

EMMANUEL DOLOSI  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
MAKONI J  
HARARE, 19 November 2010

### **Bail Application**

*R. Chikwari*, for the applicant  
*E. Makoto*, for the respondent

MAKONI J: The applicant and 3 of his accomplices appeared before a Magistrate charged with murder. The brief facts of the matter are that the applicant and his accomplices approached Gletwin farm in Chishawasha armed with pistols and with two get away cars. They disarmed the two guards who were by the gate by tying them with shoe laces and bag handles. They also handcuffed a guard who was in the chicken run. They also assaulted him. The guard screamed and one Edson Manembe who was guarding the storeroom heard the screams. As he approached the chicken run, armed with a catapult, he was shot at 3 times in the chest, cheek and stomach. The applicant and his accomplices attempted to open the storeroom and later ran away. Edson Manembe was taken to hospital where he died on admission. The applicant and his three accomplices were later arrested.

The applicant now approaches this court seeking to be released on bail in terms of s 117(1) as with s 117 A(1) of the Criminal Procedure and Evidence Act [*Cap 9:07*].

#### The Law

Section 117(2) sets out in detail the grounds upon which a Judge may refuse to grant bail to an accused. These include:-

- (i) where there is a likelihood that the accused will not stand trial.
- (ii) attempt to influence or intimidate witnesses or to conceal or destroy evidence..

These grounds have been expanded on in case law. In *S v Jonjure* 2002 (2) ZLR 209 at 215 G-H it was held that when assessing the risk of an applicant for bail absconding before trial, the court will be guided by the character of the charges and the penalties which in all probability would be imposed if convicted, the strength of the state case; the accused's ability to flee to a foreign country and the absence of extradition facilities, the past response to being

released on bail; and the assurance given that is indeed to stand trial. The most critical factors are the nature of the charges and the severity of the punishment likely to be imposed upon conviction and also the apparent strengths and weaknesses of the State Case”.

Applying the Law to the facts

The applicant is facing a serious offence of murder in the course of a robbery. If convicted chances of him being sentenced to death are very high. The accused’s version of events is that on the day the crime was committed he was nowhere near the crime of scene. He was sick and being nursed by his wife at home. He co-operated with the Police and led to the arrest of the accused who had hired his motor vehicle. He was questioned by the Police whether he had relatives who were police officers or knew anyone with relatives who were police officers. He led them to Owen whose motor vehicle had also been hired by the accused.

The State’s version is that the accused was arrested and he led the arrest of his accomplices. He led the Police to Owen whose motor vehicle they had hired. He led to the recovery of one of the firearms which was used in the commission of the offence.

The probabilities favour the states version. The applicant happened to mention the name of Owen to the Police who coincidentally had hired out his vehicle to the alleged accomplices. He led to the arrest of one of the accused who shot himself with the firearm used at the crime scene. He made indications to the Police. It is my view that the State has a fairly strong case and chances of the applicant being convicted are quite high. If the strength of State case is taken into account together with the likely sentence, chances are that the applicant will abscond if admitted to bail.

In view of the above I will make the follow order.

The application is dismissed with costs.