

YARDLEY MUCHANGWEYA
And
MOSES WARAMBA
versus
THE STATE

HIGH COURT OF ZIMBABWE
SIZIBA J
MUTARE, 19, 20 and 27 May & 6 June 2025

Application for bail pending trial

Mr *D Tandiri*, for the applicant
Mr *M. Musarurwa*, for the respondent

SIZIBA J:

1. On 27 May 2025, I granted bail pending trial to the second applicant and dismissed a similar application by the first applicant. The reasons thereof are contained hereunder.
2. The two applicants applied for bail pending trial in terms of s 117A(1) of the Criminal Procedure and Evidence Act [*Chapter 09:07*]. They are facing a charge of murder contrary to s 47(1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The applicants are both security guards employed by Eastern Highlands Plantation in Manicaland.
3. The facts pertaining to the allegations against the applicants are largely common cause. On the fateful day being 4 May 2025, the deceased was in the company of about five others and they were collecting bags of manure which had been hidden prior to the incident or earlier on in the day. The suspicion was that these items had been stolen from the applicants' employer. The two applicants were a team of about six security

guards who got to discover the hidden manure and they laid an ambush. At about 2030 hours, the deceased arrived at the scene with his associates. It is common cause that second applicant fired a warning shot. The first applicant is said to have fired the fatal shot to which the deceased succumbed. The deceased was found with seven pellet gunshot wounds on his buttocks.

4. The application for bail was filed on 14 May 2025. When the parties first appeared before me in chambers on 19 May 2025, they made submissions as usual but counsel for the State could not answer with certainty as to whether or not it was true that the second applicant had not fired any shots towards the deceased as was contended by the applicants on their bail statement. State counsel wished to be given time to clarify this issue with the investigating officer. By agreement of both counsel, the matter was therefore postponed to the following day being 20 May 2025 by which date State counsel again advised that the investigating officer was unavailable as he was attending a course in Harare. By consent again the matter was postponed to 27 May 2025 at which date State counsel was in possession of statements from State witnesses which showed that only the first applicant had admitted to have shot the deceased as per his bail statement.
5. In light of the above development, State counsel then conceded that the second applicant could be granted bail pending trial as prayed on the basis that it was being conceded that he may not have fired the shot which killed the deceased. The opposition to bail pending trial remained in respect of the first applicant. The argument that the applicants should not be released for fear of revenge by the community in their area of

residence as well as fears of interference with witnesses was not much persuasive to me in the circumstances of this case. The applicants had cooperated with the police and also assisted in ensuring that necessary reports were made as well as ensuring that the deceased's body is transported from the scene. The State had no qualms with their version on this regard. The key consideration was whether the applicants could stand trial if released on bail pending trial.

6. The charge of murder is a serious one. The circumstances of this case are such that the applicants, if convicted, may be found liable to a lesser crime of culpable homicide due to the fact that there seems to have been no intention to kill the deceased as the applicants were executing their work duties with the intention to safeguard their employer's property. However, the level of recklessness which is being imputed to the first applicant leaves a high likelihood of a custodial sentence and such likelihood may induce him to flee and not stand trial. The facts of this case so far show that the deceased was shot when he was already running away due to the warning shot that had already been fired. This is not in dispute. The State has a strong case and the evidence is overwhelming.
7. In my view, the State has demonstrated compelling reasons why the first applicant is not a suitable candidate for bail pending trial. The first applicant has failed to demonstrate that the interests of justice would not be prejudiced by his admission to bail pending trial. The second applicant was accordingly admitted to bail pending trial in terms of the draft as amended. The first applicant's application for bail pending trial was therefore dismissed.

Tandiri Law Chambers, applicant's legal practitioners

National Prosecuting Authority, respondent's legal practitioners