

SITHOLE LAST  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
BHUNU J  
HARARE, 31 March 2015 and 29 April 2015

### **Bail Application Pending Trial**

Applicant in person  
Ms *Maheya*, for the respondent

BHUNU J: This is an application for bail pending trial. The applicant is charged with murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. Acting In consort and common purpose with his accomplices John Mabhunu and Francis Benjamin Alimoso he is alleged to have way laid and murdered the deceased Oliver Chiipepera in the course of a robbery on the night of 26 September 2014.

They are alleged to have barricaded the road in Mabvuku along which the deceased was driving with 5 huge stones. When he stopped to avoid the barricade the three applicants who were lying in ambush set upon him and smashed his windscreen. John Mabhunu who was armed with an Okapi knife then stabbed the deceased to death on the shoulder and chest with the knife. They then robbed him of his motor vehicle a Volvo registration number ADK 5132, US\$1 000.00 cash and various other items including, a ZTE cell phone, a pair of brown Freeth Shoes size 42 and a brand new blue toilet brush.

Acting on information the police arrested John Mabhunu who was found wearing the deceased's shoes stolen during the robbery. Upon his arrest he implicated Alimoso and the applicant leading to their arrest.

John Mabhunu and Alimoso made various indications leading to the recovery of the murder weapon, the deceased's car battery and spare wheel from various persons to whom they had been sold.

Upon his arrest the applicant made admissions and indications to the police leading to

the recovery of the brand new blue toilet brush stolen during the course of the robbery and murder of the deceased. The brush was recovered from the applicant's premises.

The applicant is a responsible family man of fixed abode. He argued that he is unlikely to abscond because he is a citizen of this country with no passport. He now denies the charge and fancies that he has bright prospects of success at his trial.

Despite his denial of the charge, the applicant admits being found in possession of the blue toilet brush allegedly stolen from the deceased during the robbery. He however disputes that the brush belongs to the deceased. He claims to have bought the brush. His argument is that the toilet brush cannot be positively identified as that stolen from the deceased because it has no serial number.

In addition he does not deny that he made damning admissions to the police but seeks to challenge those admissions on the basis of duress.

The State is strenuously opposing bail on the basis of seriousness of the offence and the resultant likelihood of abscondment. Undoubtedly the offence is serious because it normally carries the ultimate penalty of the dreaded death sentence. At 28 years of age he falls within the bracket of people who may be sentenced to death in terms of s 48 of the Constitution.

The evidence against the applicant is water tight and overwhelming such that conviction is almost inevitable in the absence of strong exculpatory evidence. That being the case, the applicant cannot be trusted to stand trial if released on bail. Considering the strength of the State case and the real likelihood of conviction and severity of sentence, there is a very strong incentive for the applicant to abscond. The mere fact that he is a citizen of the land with no passport is no guaranty that he will defy the odds and stand trial in the face of the looming death penalty and at best life sentence. This is the sought of case that the court had in mind when the learned judge in the case of *Aitken and Another v the Attorney General* 1999 SC 67/99 remarked that:

“The more serious the offence, the heavier the sentence is expected to be, the greater the temptation to flee.”

Those remarks fit the applicant's circumstances in every material respect thereby rendering the risk of abscondment too high to contemplate.

The applicant appears to be part of a ruthless organised gang of robbers which is in the habit of hunting and preying on fellow human beings for profit and gain. Thus releasing the applicant on bail will endanger public safety and welfare. The courts have a duty to protect society from such dangerous elements of society by keeping them tightly under lock and key.

For the foregoing reasons I come to the conclusion that the applicant is not a good candidate for bail. **It is accordingly ordered that the application for bail be and is hereby dismissed.**

*The Prosecutor General, the respondent's legal practitioners*