

JERICO MOYO

And

INNOCENT NDLOVU

And

STEVEN SIBANDA

And

THULANI NCUBE ZUZA

And

NAISON TSHUMA

And

AORTA MADODANA NDLOVU

And

HANDSOME MOYO

And

NDODANA MLILO

And

TAWANDA MURIDZO

And

ANELE NKIWANE

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 18 MARCH AND 19 MAY 2022

Bail Application

N. Sithole, for the applicant
T.M Nyathi, for the respondent

MOYO J: This is an application for bail pending trial. At the hearing of the application the state conceded to 1st, 5th, 8th, 9th and 10th applicants being granted bail. They were accordingly granted bail. However, for 2nd, 3rd, 4th, 6th and 7th applicants the state opposed bail arguing that they are a flight risk.

The applicants face a charge of murder it being alleged that on the 15th of February 2022 they teamed up together with their accomplices and assaulted the deceased by attacking him with an axe and machetes thereby causing his death. There are eyewitnesses who are known to the applicants who have given statements to the police, to the effect that these particular applicants were present and did act in common purpose in attacking the deceased and his companions.

In bail matters, an accused person is presumed innocent until proven guilty. Thus the presumption of innocence operates in the accused's favour before conviction. However, in assessing whether an applicant is suitable for bail or not, the court has to assess those factors that may point to a risk to abscond on the part of the applicants. Such factors have been repeatedly stated in many cases in this

jurisdiction like in the case of *Jongwe v S* SC 62-02 wherein the factors to be so considered were given by the Supreme Court. They are:-

- the nature of the charges and the severity of the likely punishment to be imposed upon conviction.
- the apparent strength and weaknesses in the state case.
- the accused's ability to reach another country.
- the risk of interference with investigations.

The part that is relevant to the applicants before me is the seriousness of the charge they face, and the *prima facie* strong state case as there are vivid accounts by witnesses in their statements attached to the state's response which accounts render the state case *prima facie* strong. The applicants themselves do not deny having been at the scene of crime and they allege they were being attacked by a violent gang and that they only later heard of deceased's injury and demise. The eye witness accounts clearly point to a strong *prima facie* case against the applicants.

The Supreme Court in the *Jongwe* case (*supra*) held that:-

“in judging the risk to abscond, the court ascribes to the accused the ordinary motives and fears that sway human nature. Accordingly it is 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 etc.”

The applicants herein face a serious charge, and the evidence by the state through eye witness accounts is *prima facie* strong. The risk to abscond can thus be inferred from the ordinary fears governing human nature. For the risk to

abscond relatively increases with a serious charge, with a heavy penalty and a *prima facie* strong state case as an accused may be tempted to flee for the simple human fears that once the day of reckoning comes, he has no avenue to escape culpability and a lengthy term of imprisonment. In essence this is what the *Jongwe (supra)* judgment entailed in my view. Once the charge is serious, the penalty is heavy, and the state case is *prima facie* strong, human nature may move on accused to seek to avoid trial so as to escape a conviction and a lengthy term of imprisonment. In other words, the risk to abscond can be inferred if there are red flags such as a serious charge, a strong state case and a likely lengthy custodial term upon conviction

I hold the view that in this case, the vivid eyewitnesses' accounts by the state witnesses in their statements, render the state case *prima facie* strong. A conviction of murder often attracts a lengthy term of imprisonment. It is for these reasons that I find that the risk to abscond is real in this matter and thus operates against granting these applicants bail.

I accordingly dismiss the application in relation to 2nd, 3rd, 4th, 6th and 7th applicants.

Ncube Attorneys, applicant's legal attorneys

HB 125/22

HCB 86/22

XREF CRB FIL 86-90/22

CRB FIL 92-96/22