DANANAI ZINDENGA
versus
THE STATE

HIGH COURT OF ZIMBABWE
BHUNU J,
HARARE, 22 May 2013 and 18 June 2013

ASSESSORS: 1. Mr. Shenje
2. Mr. Mutambira.

Bail Application

D H Chesa, for the State
K Kachambwa, for the Defence

BHUNU J: The accused is charged with murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [*Cap 9*:*23*]. He is alleged to have intentionally and unlawfully assaulted and killed his girlfriend on 19 June 2009 following a domestic dispute.

The applicant is 29 years of age and the father of a 7 year old son. He is self-employed as an informal trader. His trial has since commenced and is at an advanced stage. The trial was however at one time stalled owing to the non-availability of a State witness. He now applies for bail pending the finalisation of his trial. The application is strenuously opposed by the State on the basis that the applicant has a propensity of committing offences of a violent nature.

There is some merit in the State's submission that the accused is of somewhat a violent disposition such that he can hardly be trusted to maintain peace if released on bail. While on bail pending trial in this matter he was convicted of two counts of contravening s 4 as read with s 3(2) of the Domestic Violence Act [*Cap 5*:*15*] and sentenced to 3 months imprisonment.

In those two cases he assaulted and abused his sister and young brother. The circumstances of the alleged murder for which he is standing trial are substantially similar to the two offences he committed while on bail in that he allegedly assaulted his girlfriend thereby causing her death. This shows that he has a penchant for assaulting relatives and close associates.

The applicant assaulted his two siblings in circumstances where he had a relevant previous conviction hanging over his head in consequence whereof the 3 months suspended sentence was brought into effect.

The accused resides at number 53 Munhondo where he used to reside with his late mother and young sister Mitchel. The State among other reasons argued that it was inappropriate to grant the applicant bail as the two felt unsafe to live under the same roof. The applicant has since countered through his other sister Naume that it is now safe to release the accused as their mother is now late. His sister is now married and has moved out of the family home. She also vouched to provide alternative accommodation in the event that the court is not willing to let him stay at the given address.

The major considerations in determining the question of bail were amply articulated in the well known case of S v *Hussey* 1991 (2) ZLR 187. The main consideration being that the granting of bail to the applicant will *not* compromise the ends of justice. That case places the onus squarely on the applicant to satisfy the court on a balance of probabilities that if granted bail this is unlikely to lead to a failure of justice. The prosecutor has the corollary duty to place before the court credible facts which point to the likelihood if any, of the interests of justice being undermined if the applicant is granted bail.

It is clear that the prosecutor has demonstrated beyond question that the applicant cannot be trusted to preserve the ends of justice if released on bail because he is a habitual offender with a propensity to commit violent offences to the extent that no one could dare to intervene when he was assaulting the deceased.

On the other hand the applicant has dismally failed to discharge the onus that his release on bail will not compromise the ends of justice given his proven violent disposition. For that reason alone the application for bail cannot succeed. It is accordingly ordered that the application be and is hereby dismissed.

Dube Manikai & Hwacha, applicant's legal practitioners
The Attorney General's Office, respondent's legal practitioners