

**JEPHIAS MANGISI**

**VERSUS**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 8 APRIL AND 11 APRIL 2013

*Mr C. Chigomere* for the applicant  
*Miss S. Ndlovu* for the respondent

Bail Pending Trial

**MAKONESE J:** The applicant is facing a charge of contravening section 47 of the Criminal Law Codification and Reform Act [Chapter 9:23], murder. The allegations are that on the 11<sup>th</sup> December 2012 and at Stephen Runeta's homestead, at Nkayi around 2000 hours, the applicant proceeded to the deceased's home armed with a spear. Upon arrival applicant forced open the door to the deceased's bedroom. The deceased was asleep at the time. The applicant then struck the deceased once on the lower side of the left breast with a spear. He struck the deceased twice on the lower side of the right ear twice with a claw hammer. The deceased died instantly as a result of the injuries sustained. The applicant fled the scene.

The applicant now seeks bail pending trial and has urged the court to accept that he is a suitable candidate for bail. He argues that he will not abscond and will stand trial.

The agreed facts, however show that the applicant was arrested by Constable Gondo and other police detectives in Gwanda aboard a South African bound Toyota Quantum omnibus. Applicant had paid the driver the sum of R1400 to be transported to South Africa. Had it not been for an informer who told the police that the applicant was on his way out of the country the applicant would have succeeded in fleeing into neighbouring South Africa.

The Investigating officer Maimbo Shingirayi Givemore swore to an affidavit opposing bail in which he stated as follows:

- “5. *Accused was later arrested in Gwanda by Police officers from Zimbabwe Republic Police (ZRP) Pumula, Bulawayo on the 27<sup>th</sup> December 2012. I send him to court in Nkayi Magistrates Court (sic).*
6. *I now oppose bail because of the following reasons:*
- (i) *The accused person is a flight risk. He was arrested in Gwanda abode a cross-border operator vehicle by Police officers from Zimbabwe Republic Police Pumula in Bulawayo. (See copy marked annexure 1, the Statement from the arresting detail).*
  - (ii) *The accused person already interfered with witnesses as he severely assaulted MILIA NCUBE mother to the deceased, using a hammer soon after committing the murder.*
  - (iii) *The accused is already serving at Nkayi Prison for the assault case on MILIA NCUBE. ZRP Gwelutshena C.R 13/12/12 and Nkayi Magistrates Court CRB 77/03 refers. (See copy marked annexure 2, proof of conviction from Nkayi Magistrates Court.”*

Mr Chigomere who appeared for the Applicant did not dispute that the applicant was arrested by police detectives on his way to South Africa. He was in fact absconding and leaving the country. He demonstrated that he has the capacity to flee the jurisdiction of these courts in order to avoid trial. The fact that he was apprehended is obviously a result of the swift action taken by the police who managed to track down the Applicant before he could make good his escape. It is now, trite in matters of bail, that where the applicant has actually shown a willingness and determination to abscond then the courts will be slow to grant let alone consider bail pending trial. There is no evidence before the court that the applicant’s desire to abscond has now somehow evaporated. No cogent reasons have been advanced before the court to show that the applicant will now want to stand trial and not attempt to abscond. I do not consider that any stringent reporting conditions would safeguard the interests of justice. The applicant is facing serious allegations of murder and the propensity to abscond is real under the circumstances.

I have been asked to disregard the fact that applicant is already serving at Nkayi prison for an assault he inflicted upon the deceased’s mother, one Milia Ncube. It has been argued that the assault took place on the same date of the murder and is therefore one criminal transaction. In my view the accused’s conduct only goes to strengthen the view that accused person is of violent disposition. That factor alone would not have persuaded me to deny the

applicant bail pending trial, but that factor taken into conjunction with the accused's attempt to abscond makes him an unsuitable candidate for bail.

The police have made credible allegations that the applicant was arrested on his way to South Africa. The onus is upon the applicant to prove a balance of probabilities that good grounds exist for him to be granted bail pending trial. See *S v Ndhlovu* 2000(1) ZLR 261.

I am satisfied that the applicant has failed to advance any good grounds on a balance of probabilities to establish that if admitted to bail he will not attempt to evade the consequences of the law by absconding.

In the result, and for the above reasons I make the following order:

- (1) The application for bail is hereby dismissed.

*Mutatu and partners*, applicant's legal practitioners

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