

DENIS DAVID KONSON

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 23 & 25 OCTOBER 2012

R. Ndlovu for the applicant
T. Hove for the respondent

Bail Application

NDOU J: This is an application for bail pending trial. He is aged 60 years and facing charges of murder, attempted murder, armed robbery and two other charges under the Firearms Act [Chapter 10:09]. The applicant and the now deceased were lovers for a period of around six years. The applicant gave her resources to start a business. The now deceased had a child by another man who was resident in South Africa. In September 2012 the deceased informed the applicant that the father of her child had returned from South Africa. After the other man's return the applicant felt that the deceased had become less candid with him concerning the operations of the store business in Lupane and her commitment to their love relationship. The deceased's conduct prompted the applicant to inform her that he will go to Lupane to speak to her and assess the goings on about the store business. The deceased advised applicant not to go to Lupane and it was at that stage that she indicated that she was a married woman. She advised him against going there as there will be people waiting to harm him. That advice alerted applicant to the possibility that the father of deceased's daughter could be a violent person. Against this background, the applicant travelled to Lupane on 9 September 2012 to check on the deceased and the store and flea market business he had set up with the deceased. He travelled overnight and arrived in Lupane at about 3 am on 10 September. Applicant slept up to 5 am and then proceeded to Jotsholo Police Station where he saw the Officer-In-Charge. He informed the latter of his intention and that he had been informed that there will be persons waiting to harm him. The applicant was armed with a Bruno pistol. Applicant was assigned a police officer to accompany him. At the business centre they found the deceased and her boyfriend sharing a room. This angered the applicant. The applicant felt that the conduct of the deceased was arrogant and extremely provocative after what he had done for her in providing resources for her and her family.

The police office ordered that the parties proceed to the store. When they got to the store the deceased indicated that she was no longer running the store. The applicant was

enraged by the turn of events and he shot the deceased twice and the latter died on the spot. He also shot the policeman who was escorting him once on the chest. The applicant is alleged to have taken BPula 300 which was on the counter at the store. From the papers before me, the applicant also pointed the firearm at other persons who were present during the murder. He then absconded from the scene and evaded roadblocks mounted by the police. This latter conduct, taken in conjunction with the seriousness of the offence and strength of the evidence make the applicant a flight risk. He is not a good candidate for bail – *S v Jongwe* 2002 (2) ZLR 209 (S). Accordingly the application is dismissed and the applicant is refused bail pending trial.

R. Ndlovu & Co. applicant's legal practitioners

Criminal Division, Attorney General's Office respondent's legal practitioners