

HB 345-17
HCB 174-17
XREF: CRB K2 177-17

NHLANHLA MLALAZI
versus
THE STATE

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 30 OCTOBER 2017 AND 2 NOVEMBER 2017

Bail Application

Ms B Mushaninga for the applicant
Ms N Ngwenya for the respondent

MATHONSI J: The applicant was arrested on 10 July 2017 at about 22:30 hours on a charge of murder as defined in s47 of the Criminal Law [Codification and Reform] Act [Chapter 9:23]. The state alleges that in the course of a robbery the applicant and two accomplices who are still at large, caused the death of Vusumuzi Mhlanga at a tuckshop located at Ndlovu Syndicate Mine in Matobo, on 20 September 2016.

The full allegations are that the deceased was employed at the mine and owned a tuckshop at the mine premises. On 20 September 2016 he was asleep with his girlfriend in a room, which was also occupied by another woman when the applicant and his two accomplices hatched a plan to rob the deceased at his tuckshop. Just after midnight the three arrived and the applicant is the one who used an axe to chop off the wooden door for them to gain entry.

It is alleged that once inside the applicant used an axe to strike the deceased twice on the head inflicting deep chop wounds from which he later died. After attacking the deceased the applicant and his accomplices robbed him and his girlfriend of a black and white bag containing *inter alia* a wallet with cash amounting to \$263-00 before making good their escape. It was not until 9 July 2017, or is it 10 July 2017 that the police received a tip off leading to the arrest of the applicant at a tent in the bushy area of Nugget Mine.

The applicant has now applied for bail pending trial. He states in his bail statement that he is 26 years old. He is not gainfully employed and resides at No 71532 New Lobengula in

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Bulawayo where he proposes to stay with his brother if granted bail. He is not a holder of any form of travel document. The presumption of innocence operates in his favour as he has not been convicted. As such his pre-trial incarceration is an infringement of his right to personal liberty. He should therefore be admitted to bail pending trial.

The application is opposed by the state on the ground that the applicant is a flight risk and reliance is placed on the affidavit of Prince Chimwanda the investigating officer who is based at ZRP Matobo. The affidavit reads in relevant part;

“I am the investigating officer of a case of murder that is under Matobo CR 17/09/16 and preliminary investigation carried out led to the arrest of the accused Nhlanhla Mlalazi who was arrested on the 09th day of July 2017 at about 2100 hours after a serious raid at a tent in the bushy area of Nugget Mine Matobo.

The accused resisted arrest and fought with the police officers but was however overpowered. Upon being arrested he gave a false name that he was Terence Ncube in a bid to outwit police officers.---

I therefore pray that the accused be remanded in custody for the following reasons;

1. To secure the accused for trial since he has no fixed abode and has been on the run for the past 11 months. He committed the offence in the month of September 2016 and was arrested on the 09th day of July 2017.
2. The accused may interfere with witnesses who are employed within the same area where he operates from and might even harm them.
3. The accused is facing another attempted murder case at Esigodini where he stabbed Chrispen Ncube on the neck with a knife CR 47/09/15.
4. Given the gravity of the offence the accused is likely to abscond to other neighbouring countries i.e. South Africa or Botswana whilst leaving no family behind.
5. Two other outstanding accused who are still at large and are known by him and is the only person who could lead us to them.”

Murder is a Third Schedule offence meaning that in terms of s115C of the Criminal Procedure and Evidence Act [Chapter 9:07] the applicant bears the onus of showing, on a balance of probabilities, that it is in the interest of justice that he be admitted to bail pending trial. Apart from that, where the murder is planned or premeditated, as occurs when people decide to rob a sleeping couple while armed with an axe or where it is committed during aggravated robbery, s115C imposes upon the applicant for bail pending trial the extra burden of showing on a balance of probabilities that exceptional circumstances exist which permit his release on bail.

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While s50 of the Constitution requires the release on bail of an arrested person unless there are compelling reasons for their continued detention, it is now accepted that it is a compelling reason to refuse bail where there is a likelihood of abscondment if the applicant is released on bail or will endanger the safety of members of the public or is likely to commit other offences.

It occurs to me that the applicant has not discharged the onus resting on him to show that it is in the interest of justice that he be admitted to bail. Neither has he discharged the onus of showing the existence of exceptional circumstances militating for his release on bail. Indeed, this is a person who succeeded in evading arrest for 10 months. When he was finally cornered he fought tenaciously with the police trying to avoid arrest. Even when that effort could not work he tried to give the false name of Terence Ncube.

Clearly therefore this is a person who not only has no respect for the law, he certainly will do anything to avoid standing trial. With that kind of background it becomes very apparent that the risk of abscondment is extremely high. The applicant is not to be entrusted with his freedom under the circumstances.

Accordingly the application for bail is hereby dismissed.

*Legal Aid Directorate, C/O Gwanda Legal Aid Directorate, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners*