

NORMAN PUTSAYI  
versus  
THE STATE

IN THE HIGH COURT OF ZIMBABWE  
MATHONSIJ  
HARARE, 22 April 2015

### **Bail Application**

The applicant in default  
*S. W. Munyoro*, for the respondent

MATHONSIJ: The applicant is a villager residing at Kujeke Village in Wedza. He was arrested on 3 December 2014 on a charge of murder and initially appeared at Marondera Magistrates Court on 15 December 2014.

The allegations against the applicant are that he was fighting with his twin brother on 12 December 2014 whom he over powered and then used an axe to strike on the head resulting in his death. According to the Form 242 the assault was witnessed by the applicant's wife and after that the applicant surrendered himself to the village head whom he informed that he had killed his own brother.

The applicant has now approached this court seeking his admission to bail pending trial. He states in his application that he is employed by Torn Mark Mutunje and that he is married with 4 children the oldest of which is 6 years while the youngest is 4 months old. In addition he looks after his two young brothers who are dependent on him.

The application is opposed by the State on the grounds that the applicant will abscond if admitted to bail because of the gravity of the offence which attracts a lengthy term of imprisonment. In addition the state argues that investigations are still underway, the applicant is likely to interfere with witnesses as his wife is a witness and that for his safety the applicant should be kept in custody as he may "be attacked by the community for killing another person".

In my view all these are lame excuses for opposing the grant of bail pending trial. It has been stated on times without number that the seriousness of the offence on its own cannot constitute sufficient ground for denying an applicant bail. There must be more evidence pointing to the applicant's affinity to abscond as would persuade the court that he will not stand trial. In this case the evidence points in a completely different direction, that of the co-operation of the applicant. After the alleged offence he surrendered himself to the village head. That is not behavior of a person intent on abscondment.

The fact that his wife is a witness is also not a pointer to interference with witnesses. In any event in Form 242 the investigating officer stated that investigations were to be completed by 22 December 2014. It is now 4 months after that date and by whatever measure investigations should be complete now meaning that a statement would have been recorded from the applicant's wife by now.

The allegation that the applicant should be kept in prison for his own safety as the community may attack him, cannot be taken seriously at all. Indeed the applicant may be indebted to the state for its concerns about his safety but such indebtedness cannot possibly extend to a desire to remain in custody: *Japoko & Ors v the State* HH 172/12. If that was the case no one would be admitted to bail at all.

I am satisfied that the applicant is a proper candidate for bail.

Accordingly, it is ordered that:

The applicant is hereby admitted to bail on the following conditions, that;

1. He deposits a sum of \$100-00 with the Registrar of this court.
2. He resides at his homestead in Kujeke Village Wedza until the matter is finalized.
3. He reports once a week at Wedza Police Station on Mondays between the hours of 0600hrs and 1800hours until the matter is finalised.
4. He does not interfere with state witnesses.

*National Prosecuting Authority*, respondent's legal practitioners