

PATRICK MOYO

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 11 JANUARY 2007

S Masuku for the applicant
W B Dube for the respondent

Bail Application: Pending Appeal

NDOU J: The applicant was charged before a Regional Magistrate sitting in Bulawayo of attempted murder. Despite his strenuous protestations he was eventually convicted and sentenced to 8 years imprisonment of which 1 and half years were suspended on the usual conditions of good future behaviour. He has noted an appeal against both conviction and sentence. The facts of this case reveal a sad case of domestic violence. They are briefly the following.

The applicant and the complainant are husband and wife. Theirs was a marriage with unadmirable challenges and they were not staying together. She had moved out of the matrimonial home. On 6 January 2006 the complainant telephoned the applicant to inform him that their 5 year old child was sick and requested him to contribute financially so that she could take the child to the clinic. The applicant was no co-operative. She, nevertheless, took the child to Nketa Clinic for treatment. After treatment she again telephoned the applicant about his contributions towards the medical expenses. She called him from a public telephone booth. Struggling to use the facility, she sought assistance of a male person next to the booth. The applicant over heard the male voice in the background. Jealousy, and not the concern of the sick child triggered him to act. He later telephoned the complainant demanding to know the identity of the male person whose voice he over-heard in the background.

He armed himself with a knobkerrie, machete and spear and went to the place where the complainant was. He asked her to return to the matrimonial home. She declined resulting in the assault using the above-mentioned assortment of weapons. The resultant injuries sustained by the

complainant were predictably serious. She sustained a 10cm deep scalp laceration, stab wounds etc. She lost consciousness as a result of the assault. The doctor described the injuries as very serious. He opined that severe force was used. He said there was potential danger to life on account of chronic headaches. He also opined that permanent disability was likely as the assault resulted in poor vision on the left eye.

I have had sight of the entire record of proceedings in the Regional Court. I am satisfied that there are no reasonable prospects of success on appeal. The applicant was convicted of a serious offence and sentenced to imprisonment to a long term of imprisonment. This may induce him to abscond – *S v Kilpin* 1978 RLR 282 AD; *S v Benatar* 1985 (2) ZLR 205 (HC); *S v Ndlovu* HH-177-01 and *S v Hudson* 1980 (4) SA 145 (D).

As rightly pointed by MACDONALD C J in *S v Kilpin, supra* at page 286:

“... it would be most improper for a person who should be in prison to be at large as this is likely to encourage frivolous and vexatious appeals.”

It is trite that the presumption of innocence no longer applies in such an application. The onus is on the applicant to show that he should be admitted to bail and in the absence of positive grounds for granting bail it should be refused – *S v Ncube & Anor* HB-4-03.

Further, the applicant absconded for around three month soon after the commission of the offence. This is a relevant factor that works against the applicant’s case – *S v Nichas* 1977(1) SA 257 (C) and *S v Ndlovu, supra*.

Taking all the above factors into account the applicant is not a suitable candidate for bail and the application is accordingly dismissed and the applicant is refused bail pending appeal.

Ben Baron & Partners, applicant’s legal practitioners
Criminal Division, Attorney-General’s Office, respondent’s legal practitioners