

TINEYI CHIGONDO  
and  
COSTA NGWENYA  
and  
THANDAZANI DUBE  
and  
SOAMES NDLOVU  
and  
BUSANI DHLAMINI  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
ZHOU J  
HARARE 24 & 30 July 2015

### **Bail application**

*R. Savanhu*, for the appellants  
*Ms F. Kachidza*, for the respondents

ZHOU J: This is an appeal against a judgment of the Magistrates Court, Harare in which the appellants' application for bail pending trial was dismissed. The five appellants stand accused of contravening section 113 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (theft from motor vehicle). The allegations against them are that on 1 June 2015 at Msasa Food Court, Harare, the appellants forced open the complainant's motor vehicle and stole cash in the sum of US\$29 000-00. After that the appellants are alleged to have fled in two motor vehicles. Persons who witnessed the theft took down the registration numbers of the motor vehicles. The appellants were, according to the Form 242, found in possession of the two motor vehicles which were used to escape from the scene of the crime. Part of the stolen money was also recovered from the appellants.

The Magistrate dismissed the application by the appellants for release on bail on the ground that the case against them was very strong, and that there was evidence linking them to the offence as the motor vehicles used in the commission of the offence were found in their

custody. The court also noted that part of the money stolen was recovered from the appellants. That is the judgment which the appellants appealed against. The respondent does not contest the relief being sought by the applicants. The attitude of the prosecution to the request for release on bail is a factor which this court takes into account together with all the other relevant factors. It is not, however, decisive on its own. See *Mahata v Chigumira NO & Anor* 2004 (1) ZLR 88(H) at 92D-E. The inquiry of this court is directed at whether the magistrate misdirected himself when he refused to grant bail to the applicants. The appeal must strike at the judgment of the magistrate and the reasons for the conclusion reached in that judgment. *S v Malunjwa* HB 34-03.

I do not find any misdirection on the part of the Magistrate. He considered all the relevant factors which point to likelihood that the appellants will abscond if they are to be released on bail. These include the seriousness of the offence, as well as the evidence linking them to the offence. The manner in which the offence was committed shows some serious planning, as the appellants must have followed the complainant from the bank after he had withdrawn the money. The offence was committed during the day. The registration numbers of the motor vehicles were recorded by the persons who saw them. There is very little or no chance of the numbers having been wrongly recorded. The appellants give no explanation as to who could possibly have been in possession of their motor vehicles at that time if they were not the ones who stole the money.

For the above reasons, the appeal against the judgment of the magistrate is without merit. The appeal is accordingly dismissed.

*Zuze Law Chambers*, appellants' legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners