's legal practitioners.
The Prosecutor General's Office, respondent's legal practitioners.