

TAPIWA MADYA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
ZHOU J  
HARARE, 6 October and 10 November 2016

### **Bail application**

Applicant in person  
*A Masamha*, for the respondent

ZHOU J: The applicant is the accused person in a matter in which he is facing a murder charge. The evidence for both the prosecution and the defence was led and the matter was postponed indefinitely for judgment. The applicant has now approached this court seeking admission to bail pending the finalisation of the trial. The application is opposed by the respondent.

The allegations against the applicant are that on 7 December 2010 at or about 2100 and at Kandeya Township Mount Darwin he unlawfully caused the death of Alex Jomboro by shooting him in the head intending to kill him or realising that this conduct might cause death, continued to engage in the conduct.

The entitlement to bail of an unconvinced person provided for in s 50 of the Constitution applies to the applicant since the presumption of innocence still operates in his favour. Unlike cases in which the trial has not commenced, there is the additional dimension to the present case, which is that all evidence has now been placed before the court. It is therefore easy for the court to weigh the evidence tendered in order to assess whether, if admitted to bail, the applicant will attend to receive his judgment.

The offence with which the applicant is being charged is a very serious one. While that factor on its own does not always constitute a compelling factor to justify denial of bail in the present case the evidence which has been led links the applicant to the offence. The evidence of the investigating officer shows that the applicant is the one who led the police to the recovery of the firearm which was used to commit the offence. The ballistics reports

produced show that that is indeed the firearm that was used to commit the offence. The applicant denies that he led the police to the recovery of the firearm in question at Ruwa. The ultimate factual determination of that issue will turn on the credibility of the witnesses taken together with the totality of the other evidence led. The matter is better left for the judgment in the main case itself. At this stage it is sufficient to observe that the evidence of the police officer was that the applicant was the one who made indications which led to the recovery of the firearm in Ruwa. The applicant did not suggest that the firearm was recovered through the indications of some other person. Quite clearly, he has been sufficiently linked to the fire arm used in the commission of the offence. He is aware of the strong evidence against him. That will no doubt induce him to abscond.

In the light of the above factors it would be against the interests of justice to admit the applicant to bail at this stage.

In the result, the application for admission to bail is dismissed.

*National Prosecuting Authority*, respondent's legal practitioners