

TENDAI HAPPINESS BWANYA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
ZHOU J  
HARARE, 28 September & 5 October 2016

### **Bail Application**

*D. Muzawazi*, for the applicant  
*Miss N. Mzvimbakupa*, for the respondent

ZHOU J: On 27 August 2016 the applicant was arrested on a charge of murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The deceased died of injuries sustained as a result of the assault by the applicant. The allegations against her are that on the 26<sup>th</sup> of that same month she assaulted the now deceased who was her six year old step daughter using a hosepipe, a stick and an axe handle. The applicant now seeks admission to bail pending her trial. The application is opposed by the respondent on the ground that the applicant is likely to abscond if she is admitted to bail.

The entitlement of an accused person who has not been convicted is provided for in s 50 of that Constitution of Zimbabwe. Section 50 (1) (d) provides that any person who has been arrested and detained:

“must be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons justifying their continued detention.”

In considering whether there are compelling reason to deny an arrested person the right of admission to bail the court will take into account the circumstances of each case, including the factors outlined in s 117 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. The question of whether, if admitted to bail, the applicant will stand trial is one of the relevant factors. In the present case the respondent’s contention that the applicant is likely to abscond if she is released at this stage is predicated upon the conduct of the applicant after her arrest. It is common cause that the applicant who was detained at Chikanga Police Station

left the charge office on 27 August 2016. Masiyakurima Yvette who was the officer on duty states in her affidavit that the applicant sneaked out of the police station surreptitiously. In other words, she escaped from lawful custody. The police officers looked for her and found her hiding in the bedroom of one Gladys Nyabereka who was her friend. The applicant's version is that she did not escape but "informed the officer that she wanted to collect some money from (her) home" in anticipation of being admitted to bail. She decided to take shelter at her friend's residence because she had received information that her neighbours might harm her as she was suspected to be the one who had caused the death of the deceased.

While the two versions are on paper, it is clear to this court that the applicant's story does not make sense. Why would the police look for her if they were the ones who had released her in the first place? She does not state the name of the person or officer who authorised her to leave the police station. Mr *Muzawazi* for the applicant stated that the place where the applicant was found hiding was within the same neighbourhood as her residence. She does not explain why the same neighbours would not confront her when she entered her friend's house. She also does not explain why she would hide in the friend's bedroom. Her story regarding the circumstances in which she left the police station and the reason for that conduct simply cannot be accepted. She is clearly a flight risk.

Quite apart from her conduct after her arrest, the applicant is facing a very serious charge. If she is convicted she will in all probability be sentenced to a very long term of imprisonment if she is lucky to escape capital punishment. The applicant is aware of these facts. The risk of absconding if she is admitted to bail is therefore very real.

This is a matter in which the right to liberty must yield to the proper administration of justice. The applicant suggests that she feels unsafe because of the threat from the neighbours who believe that she is the one who caused the death of the deceased. She does not explain how she would deal with such neighbours if she was to be admitted to bail. Whether that threat is real or only imaginary, it is clear that the applicant feels that her security would be threatened. That fear, coupled with the prospect of a conviction and a consequent severe penalty would induce her to abscond.

She has already tried to escape from lawful custody. Her assurances at this stage cannot be trusted by this court.

This is an application that is without merit.

The application is accordingly dismissed.

*Mtombeni, Mukweshe, Muzawazi & Associates*, applicant's legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners