

**ALBERT NCUBE**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 31 MAY & 2 JUNE 2022

**Bail Application**

*B. Mhandire* for the applicant  
*T. Muduma* for the respondent

**MAKONESE J:** The applicant is facing allegations of murder as defined in section 47(1) of the Criminal Law (Codification and Reform) Act (Chapter 9:23). Applicant appeared at Gwanda Magistrates' Court for an initial remand on 4<sup>th</sup> of May 2022. He was remanded in custody to the 18<sup>th</sup> May 2022. Applicant desires to be released on bail pending his trial. This application for bail is opposed by the state on the grounds that he is a flight risk. The state contends that applicant is not a suitable candidate for bail as committed a similar offence whilst on bail on another murder charge.

**Background facts**

The state alleges that on 24<sup>th</sup> March 2022 late in the night, the accused gained entry into deceased's room by smashing the door. Once inside the house, the applicant struck the deceased Emelia Ncube several times on the head with an axe. During the attack applicant also struck Aaron Zulu on the head four times before leaving him for dead. Sandisiwe Ndlovu who had jumped out of the house moments before the attack went back to the house. She was accompanied by two men. When they were close to the verandah they flashed a torch and saw the applicant standing outside the house in the verandah. Applicant fled and disappeared into the night. Sandisiwe Ndlovu then entered the house only to discover the body of her mother Emelia lying lifeless in a pool of blood. Aaron Zulu had sustained serious injuries but survived the attack.

**Submissions by the applicant**

The applicant submits that he has a constitutional right to be admitted to bail pending his trial unless there are compelling reasons justifying his continued detention. Applicant is

of fixed abode and resides at 402 Spitzkop, Gwanda. He is gainfully employed as an artisanal miner and he is the bread winner for his family. The applicant has no links abroad and does not have travel documents. Applicant has not interfered with police investigations, neither has he interfered with state witnesses. Applicant has no intention to abscond. Applicant denies the charge and states that he never assaulted complainant, neither did he murder Emilia Ncube. Applicant states that he was at his homestead with his family at the relevant time. Applicant argues that the fact that he has a pending murder charge does not deprive him of the presumption of innocence as he has not been convicted of an offence. Applicant concedes that there is an outstanding warrant of arrest issued on the 30<sup>th</sup> of December 2020 at Gwanda Magistrates' Court against him. Applicant did not tender any explanation as to why the warrant of arrest has not been cancelled. Applicant conceded that at the time of his arrest he fled as he did not know that the police had come to effect an arrest. Applicant only stopped when warning shots were fired.

### **Submissions by the state**

Counsel for the respondent abided by the papers filed of record. The state opposes the granting of bail and contends that the applicant is not a suitable candidate for bail. The state submits that the applicant is a flight risk and should not be granted bail as he is facing a similar charge of murder under case number Gwanda Urban CR 14/06/2020. A warrant for applicant's arrest was issued on 30<sup>th</sup> December 2020 and remains outstanding. The state submits that applicant is likely to commit similar offences if he is granted bail. The state submits that applicant has been on the run since December 2020. The state avers that applicant is a flight risk due to the fact that:

- (a) he fled from police officers who had gone to arrest him;
- (b) applicant fled despite warning shots being fired by the police;
- (c) applicant was arrested and handcuffed after being chased and caught by the police;
- (d) upon his arrest applicant bolted again before he was re-arrested;

The state submits that although the presumption of innocence still operates in favour of the applicant, there are compelling reasons for his continued detention pending his trial.

### **Analysis**

It is now trite that the purpose of granting bail to an accused person is to strike a balance between the two competing interests that of the liberty of the accused and the requirement that the accused stands his trial. See; *State v Biti* 2002 (1) ZLR 115 (H).

The overriding consideration in bail applications is to ensure that the interests of justice are not compromised by the granting of bail to an accused person. Before the state can oppose bail on the grounds that the accused is likely to abscond, there is need for sufficient information to be placed before the court indicating that the accused has either the means to abscond or the propensity to abscond. See: *Munsaka v State* HB-55-18. In this matter, the state has by positive means, demonstrated that the applicant committed an offence of a similar nature whilst on bail and is on a warrant of arrest. I have not lost sight of the fact that applicant has not yet been convicted of any criminal offence. It is however important to note that to grant an applicant bail pending his trial, whilst he is on the run, and on a warrant of arrest is not only irresponsible but has the effect of jeopardizing the interests of justice. It has been suggested that applicant is not on the run and has always been resident at his Gwanda address. No explanation has been given by the applicant why he defaulted court on 30<sup>th</sup> December 2020 and why he has not seen it fit to have the warrant of arrest cancelled.

For the foregoing reasons, I conclude that applicant is not a suitable candidate for bail.

In the result, and accordingly, the application is hereby dismissed.

*Masawi & Partners*, applicant's legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners