

TENDAI NKOMO
versus
THE STATE

HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 17 DECEMBER 2015 AND 11 FEBRUARY 2016

Bail Application

R. Dzete for applicant
K. Ndlovu for respondent

MAKONESE J: The applicant is facing a charge of murder. The brief facts are that on 10 September 2015 and at Hwange the applicant stabbed his estranged wife Sithembile Luphahla three times with a kitchen knife on the shoulder and back following suspicions that deceased was having an extra-marital affair with another man. The applicant does not deny that he caused the death of the deceased. He states that he had an altercation with his wife whom he loved dearly. He acted out of anger and regrets his actions.

The applicant's legal counsel has passionately argued for the release of the applicant on bail pending trial. It is contended that the court should lean in favour of the liberty of the applicant to protect his fundamental freedom to liberty.

In his opposition to the granting of bail, the Investigation Officer raised four primary grounds for opposing bail, *viz*;

- a) The accused is likely to abscond considering the gravity of the case
- b) The accused is not permanently employed and might abscond
- c) The accused is likely to commit another crime as he now knows the identity of the deceased's boyfriend.

In considering the application for bail I am mindful of the provisions of section 117(1) of the Criminal Procedure and Evidence Act [Chapter 9:07] which provide that any person who is

in custody in respect of an offence shall be entitled to release on bail unless the court finds that it is in the interests of justice that he or she should be detained in custody. The court's approach to the question of bail is one of striking a balance between the interests of society, that the applicant should stand trial and that there should be no interference with the proper administration of justice and the liberty of the applicant who pending the outcome of his trial is presumed innocent. The onus is on the state to proffer cogent reasons supported by information justifying why the applicant should not be released on bail. See the case of *S v Hussey* 1991(2) ZLR 187(S).

In his affidavit opposing the gravity of bail the Investigating Officer, Dumisani Murindi had this to say:

"I am a duly attested member of the Zimbabwe Republic Police stationed at ZRP Hwange. On the 11th day of September 2015 I was assigned to investigate a case of murder in which Tendai Nkomo stabbed Sithembile Lupahla several times with a kitchen knife. I took the accused for indications and did the necessary documentation and later sent him to court for initial remand. Accused was remanded in custody. The accused is still in custody and I wish to oppose bail on the following grounds:

1. *When Tendai Nkomo was arrested he made threats to the witnesses who effected citizen arrest that once released he is going to kill them.*
2. *Accused is a local person and the community where he lives in baying for his blood and his safety once of the custody will be in danger.*
3. *Accused is likely to interfere with witnesses one released out of custody.*
4. *The probability of the accused running away is high due to the gravity of the offence."*

It is my view that that the seriousness of the offence on its own is not sufficient ground for denying the applicant bail. In this case however, the applicant threatened the witnesses with death upon his release from custody. The case against him is very strong. It is my considered view that the granting of bail is likely to prejudice the administration of justice. In the case of *State v Jongwe* SC 62/02, the learned Chief Justice, CHIDYAUSIKU stated as follows at page 5 of the cyclostyled judgment:

"In this case the evidence against the appellant is very cogent, if not overwhelming. The appellant admits inflicting the wounds found on the deceased. The Post Mortem Report clearly establishes the nature and the multiplicity of stab wounds that he inflicted. The Post Mortem Report clearly establishes that this was a savage and brutal attack on the deceased....."

The court held that the risk of abscondment was high due to the strength of the case against the applicant.

In *casu*, the knife which the applicant used was found stuck in the back of the deceased's body. The applicant stabbed the deceased three times before fleeing the scene of the crime. He was apprehended by members of the public. The likelihood of a lengthy prison term being imposed against the applicant is high. The possibility of applicant absconding to avoid trial is therefore quite high.

For these reasons, the application for bail pending trial is dismissed.

Maronedze, Mukuku and Partners, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners