

MICHAEL MAPULANGO  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
CHAREWA  
HARARE, 21 & 28 December 2016

### **Bail Application**

Applicant in person  
*T Kasema*, for respondent

CHAREWA J: The applicant is facing a charge of murder as defined in s 47 of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*], in that on 8 December 2015 and at around 1000 hours, he, at Kinvara Estate Compound, Mt Hampden, struck the deceased (his father), six times in the head with a machete causing severe cerebral damage, multiple bone fractures and severe head trauma. The deceased succumbed to the injuries the same day.

The applicant applies for bail pending his trial. In his application and his response to the opposition to his application filed by the respondent, he denies committing the offence. He avers that he ought to be granted bail as he is a family man who must fend for his family and will not abscond. He avers that he is a first offender who is unlikely to commit further offences and will not interfere with witnesses as he resides 30 km away from the deceased's residence and hence any witnesses.

The respondent opposes bail on the grounds that applicant is facing a very serious charge which, if convicted, may give rise to a death sentence and is therefore likely to abscond. This is more so since, after the commission of the offence, applicant was on the run for about a year until his arrest in Chegutu on 2 December 2016. Further, the applicant has not raised any defence to the charge except for a bare denial, and is likely to interfere with

witnesses as he appears to be of a violent disposition in view of the nature of the crime he is alleged to have committed.

The law on bail is very clear, having been established by a line of case authorities both in the lower courts and the Supreme Court and which I do not find necessary to traverse. Suffice it to summarise the established legal position as follows:

1. Firstly, the court must strike a balance between the individual's right to liberty and the interests of the administration of justice. The right to liberty is predicated on the presumption of innocence of an accused person until his guilt is established by a court of law. The interests of justice include whether the release of an applicant will pose a danger to members of the public, or any person; whether an applicant will commit other offences; whether an applicant is likely to abscond or influence witnesses, destroy evidence or interfere with investigations; or any other good and sufficient cause.
2. Secondly, the State must give cogent reasons and full information for opposing bail.
3. The seriousness of an offence is not enough ground to oppose bail.

The State case appears to me to be quite strong and the papers before me raise a *prima facie* case that the applicant committed the crime alleged. The applicant therefore has a duty to rebut the allegations made against him in order to show that he should be granted bail. However, apart from a bare denial, the applicant made no attempt to rebut the allegations brought by the police.

It was only during his submissions before me, that, for the first time, the applicant proffered a defence to the charge: that he was acting in self-defence after the deceased attacked him first. However, I found his submission contrived and unconvincing. He alleged that he blocked a machete blow from deceased which rebounded onto the deceased's head, whereupon the deceased fell and struck his head against his own hoe. This does not explain the six machete blows to deceased's head, or the degree of force used to break skull bones and cause severe head trauma and cerebral damage.

Secondly, applicant made no attempt to explain his absconding from justice for twelve months since the commission of the offence until he was arrested in Chegutu, to satisfy me that he was unlikely to abscond again.

Thirdly, the degree of force used on the deceased and the number of machete blows meted against deceased suggests a very violent temperament which, to me, raises a presumption of a real threat to any witnesses, particularly applicant's stepmother who is alleged to have witnessed the attack on deceased, and to whom applicant himself ascribed bad blood. I find a distance of a mere 30km from the witness no bar from a determined person wishing to interfere with that witness or any other witnesses in deceased's compound. That applicant has not been provided with a list of the witnesses is immaterial, as he surely knows the persons who witnessed the attack, or his father's neighbours.

For these reasons I am of the view that the applicant has not discharged the onus of showing that he ought to be admitted to bail.

The application for bail is therefore dismissed.

*National Prosecuting Authority*, respondent's legal practitioner