DAVISON MAJARI
versus
THE STATE

HIGH COURT OF ZIMBABWE
FOROMA J
HARARE, 21 July, 16 September 2021

Appeal against refusal of an application for bail pending trial

W Madzimbamuto for the appellant
A Muziwi for the State

FOROMA J: The appellant is charged with 5 counts of theft from motor vehicle allegations which he is alleged to have committed with 3 others two of whom are still at large.

Appellant was placed on remand on the 9th July 2021 together with one Desire Chirume as accused 2. Broadly the *modus operandi* in all the 5 counts is the same. Appellant and his co-accused are alleged to have broken into complainants' motor vehicles after smashing door window glasses in order to access property inside the motor vehicle which generally were laptop, mobile phones etc.

After being placed on remand appellant and accused 2 applied for bail pending trial which application was refused by the court *a quo*. This appeal is against such refusal of bail. In the form 242 the State alleged in count one that on the 1/07/21 appellant referred to as accused 1 and accused 2 in the company of one Edward Takaendesa and Kule (no further particulars known) both of whom were still at large broke into complainant's Nissan Hard Body Vehicle Registration ADR 7299 at Total Service Station opposite Harare Show Grounds (Exhibition Park) which complainant had parked and secured before going into a shop. The accused persons approached the Nissan Hard body using a charcoal Grey Toyota Hilux D4D. Appellant allegedly smashed the rear right door window glass to gain access into the Nissan Hard body and stole an HP laptop 2 book serial number CDN 705W8M and its charger, Zimbabwean identity document and headphones.

Police investigations led to recovery of the complainant's lap top and the charcoal grey D4D Toyota Hilux used in the commission of the crime at appellant's yard at 8250 Glen Norah C Harare.

At the bail hearing the state led evidence from one Nomore Dhambuza who in summary testified that Police had recovered a motor vehicle that had been found parked recovered at appellant's house. This was an answer in response to a question put to the witness by appellant (accused 1)'s counsel. The witness testified that the recovered vehicle was at the police station. Police had also uplifted finger prints which were still being examined/matched for verification. The witness also testified that he was present at the recovery of the D4D from appellant's residence.

In his ruling on the bail application the Magistrate's operative finding which constituted the reason(s) for the denial of bail to applicants said "the only evidence linking accused persons is the get-away vehicle which was captured by the CCTV and it was recovered. The offences being serious in nature that feature alone can entice the accused to abscond and flee from the courts jurisdiction. They are not good candidates for bail." – (the underlining is mine for emphasis). In his challenge of the court a quo's ruling appellant's counsel raised only one valid ground of appeal namely ground (6) which was couched as follows "Consequently the court *a quo* erred in holding that the seriousness of the offence on its own was likely to induce the appellants to abscond without making other considerations. Paraphrased ground 6 avers that the court a quo misdirected itself by holding that the seriousness of the offence on its own was likely to induce the appellant to abscond. If those were the facts then that would be a valid ground of appeal – See *S* v *Caplin* HB 05/26 and Peter *Chikumba* v *State* HH 90/14. Appellant's counsel incorrectly interpreted the court *a quo's* finding. The court found as a matter of fact that the only evidence linking the accused persons to the offences is the getaway vehicle which was captured by the CCTV. When the court commented thus – "that feature alone can entice the accused to abscond and flee from the court's jurisdiction it was making reference to the evidence available against the appellant and his co-accused. Indeed if the trial court finds it established that the D4D that was recovered at appellant's residence in Glen Norah is the D4D captured on CCTV during the commission of the offence then the conviction of appellant would follow like day follows night. In the event of the conviction on the offences charged (5counts of theft from vehicles) an imprisonment sentence is indeed the most

probable penalty appellant can expect. It is such risk of imprisonment that the court *a quo* considered made appellant a flight risk. In the circumstances the court does not find that the court a quo misdirected itself by finding that applicant was a flight risk. The appeal is accordingly dismissed.

Kajokoto and Company, appellant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners