

TWOBOY NDLOVU  
and  
TINASHE SIBANDA  
and  
EPHRAIM NDLOVU  
and  
LAMECK NDLOVU  
**versus**  
THE STATE

HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO 15 SEPTEMBER 2017 AND 19 OCTOBER 2017

### **Bail Application**

*N Moyo* for the applicants  
*W Mabhaudi* for the respondent

**MOYO J:** The four applicants launched this application for bail pending trial. The state did not oppose bail in relation to the third and fourth applicants and they were as a result granted bail by consent.

The state however, opposed bail with regard to the first and second applicants.

The two applicants face a charge of murder, it being alleged that on 15 July 2017 at Sivomo Business Centre in Nkayi, they teamed up and followed the now deceased Chris Mpofu at Sivomo Business Centre where they accused him of assaulting their father and stealing their livestock.

They then assaulted deceased with a plank, an axe and a wheel spanner all over his body resulting in deceased suffering injuries that he subsequently died from on 16 July 2017 after he had been taken to hospital. The two applicants are aged 26 and 25 years respectively. In the applicants' statement, a defence is only mentioned in relation to the third and fourth applicants whom the state consented that they be granted bail.

Conspicuously absent is the defence that first and second applicants will proffer at the trial. Such defence is relevant for the following reasons. Central to the determination of a bail application are the interests of the administration of justice and these are constituted by, the accused's personal circumstances, the right to liberty, the presumption of innocence and the assurance that an accused person will indeed stand trial once granted bail. The main consideration therefore in such applications is the assurance that once granted bail an accused person will indeed stand trial. For if there is a risk that an accused person will not stand trial then the interests of justice will be prejudiced by his admission to bail.

In this case the accused persons face a charge of murder, which on its own is a serious offence. The state case appears *prima facie* strong as the request for remand form states that there are eye witnesses in the matter.

In the Supreme Court case of *S v Jongwe* 2002 (2) ZLR 209 (S) indicated that when assessing the risk of an applicant for bail absconding before trial, the court should be guided by *inter alia*:

- (a) the character of the charges and the likely penalties
- (b) the strength and weaknesses in the state case
- (c) and other considerations that may be relevant in that particular matter.

The two applicants in this matter also have a previous conviction on a charge of assault which is an offence involving violence just like the murder charge they are currently facing.

The applicants in this matter face a murder charge which is a serious offence with a likely sentence of a lengthy imprisonment term. According to the allegations raised against the two applicants, there are eye witnesses who support the state case. The evidence is thus overwhelming.

On the other hand, the applicants do not refer to a defence in their bail statement. This has been held to be important in assisting the court to weigh the strengths and weaknesses in the state case so as to formulate an opinion whether there is indeed an assurance that the applicant will await trial in order to challenge an otherwise weak state case.

Refer to the case of *Ndlovu v S S 2001 (2) ZLR 261 (H)* wherein it was held that it may be desirable for an accused person to lay before the court hearing his bail application, what his defence will be at the trial, as such has a bearing on the assurance that he will indeed stand trial.

I accordingly find as follows:

- 1) That the applicants have previous convictions which are somehow related to violence.
- 2) They face a serious charge of murder
- 3) The state has a *prima facie* strong case against them
- 4) If convicted they face a lengthy term of imprisonment
- 5) They have not said anything in their application to counter the allegations made against them by the state.

The risk of abscondment is therefore high in my view for the foregoing reasons. The applicants also have a propensity to conduct themselves in a violent manner as evidenced by the previous conviction in relation to assault.

The two applicants are therefore not suitable candidates for bail and their application is accordingly dismissed.

*SKM Sibanda and Partners*, applicants' legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners