

MASOPO RONALDO

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 10 AND 28 OCTOBER 2021

Bail Application

Applicant in person
T. Muduma, for the respondent

MAKONESE J: This is an application for bail pending trial. Applicant is facing a charge of murder in contravention of section 47 (1) (a) of the Criminal Law (Codification & Reform) Act (Chapter 9:23). Applicant denies the charge.

The allegations against the applicant are summarised in a Request For Remand Form, 242. On 15th February 2020 at or near house number 330 Lovedale, Bulawayo, applicant struck the deceased with an axe once on the mouth, once on the left side of the neck and on the left leg. The deceased was ferried from the scene and died on his way to Zimbabwe Republic Police Nkulumane. He succumbed to injuries sustained in the attack. The applicant was seen by witnesses attacking the deceased with an axe.

The applicant who is not legally represented filed a detailed hand-written bail statement citing sections of the Constitution of Zimbabwe and relevant case law on the aspect of bail. Applicant avers that he did attack the deceased with an axe as alleged but claimed that he was acting in self defence. Applicant contends that before using the axe he had been engaged in a fist fight with the deceased. In his oral submissions, applicant suggested that he had been in remand prison for too long. He was entitled to bail as he wished to reunite with his family. Asked why he had assaulted the deceased with an axe, applicant alleged that he could not remember exactly what had transpired. Applicant feigned ignorance of how he savagely attacked the deceased causing him fatal injuries and yet in his bail statement he seemed to raise the defence of provocation and self defence. At some point, the applicant shifted his defence and alleged that he did not appreciate the consequences of his conduct. Applicant stated that he had been drinking beer prior to the commission of the offence but was not so drunk not to know what he was doing.

The law on bail is well traversed in this and other jurisdictions. The court must exercise its wide discretion and weigh the applicant's personal interests against the interests of the due administration of justice. Bail must be given where there is no danger to the interests of justice. In bail applications the courts are guided by section 50 and 70 of the Constitution of Zimbabwe (Amend No. 20) 2013. Section 50 provides that:-

“Any accused person who is arrested –

...

- (d) must be released unconditionally or on reasonable conditions pending a charge or trial, unless there are compelling reasons justifying their continued detention.”

Section 70 (1) provides that:-

“Any person accused of an offence has the following rights –

- (a) to be presumed innocent until proved guilty.”

These courts have interpreted the meaning of compelling reasons in several decided cases. In cases where the applicant in a bail application is likely to abscond or is a flight risk, this will be deemed to be a compelling reason. The seriousness of an offence on its own does not lead to a conclusion that an accused person is unlikely to stand trial. In fact, in several instances where the state asserts that there is a water tight case against an accused person, when the matter eventually goes to trial, the state may not be able to prove a *prima facie* case against the accused. In a bail application, therefore, the court must carefully, and as best as is reasonably possible, assess the strength of the case against an accused person.

On the facts of this case it is not disputed that applicant struck the deceased with an axe on the mouth, on the left side of the neck and on the left leg. The blows were directed on sensitive parts of the body. The deceased lost his life on the way to the police station. The applicant has not been forthright on the nature of his defence. In applications of this nature, and where the court is not conducting a trial of the matter, the applicant is required to place before the court all the material facts surrounding the commission of the offence. The court is less likely to exercise its discretion in favour of an applicant who seeks to conceal vital information to the court. Applicant must place the court in its confidence if the discretion to grant bail pending trial is to be exercised in his favour.

Applicant in this matter is facing a very serious offence which attracts a fairly long sentence upon conviction. Applicant has not furnished the court with any cogent and

recognizable defence to the charge. In fact, his defence has shifted from not knowing what transpired on the day in question, to self defence. In *S v Ndlovu* 2001 (2) ZLR 26, the court held that:-

“It is desirable for an accused person to lay before the court in a bail application what his defence will be at trial as such has a bearing on the assurances that he will indeed stand trial.”

For these reasons, I find that applicant may abscond to avoid trial. The case against him appears formidable. The administration of justice would be compromised if the applicant is granted bail as he may be tempted to flee to avoid trial. The applicant is not a suitable candidate for bail.

In the circumstances, the application is hereby dismissed.

National Prosecuting Authority, respondent’s legal practitioners