

CARLOS CHAPEYAMA

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 13 & 28 JUNE 2018

Bail pending trial

Applicant in person
Ms N. Ngwenya for the respondent

MAKONESE J: The applicant appeared before me in chambers on 13 June 2018. He is wheel chair bound having sustained serious injuries following an attempted suicide. I directed that the accused be examined by a medical doctor and that a medical report be availed to assess the accused's medical condition.

The applicant is on remand on allegations of murder and attempted murder. The facts surrounding the commission of the offence are largely common cause. On the 1st of February 2018, the accused, a private in the Zimbabwe National Army and based at 5 Brigade, Battlefields, Kwekwe was assigned night guard duties at the Zimbabwe Broadcasting Corporation transmitter at Guinea Fowl, Gweru. On completing the night duties accused sneaked out of the camp with his service rifle and travelled to Bulawayo. Accused concealed the AK 47 folding butt rifle in a bag. Upon arrival in Bulawayo, accused proceeded to his in-laws' house in New Magwegwe. The rifle was loaded with 20 rounds of ammunition. As soon as his wife opened the gate, applicant randomly opened fire on his wife and two sisters, killing them instantly. The accused person also fired shots at his one and half year old child fracturing her right leg. In his application for bail, accused person does not deny committing the offences but pleads with the court to release him on medical grounds. The accused who is a self actor states as follows in his bail statement:

“ ---I, the applicant, suffered some serious spinal, chest and abdominal injuries at the scene of the crime during the commission of the offence in question. I am paralysed on the lower of my body (*sic*), as I cannot turn myself in bed, urinate, pass out stool and even feed the body, due to the injuries. As a result I have developed bad sores and have been bed-ridden for the past four months in incarceration. I am in need of urgent specialist attention for injuries sustained.”

The state is opposed to bail in this matter, *inter alia* because the accused is facing serious charges and that in the event of a conviction he faces capital punishment. This, the state argues is likely to induce the accused to abscond. The evidence against the applicant is strong. He was arrested at the scene of the crime and the murder weapon, an AK 47 rifle, and spent cartridges were recovered at the scene. The applicant attempted to commit suicide when he shot himself in the stomach.

In *S v Jongwe* 2002 (2) ZLR 2009 (S), the Supreme Court per CHIDYAU SIKU CJ, held that in judging the risk that an accused person would abscond, the court should be guided by the following factors:

- (a) the nature of the charge and the severity of the punishment likely to be imposed on the accused upon conviction;
- (b) The apparent strength or weakness of the state case;
- (c) The accused's ability to reach another country and the absence of extradition facilities from the other countries.
- (d) The accused's previous behaviour;
- (e) The credibility of the accused's own occurrence of his attention and motivation to remain and stand trial.

The state contends that the applicant is facing serious charges. He killed 3 people and is facing an attempted murder charge for shooting at his own child. The offence was committed in aggravatory circumstances as it involves the murder of three people during the same episode. The murder was pre-meditated and a lethal weapon an AK 47 assault rifle was used. The temptation to abscond in this case is high, as applicant has previously attempted to commit suicide by shooting himself. The evidence against the applicant is overwhelming and in his bail

statement the applicant admits committing the offences. In essence the applicant's application for release on bail is premised on his medical condition. The injuries applicant suffered were self-inflicted, and while the court notes the gravity of the injuries carried by the applicant the interests of the due administration of justice must be weighed against applicant's own personal interests.

I requested that a medical report be availed to the court to have appreciation of the nature of the injuries sustained by the applicant. A medical report prepared by a medical doctor, attached to the Zimbabwe Prisons and Correctional Services, Dr Zivo Sheninga Kuremba dated 25 June 2018, is in the following terms:

"The state of medical condition of Carlos Chapeyama, Prison Number 70/18, trial case number HCB 93/18 is as follows:-

- (a) He sustained traumatic spinal cord injury resulting in paraplegia (paralysis of lower limb), loss of bladder and bowel control, pressure ulcers and a chronic backache. His condition is not life-threatening.
- (b) He is currently depended on nursing staff for dressing, bathing and toileting. He uses a shared wheelchair for movement. In addition he is getting therapy, pain medication and daily dressings.
- (b) He would benefit from access to specialized rehabilitation institution with accessible features for the disabled persons, physical therapy, occupational therapy, nursing care and vocational training. This can be either full-time or day care only.
- (c) Barring any unforeseeable occurrences, he is able to stand trial in September 2018. He has normal cognitive function.
- (d) The relevant prison administration authorities are better positioned to determine ability or lack thereof to provide security in the event that he is outside prison..."

The medical report is made under oath and clearly spells out the medical condition of the applicant. The court is enjoined to balance the interests of an applicant who is in need of medical attention, and the interests of the due administration of justice. The injuries sustained by the applicant are by all accounts serious. It would seem to me that granting the applicant bail at

this stage may actually prove fatal to the applicant. There is no guarantee that if released on bail pending trial he would be able to receive adequate and daily medical care and attention. It seems to me that with its restrictions, the prison environment still ensures that applicant receives daily and regular care. There is no life threatening condition detected by the doctor, and to that end, I do not find any justification to grant bail pending trial on medical considerations.

The applicant is facing very serious charges. He admittedly killed three people by shooting them at point blank range. He then attempted to kill himself. He was not so lucky and did not achieve his objective. The law demands that he should stand trial. The AK 47 used in the shooting was recovered at the scene. The case against the applicant is very strong. The temptation to abscond in such cases is very high. In my view the applicant is not a proper candidate for bail.

In the circumstances, and accordingly, the application is hereby dismissed.

National Prosecuting Authority, state's legal practitioners