

TUNGAMIRAI MADZOKERE
and
LAST TAMAI MAENGAHAMA
and
LAZARUS MAENGAHANA
and
STANFORD MAENGAHAMA
and
GABRIEL SHUMBA
and
PHENEIOUS NHATARIKWA
and
STEFANI TAKAIDZWA
and
STANFORD MANGWIRO
and
YVONNE MUSARURWA
and
REBECCA MAFUKENI
and
CYNTHIA FUNGAI MANJORO
and
LINDA MUSIYAMHANJE
and
TAFADZWA BILLIAT
and
SIMON MUDIMU
and
DUBE ZWELIBANZE
and
SIMON MAPANZURE
and
EDWIN MUIGIRI
and
AUGUSTINE TENGANYIKA
and
FRANCIS VAMBAI
and
NYAMADZAWO GAPARA
versus
THE STATE

HIGH COURT OF ZIMBABWE
UCHENA J
HARARE 14, 15, 16, June and 1 July 2011

Bail application

C Kwaramba, for the applicants
E Nyazamba, for the respondent.

UCHENA J: The applicants are facing a charge of contravening s 47 (1) (a) of the Criminal Law Codification and Reform Act [*Cap 9:23*]. It is alleged that they murdered Petros Mutedza. Petros Mutedza was an Inspector in the Zimbabwe Republic Police. He had been called to disperse MDC (T) youth who had gathered unlawfully at Glen View 3 Shopping Centre. The same group of MDC (T) youth numbering about 50 had earlier on been dispersed by other police officers from Glen View 4 Shopping Centre.

When the deceased and his team of uniformed police officers arrived at Glen View 3 Shopping Centre, he inquired from some of the youth as to where their leaders were. He was informed that they were in Munyarari Night Club after which he and five police officers entered the night club to tell the youth's leaders that they should disperse as their gathering had not been authorised by the Police. The group of youth then shouted in shona that (*matatya ngaauraiwe*). The deceased, and his police officers, were then attacked, with various missiles including stones bricks and stools. They were forced to run away from the night club, with a volley of missiles being thrown at them. The deceased mistook the white Nissan Hardbody which was later driven away by the sixth applicant for their unmarked police motor vehicle. He ran to it and tried to open the door so he could seek refuge in the motor vehicle but the sixth applicant closed the door and drove the motor vehicle a few meters away from the deceased. He was struck the fatal blow, and he, fell to the ground. He was then kicked and trampled by the mod of MDC (T) youth, until he lost consciousness and died. On seeing the result of their acts, some of

the youth jumped into the Nissan Hardbody, and the sixth applicant drove them away at high speed. The eleventh applicant also drove her motor vehicle from the scene with some of the youth who had attacked the deceased. Those who remained at the scene quickly removed their MDC (T) T/shirts, and left the scene.

The other police officers ran to their police motor vehicle but, one of them was seriously injured.

The applicants applied for bail pending trial which the State strenuously opposed. Mr *Kwaramba* made detailed submissions on why the applicants should be granted bail. Mr *Nyazamba* for the respondent also made detailed submissions on why the applicants should not be granted bail. They both relied on s 117 (1) and (2) of the Criminal Procedure and Evidence Act [*Cap 9:07*], which provides as follows:

- “(1) Subject to this section and s 32, a person who is in custody in respect of an offence shall be entitled to be released on bail at any time after he or she has appeared in court on a charge and before sentence is imposed, unless the court finds that it is in the interests of justice that he or she should be detained in custody.
- (2) The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established—
 - (a) where there is a likelihood that the accused, if he or she were released on bail, will—
 - (i) endanger the safety of the public or any particular person or will commit an offence referred to in the First Schedule; or
 - (ii) not stand his or her trial or appear to receive sentence; or
 - (iii) attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
 - (iv) undermine or jeopardise the objectives or proper functioning of the criminal justice system, including the bail system; or
 - (b) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine public peace or security”.

The section makes it clear that an accused person is entitled to be released on bail, unless the court finds that it is in the interests of justice that he or she should be detained in custody. The detention of an accused person in custody can only be in the interest of

justice if one or more of the factors mentioned in s 117 (2) is or are established against him.

The release of an accused person on bail is aimed at enabling him to attend trial from out of custody. It does not mean he or she has no case to answer. On the other hand the detention of an accused in custody is to secure his or her attendance to stand trial, if there are genuine grounds for believing that the factors mentioned in section 117 (2) have been established against him. That is why the seriousness of the charge the accused is facing is not on its own enough to deny an accused person bail. The court must therefore endeavour to strike a balance between the interests of justice, and the accused's liberty. Section 117 (1) leans in favour of the liberty of the accused person, hence the use of the words, "**shall be entitled to be released on bail** at any time after he or she has appeared in court on a charge and before sentence is imposed, **unless the court finds that it is in the interests of justice that he or she should be detained in custody.**" The intention of the legislature was obviously to make s 117 consistent with the presumption of the accused's innocence until proved guilty. That proof or lack of it can only be established at the accused's trial.

The factors to be considered in the applicants' bail applications are therefore:

1. Whether if the applicant is released on bail he or she will endanger the safety of the public or any particular person or will commit an offence referred to in the First Schedule; or
2. Whether the applicant will abscond if released on bail, or
3. Whether the applicant will interfere with witness's or evidence if released on bail, or
4. Whether the release of the applicant on bail will undermine or jeopardise the objectives or proper functioning of the criminal justice system, including the bail system;
5. Whether or not the release of the applicant on bail, will disturb the public order or undermine public peace or security.

In general Mr *Kwaramba* for the applicants submitted that the applicants are good candidates for bail and gave each applicant's personal details. He extensively dealt with each of the grounds which the State had in its response advanced as the reasons why the applicants should not be released on bail.

Endangering society and other persons and commission of other offences

Mr *Kwaramba* submitted that the applicants can not endanger society as they did not commit the offence and have no previous convictions showing they were ever involved in public violence. He submitted that the offence is merely being thrust upon the MDC (T) when it could have been committed by an ordinary member of the public who may escape prosecution because the police have devoted their effort on the MDC (T) party's activists. He submitted that the applicants are not facing other charges, which would show they have a propensity towards committing offences.

Abscondment

Mr *Kwaramba* argued that the applicants, will not abscond because the State's case against them is weak. He while admitting, that the murder of a police officer, during the execution of his duties, is a serious offence, argued that the applicants are denying the charge and seriousness of an offence on its own is not a ground for refusing an applicant bail. He submitted that the applicants are of fixed abode and that all, except, the third applicant, live and have families in this country. Most of them are of limited means and would not be able to start a new life in a foreign country. He said those who have means have strong links to this country through their assets, family ties and businesses. He said those who have travel documents can surrender them, to the court, and in any event they have already been taken by the police from which they can easily be accessed.

He further submitted that the State's allegations that the applicants will abscond because most of them were arrested away from their homes, or during night raids at their homes, is not an indication that they will abscond, as most people are bound to be away from home especially during the day.

Mr *Kwaramba* submitted that the State case is not strong because the medical report states that the deceased died of a head injury. He argued that it is impossible for all the applicants to have thrown the half brick which caused that head injury. He submitted that as police intelligence officers observed the attack on the deceased they must have indicated who threw the half brick. He submitted that there is no allegation that there was common purpose which would make the conduct of the person who threw the half brick

attributable to the other applicants. He also submitted that the post mortem report, states that the deceased died of a head injury due to assault. He argued that the Dr has shown bias because he mentioned that there was an assault.

Mr *Kwaramba* further submitted that the State's case is not strong because the alibis proffered by the applicants were not investigated by the police.

Interference with witnesses' and evidence

Mr *Kwaramba* submitted that the applicants do not know the witnesses, and can therefore not interfere with witnesses they do not know. He submitted that the witnesses who were described as police officers who were in plain clothes, can not be interfered with by the applicants. He submitted that the exhibits are already in the custody of the police, and can no longer be interfered with. He submitted that the investigations are almost complete so there is no fear that the applicants can interfere with investigations.

Undermining or jeopardising the criminal justice system, including the bail system

Mr *Kwaramba* submitted that the release of the applicants on bail will not undermine the criminal justice system, as they have no pending cases in the courts. They do not have previous convictions which would tend to show a propensity towards criminal conduct on their part.

Disturbing public order or undermining public peace or security

Mr *Kwaramba* submitted that the applicants will not disturb public peace, or undermine public peace and security if they are released on bail. He argued that the applicants do not have previous convictions, or pending cases which would show that they can disturb public peace order and security if released on bail. He said their good records show that they are unlikely to disturb public order, peace and security.

The State's response

In response to the applicants' submissions Mr *Nyazamba* for the respondent submitted that the applicants are not good candidates for bail. He made submissions on the five grounds relied upon by the applicants' counsel.

Endangering society and other persons and commission of other offences

Mr *Nyazamba* submitted that the applicants will endanger society as they are likely to commit offences involving public violence which offences have according to Inspector Ntini the investigating officer become prevalent. He added that the release of the applicants who are political activists will be received by society with shock.

Abscondment

Mr *Nyazamba* submitted that the applicants are facing a very serious case involving the murder of a police officer who was on duty. He submitted that the applicants face capital punishment if convicted and that will induce them to abscond if granted bail. He submitted that the State's case is very strong as the applicants were seen committing the offence by police intelligence officers who were at the scene and had called the deceased and his reaction team of uniformed police officers. He also submitted that the applicants were seen by members of the public who are assisting the police with the identification and addresses of the offenders. He submitted that the amounts of bail suggested by the applicants are so inadequate that they are an indication that the applicants intend to abscond on their being released on bail.

He further submitted that some of the applicants have behaved in a manner indicative of their intention to abscond. He said some had left their homes avoiding arrest and were arrested at lodges where they were staying hiding from the police who were looking for them at their homes. One had abandoned his home and was staying at his work place. Others were staying away from their homes avoiding the police and were arrested during police raids during the night. He said the two applicants who drove others from the scene, sped off at high speed obviously to avoid arrest.

On the alleged weakness of the State's case he submitted that there is strong evidence on which the applicants may be convicted because the applicants who were, a distinct group, wearing party regalia were observed by police intelligence officers and members of the public committing the offence. On the alleged failure by the police to investigate the applicants' alibi's he said the police investigated them and found to the contrary.

He submitted that the fact that one half brick struck the fatal blow does not matter as the applicants and others not yet arrested were acting in common purpose. He said that is why they shouted (*matatya ngaauraiwe*), after which they threw various missiles at the police, and kicked and trampled the deceased as a group.

Interference with witnesses and evidence

Mr *Nyazamba* for the respondent submitted that the applicants will interfere with witnesses for the State and evidence as some members of the public are still slowly coming up with evidence. He submitted that the witnesses are afraid of the applicants, and may not continue to come up with further evidence if the applicants are released on bail as their fear will intensify. He explained that though the police witnesses, saw the applicants and others not yet arrested committing the offence, it is the witnesses who are members of the public who are giving the police details like the offenders' names and addresses. He conceded that the exhibits are already in the custody of the police and that such evidence is unlikely to be interfered with. He said it is the evidence that the police are still gathering which may be interfered with.

Undermining or jeopardising the criminal justice system, including the bail system

Mr *Nyazamba* said the release of the applicants on bail is likely to cause public outrage as this was a politically motivated public violence related murder. He further submitted that the applicants' ability to influence witnesses will undermine the criminal justice system.

Disturbing public order or undermining public peace or security.

Mr *Nyazamba* for the respondent submitted that the applicants who are MDC (T) political activists, will organize public violence related offences, using their influence. He used their congregating at Glen View four and later at Glen View three, as proof that they have such a propensity and shows persistence in unlawful behaviour. He further submitted that their attacking police officers and killing one of them was in furtherance of their desire to defy the law.

Applicants' Response

In his response Mr *Kwaramba* for the applicants, persisted with his earlier submissions, and criticised the respondent's counsel for introducing new principles of bail, like the effect of offering low bail amounts. He submitted that the amounts offered is what the majority of the applicants can afford. He argued that bail should not be granted in excessive amounts as that will be equal to denying the applicants bail.

On the State's submission that the applicants had behaved in a manner indicative of an intention to abscond he submitted that most of the applicants were arrested at their homes.

On interference with wittiness's he argued that the identity of the wittiness's was not revealed so the applicants can not interfere with wittiness's they do not know. He concluded his reply by submitting that the presumption of innocence is still operating in the applicants' favour, and that the applicants had discharged the onus on them of proving, that they are proper candidates for bail.

Analysis of submissions and evidence.

The submissions made by both parties establish the following general evidence, which has to be considered along side that which is personal to each applicant.

1. The applicants are facing a serious charge of murder of a police officer, during the execution of his duties, committed in circumstances of public violence.
2. None of the applicants were arrested at the scene.
3. Some were arrested at lodges, during night raids by the police, and while traveling in Commuter omnibuses within Glen View.
4. That the exhibits were taken by the police, and are with the police.
5. That some applicants are holders of travel documents which are now with the police.
6. That the commission of the offence was wittnessed by police intelligence officers and members of the public.

7. That about 50 MDC (T) youth had on that day previously gathered at Glen View 4 shopping centre, from which they had been dispersed by police intelligence officers.
8. That they regrouped and gathered at Glen View 3 shopping centre from which the deceased and other uniformed police officers tried to disperse them after having been called to the scene at the instance of police intelligence officers who were at Glen View 3 shopping centre.
9. That on arrival the deceased inquired from some MDC (T) youth where, their leaders where, and was advised that they were in Munyarari Night Club.
10. That they entered the night club, after which the group shouted (matatya ngaauraiwe), and the group started throwing various missiles at the deceased and his officers.
11. That the deceased was hit by a half brick on the side of his head, kicked, and trampled by the group.
12. The group then left the scene as follows, some jumped into two motor vehicles which were driven from the scene at high speed by two of the applicants.
13. Those who remained behind removed their T/shirts to avoid being identified and walked away.

In terms of s 117 (1) of the CP&E Act the courts should in considering bail applications lean towards granting bail unless the court finds that it is in the interests of justice that an applicant for bail should be detained in custody. The section provides as follows:

- “(1) Subject to this section and s 32, a person who is in custody in respect of an offence **shall be entitled to be released on bail** at any time after he or she has appeared in court on a charge and before sentence is imposed, **unless the court finds that it is in the interests of justice that he or she should be detained in custody.**”

In terms of s 117 (2) of the CP&E Act, it will be in the interest of justice to keep an accused person in custody:

- “(a) where there is a likelihood that the accused, if he or she were released on bail, will—
- (i) endanger the safety of the public or any particular person or will commit an offence referred to in the First Schedule; or
 - (ii) not stand his or her trial or appear to receive sentence; or
 - (iii) attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
 - (iv) undermine or jeopardise the objectives or proper functioning of the criminal justice system, including the bail system; or
- (b) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine public peace or security.”

The use of the word “or” after each subsection means, if the state proves that the applicant for bail can do one or more of the things mentioned in section 117 (2) (a) to (b), he can be denied bail. They need not all be proved before a court can find that it is in the interest of justice for an accused to be detained in custody pending his or her trial.

Section 117 (1) makes it clear that an accused person is entitled to be released on bail, unless the court finds that it is in the interests of justice that he or she should be detained in custody. The detention of an accused person in custody can only be in the interest of justice if one or more of the factors mentioned in s 117 (2) is or are established against him.

The release of an accused person on bail is aimed at enabling him or her, to continue to enjoy his or her liberty, and attend trial from out of custody. It does not mean he or she has no case to answer. On the other hand the detention of an accused in custody is to secure his or her attendance to stand trial, if there are genuine grounds for believing that one or more of the factors mentioned in s 117 (2) have been established against him. That is why the seriousness of the charge the accused is facing is not on its own enough to deny an accused person bail. In the case of the *State v Hussey* 1991 (2) ZIR 187 at p 190 A to B EBRAHIM JA commented on this issue as follows:

“I do not understand that either the *Chiadzwa* or the *Maratera* cases *supra* are authority for the proposition that the mere fact that an offender is facing a serious

charge, albeit a very prevalent offence, justifies his incarceration pending his trial. It is clearly a factor that should be taken account of, together with other factors, in determining whether a person should be kept in custody until the time of his trial, but it can never be the only factor to justify keeping alleged offenders in custody. It is a well-established principle of our law that a man is innocent until proved guilty. To disregard this very well-founded principle and to incarcerate an individual purely because he faces a serious offence would be in disregard of this very valid and important principle and weaken respect for the law and the social condemnation of those who break it”.

The court must therefore endeavor to strike a balance between the interests of justice, and the accused’s liberty. Section 117 (1) leans in favour of the liberty of the accused person, hence the use of the words, “**shall be entitled to be released on bail** at any time after he or she has appeared in court on a charge and before sentence is imposed, **unless the court finds that it is in the interests of justice that he or she should be detained in custody.**” The intention of the legislature was obviously to make s 117 consistent with the presumption of the accused’s innocence until proved guilty. That proof or lack of it can only be established at the accused’s trial.

In this case the State’s strong objection to bail is based on the possibility that the applicants will abscond if granted bail and the possibility that they may interfere with State witnesses who are already assisting the police and those who are likely to come forward with information on the deceased’s murder. The State is also concerned about the possibility of the applicants, disturbing public order or undermining public peace and security, and undermining or jeopardising the objectives or proper functioning of the criminal justice system.

The last three grounds are not strong and in fact s 117 (2) (b), which relates to disturbing peace order and security, is only applicable in exceptional circumstances. This in my view would apply if the applicants can on being released on bail engage in public violence, which would disturb public order and undermine public peace and security. For this ground to apply there must be clear evidence establishing the applicants’ propensity, to disturb public order, and undermine peace and security. The respondent’s allegation that the applicants can do so is only based on what they are alleged to have done in this case. That does not establish a strong propensity as it is still just an allegation still to be

proved at their trial. What would establish a strong propensity is evidence that the applicant has previous convictions for public violence and is facing several similar cases. The use of the words “in exceptional circumstances” in s 117 (2) (b), clearly indicates that the legislature was conscious of the remote possibility of this ground ever being ordinarily applicable. Therefore when ever this ground is advanced it should be carefully considered to ascertain whether that likelihood is present. I am satisfied that it has not been established in this case.

The undermining or jeopardising, of the objectives or proper functioning of the criminal justice system including the bail system was also relied on as a ground for denying the applicants bail. An applicant must be proved to have done things which can affect the proper functioning of the criminal justice system or to be likely to do so. If an applicant is likely to interfere with witnesses or evidence he may be denied bail on this ground, but only if that interference can not be restrained by imposition of a bail condition restraining him from doing so. If he is likely to skip bail and abscond he is likely to affect the bail system. This ground will therefore be dealt with together with the States grounds of abscondment and interference with witnesses and evidence.

The State strongly argued, that the applicants, are likely to abscond, because the State's case, against them, is strong, and that if convicted they are likely to face capital punishment, or a long term of imprisonment. It was on the other hand argued by counsel for the applicants that the State's case is weak and cannot induce the applicants to abscond. The fact that the deceased died at Glen View 3, shopping center, after being attacked by a mob is not in dispute. What is in dispute is who was in that mob. The applicants say they were not part of that mob while the State says they were. The State says police internal security officers saw the applicants at Glen View 4 and caused their dispersal. They again saw them at Glen View 3, and called the deceased and other uniformed police officers to come and disperse them. The fact that police internal security officers, were monitoring the applicants' movements tend to strengthen the State's case. If the officers observed the applicants for a long time, their evidence may be strong enough at trial, and knowledge of that may have an effect on the applicants. However the mere fact that the state's case is strong is not on its own enough to deny an

applicant bail. The circumstances of each applicant will therefore be considered to determine each applicant's suitability for bail.

It was submitted that most of the applicants have travel documents which can enable them to leave the court's jurisdiction. It was also argued that those without travel documents can leave the country without travel documents or hide within the country. The applicants' counsel's response to that is that the police already have the passports of those who have such documents and they are willing to surrender them to the court. The surrendering of an applicants' travel documents usually satisfies the State's fear of abscondment unless there are other pointers to the applicants' intention to abscond.

The applicants' interference with witnesses was advanced as a reason for not granting the applicants bail. The names of the witnesses were not revealed, leaving the applicants without knowledge of who the witnesses are and therefore unlikely to interfere with unknown witnesses. The real and satisfactory fear is that other likely witnesses may not come forward to assist the police, if the applicants are released on bail. However that fear does not affect the applicants as they have already been identified and arrested. It can be ordered that they do not interfere with State witnesses and evidence.

In an application of this nature the starting point should be an inclination to grant bail, if its not in the interest of justice for the applicants to remain in custody. I am satisfied that with stringent conditions applicants who have not shown a propensity to abscond can be granted bail. I am however also satisfied that those who have show a propensity to abscond should not be granted bail as they are flight risks. This calls for the assessment of each applicant's circumstances as per the State and the applicant's evidence and submissions. I appreciate the need to treat jointly charged accused persons equally, but where a distinction can be shown between bail applicants their individual cases can be treated differently.

Tungamirai Madzokere 1st Applicant

He is of fixed abode, and stays at number 2358, 35th Crescent Glen View 1, but was arrested by the police on 31 May 2011, hiding at Palm Villa Lodge along Selous

Avenue in Harare. He is a holder of a Zimbabwean passport. He is a councilor for ward 32 Glen View. He did not explain what he was doing at the lodge leaving the police's allegation that he was hiding to avoid arrest unchallenged. In his submissions Mr *Kwaramba* for the applicants, alleged that Olyn Madzokere and Mavis Madzokere were arrested by police as bait for the first applicant who they were locking for, and were only released when the first applicant was arrested. This though not a lawful way of pursuing the arrest of an accused person as it interferes with the rights of innocent third parties however proves that the first applicant was avoiding arrest. This coupled with the fact that he had left home and was staying at a lodge along Selous Avenue several kilometers from his Glen View 1 house is proof that he is a flight risk. He has also made indications at the scene which were capture on video. This, further strengths, the respondent's case against him, and may, cause him to abscond. His application for bail is dismissed.

Last Tamai Maengahama 2nd Applicant

He resides at house number 4712, 58th Crescent Glen View 3 Harare. He is of fixed abode and is the owner and director of a company called Latview Marketing. He is a National Executive Member of the MDC (T) party. He is a holder of a Zimbabwean passport, and has on occasions traveled outside Zimbabwe to attend conferences. It was submitted that he has no strong social connections outside this country. His assets are all in this country. He thus has interests in this country. He is firmly rooted within the court's jurisdiction and might be inclined to await the trial of his case if granted bail. Nothing was said by the State which suggests he is a flight risk. He is a man of means whose bail must be such as will induce him to stand his trial. The reason given by Mr *Kwaramba* for setting bail at US\$300-00 per applicant does not apply to his circumstances. Bail must be for this applicant set in a meaningful amount which will compel him to stand trial. Bail in the sum of US\$1000-00, will be appropriate in his case. He is granted bail on the following conditions:

- 1 That he deposits US\$1000-00 with the clerk of court Harare Magistrate's court.
- 2 That he resides at number, 4712, 58th Crescent Glen View 3 Harare, until this matter is finalised.

- 3 That he reports to Glen View Police Station every Monday, Wednesday and Friday, between 6.00 am and 6.00 pm.
- 4 That he does not interfere with any State witness's or evidence.
- 5 That he surrenders his passport to the clerk of court, at Harare Magistrate's court.

Lazrus Maengahama, 3rd Applicant.

He resides at number 4712 58 Crescent View 3 when in Zimbabwe. He is employed by Conco Botswana a company based in Gaborone Botswana. The address given is the same as that for the second applicant. No explanation was given, besides it being stated that he owns that property. He shares the same surname with the second applicant. As it is his house he might be accommodating the second applicant. Mr *Nyazamba* for the respondent submitted that this applicant can easily go back to Botswana or further without travel documents. In a bail application the court must balance the interests of justice and the liberty of the accused. The fact that the applicant, works in Botswana, tilts the scales in favour of the interest of justice. Granting the applicant bail on the promise that he will abandon his employment in Botswana, and surrender his travel documents is taking a serious risk as the applicant is most likely to abscond as no explanation has been given as to how he will survive without a job. He is experienced in traveling out of the country, and living outside the country. He is going to be constantly thinking about the case which I have already said is fairly strong. He might while waiting for his trial succumb to the temptation to flee back to Botswana or any other country as he obviously has contacts outside the country. His application for bail is dismissed.

Stanford Maengahama 4th Applicant.

He is the third applicant's brother. He is not employed. He stays at his brother's house. He is single. He therefore has no strong attachments to Zimbabwe which would persuade him to await the trial of his case. He in his application said he has no connections outside Zimbabwe. This is a lie as his brother the third applicant works in Botswana. That is a strong and reliable contact person, who will have an obvious interest in helping him once he leaves the country. The fact that he lied to the court makes it

difficult for the court to believe him when he says he is prepared to stand trial. His application for bail is dismissed.

Gabriel Shumba 5th Applicant.

He stays at house number 2156, 34th Crescent Glen View 1 Harare. He is married with two children. His wife is not employed. His family is wholly dependant on him. He is self employed selling food items. He does not have travel documents. He seems to me to be an unsophisticated applicant who may not abscond if granted bail. He is unlikely to be able to settle himself outside Zimbabwe. The investigating officer's affidavit does not say he did anything which tends to point at an inclination to abscond. If granted bail on stringent conditions he is likely to stand his trial. He is granted bail on the following conditions:

1. That he deposits US\$300-00 with the clerk of court Harare Magistrate's court.
2. That he resides at house number 2156, 34th Crescent Glen View I Harare, until this matter is finalised.
3. That he reports to Glen View Police Station every Monday, Wednesday and Friday, between 6.00 am and 6.00 pm.
4. That he does not interfere with any State witness's or evidence.

Phenias Nhatarikwa 6th Applicant.

He resides at number 166, 24th Crescent Glen View I Harare. He is married with two children. He is employed by the MDC (T) as a driver. Mr *Kwaramba* for the applicants, submitted that the State's allegation that he drove off when the deceased wanted to get into his car proves he was not involved in the attack against the deceased. He further submitted that the fact that he parked a few meters away does not get him involved in the crime charged. Mr *Nyazamba* for the respondent submitted that the fact that people who had attacked the deceased got into his car and he drove off with them at high speed means he was aiding and abating those who had attacked and killed the deceased. I agree with Mr *Nyazamba*'s reasoning. In fact the fact that he used the motor vehicle he was driving to get those who had attacked the deceased from the scene is an indication that he is likely to abscond. It was submitted on his behalf that he went with counsel for the appellants to Harare Central Police bringing food for those who had been

arrested. This was not stated in his application so the respondent's counsel was not able to respond to it. However that does not prove that if granted bail he may not abscond, as his going to the police station may have been due to a then belief that his involvement was not known. It is now known that the car he was driving was traced to him through CVR. He now knows he is facing a serious offence. His instincts towards fleeing from brushes with the law may have been reactivated. He is not a good candidate for bail. His application for bail is dismissed.

Stefani Takaidzwa 7th Applicant.

He stays at house number 3516, 266 Close Kuwadzana 3 Harare. He is said to be self-employed, selling clothes, yet he is also alleged to be employed by the MDC (T) as a general worker. This could be a mistake, as it is later said he was arrested at MDC (T) head office. He is married with two minor children. If he works at the MDC head office his arrest there carries no connotation, as the investigating officer said nothing further about that arrest. It seems to me he has no means through which he can sustain himself outside Zimbabwe. He is like the other applicants whose circumstances do not make him a flight risk to be granted bail on the following conditions:

- 1 That he deposits US\$300-00 with the clerk of court Harare Magistrate's Court.
- 2 That he resides at house number 3516, 266 Close Kuwadzana 3 Harare, until this matter is finalised.
- 3 That he reports to Kuwadzana Police Station every Monday, Wednesday and Friday, between 6.00 am and 6.00 pm.
- 4 That he does not interfere with any State witness's or evidence.
- 5 That he surrenders his passport to the clerk of court at Harare Magistrate's court.

Stanford Mangwiwo 8th Applicant

He stays at house number 2900 Mhembwe Close Budiriro 2 Harare. He is married with two minor children. He has no travel documents, nor connections outside Zimbabwe. He is employed by Astomech Furnitures. His family and the job may act as an incentive for him not to abscond. He has however already shown that he is a flight risk. The investigating officer in para 22 of his affidavit of 10 June 2011, said "he had deserted his residential address and was staying at his work place where he told some workmates

that his hands were painful because of the assault he did on some Police Officers". This makes him a flight risk. His application for bail is dismissed.

Yvonne Musarurwa 9th Applicant

She stays at number 10788 Budiro 5A, Harare. She is not married. She has no previous convictions, and denies participating in the deceased's murder. She according to the investigating officer's affidavit of 10 June 2011, was arrested at Palm Lodge 11 Mazowe Road. This is not disputed, though the applicant's counsel contented that, that does not mean she was hiding from the police. This response is clearly not of any help to this applicant's case. A serious allegation was made that she had abandoned her residence to avoid the police, yet all that could be said is that, that information is colourless. It certainly colours the applicant a flight risk. While there could be nothing wrong in booking oneself into a lodge under normal circumstances, there is certainly something wrong if one does so for purposes of avoiding arrest. That indicates an intention to avoid having to answer the charges. It makes her a flight risk. Her application for bail is therefore dismissed.

Rebecca Mafikeni 10th Applicant.

She ordinarily stays at number 13 Orkney Road Eastlea Harare. She is self – employed selling clothing. She is single and has no children. She has a passport which she uses to go and buy clothes for sale from outside the country. She is therefore a frequent traveler outside the country and could have contacts there, who can easily help her to settle down in a foreign country. She as a single person with no children and thus has no strong ties in this country which can dissuade her from absconding. She like the 9th applicant had also booked herself into Palm Lodge 11 Mazowe Road. This is not disputed, though the applicant's counsel contented that, this does not mean she was hiding from the police. This response is clearly not of any help to this applicant's case. A serious allegation was made that she had abandoned her residence to avoid the police, yet all that could be said is that information is colourless. It certainly colours the applicant a flight risk. While there could be nothing wrong in booking oneself into a lodge under normal circumstances, there is certainly something wrong if one does so for purposes of

avoiding arrest. That indicates an intention to avoid having to answer the charges. It makes her a flight risk. Her application for bail is therefore dismissed.

Cythia Fungai Manjoro 11th Applicant

She stays at number 1 Harland Court, 118 Fife Avenue Harare. She is single and has no children. She is a holder of a Zimbabwean passport. She is employed by Fintrac a company conducting business at no 5 Premium Close, Mt Pleasant Business Park Harare. The fact that she is gainfully employed tends to show that she may have a reason to want to stand trial on these charges. She is, however alleged, to have been driving a motor vehicle ACA 6904, which speed off with some of the deceased's assailants from the scene. It was contented on her behalf that she was at church on the day in question, and that her boyfriend was driving the motor vehicle, but the State's response to that is that alibi was checked and found to be false. She was linked to the motor vehicle through CVR checks. She does not deny links with the motor vehicle.

The State's evidence is that there were police internal intelligence officers who were at the scene and saw what happened. They got the motor vehicle's number plates leading to the CVR checks. If they could see the number plates they surely could also see the driver. The speeding away, with persons, who had fatally attacked police officers, indicates intention to avoid arrest on her part and those who were in her motor vehicle. She is therefore a flight risk. Her application for bail is dismissed.

Linda Musiyamhanje 12th Applicant

She stays at number 50 Mharapara Street, Mufakose, Harare. She is single and has one child. She is not employed. She is a holder of a Zimbabwean passport. The investigating officer's affidavit does not say she did anything which makes her a flight risk. She seems to be one of those applicants who can not abscond if granted bail on stringent conditions. She is granted bail on the following conditions:

- 1 That she deposits US\$300-00 with the clerk of court Harare Magistrate's Court.
- 2 That she resides at no 50 Mharapara Street, Mufakose, Harare until this matter is finalised.

- 3 That she reports to Marimba Police Station every Monday, Wednesday and Friday, between 6.00 am and 6.00 pm.
- 4 That she does not interfere with any State witness's or evidence.
- 5 That she surrenders her passport to the clerk of court at Harare Magistrate's court.

Tafadzwa Billiat 13th Applicant

He stays at number 15 Thompson Samukange Road, Mbare National Harare. He is married with three minor children. He is employed as a customer liaison officer by a company called Kapp-Jack Trading earning a salary of US\$190-00 per month. He has no passport or any contacts outside the country. He was arrested at his house in Mbare. There is no allegation that he attempted to avoid arrest. He seems to me to be an unsophisticated man who if granted bail on stringent condition will not abscond. He is granted bail on the following conditions:

- 1 That he deposits US\$300-00 with the clerk of court Harare Magistrate's Court.
- 2 That he resides at no 15 Thompson Samukange, Mbare National Harare, until this matter is finalised.
- 3 That he reports to Mbare Police Station every Monday, Wednesday and Friday, between 6.00 am and 6.00 pm.
- 4 That he does not interfere with any State witness's or evidence.

Simon Mudimu 14th Applicant.

He stays at number 4324, 16th Street Glen View 3. He is self-employed. He repairs shoes and sometimes sales chicken products. He was at the time of his arrest being trained by Squad Security as a security guard. He is married with one child. He is a holder of a Zimbabwean passport which he is willing to surrender to the court. He has no contacts outside the country. It was submitted that he cooperated with the police when he was arrested. However according to the investigating officer's affidavit he was arrested at his house during a night raid, after efforts to arrest him during the day had failed. It was not contented that he resisted arrest, when the police arrested him. It was also not explained whether he was aware that the police wanted to arrest him. The police's effort was not explained. That lack of detail must be resolved in his favour. He generally seems

to be a suitable candidate for bail. Stringent conditions will be imposed to ensure that he stands his trial. He is granted bail on the following conditions:

- 1 That he deposits US\$300-00 with the clerk of court Harare Magistrate's Court.
- 2 That he resides at number 4324 16th Street Glen View 3, Harare, until this matter is finalised.
- 3 That he reports to Glen View Police Station every Monday, Wednesday and Friday, between 6.00 am and 6.00 pm.
- 4 That he does not interfere with any State witness's or evidence.
- 5 That he surrenders his passport to the clerk of court, at Harare Magistrate's Court.

Dube Zwelibanze 15th Applicant.

He stays at number 4486 1st Circle Glen View 3, Harare. He is married with two minor children. He is employed as an Area Sales Manager with Power Sales earning a salary of US\$500-00 per month. He has no strong connections outside this country. This applicant was arrested in circumstances similar to those of the 14th applicant. Though he was arrested in a night raid, after police's efforts to arrest him during the day had failed, the reason for the failure of the police's effort was not explained leaving room for an innocent explanation for that failure. If he knew the police where after him would he if he wanted to avoid arrest have come to his house as he did? He must be given the benefit of the lack of clarity in the investigating officer's affidavit. The applicant is an employed family man who is unlikely to abandon his employment to avoid his trial. I am satisfied that he is a suitable candidate for bail. It was not indicated whether or not the applicant is a holder of travel documents. To ensure that he stands his trial it will be ordered that he should surrender his passport, in case he has a passport. He is granted bail on the following conditions:

- 1 That he deposits US\$300-00 with the clerk of court Harare Magistrate's court.
- 2 That he resides at number 4486, 1st Circle Glen View 3, Harare, until this matter is finalised.
- 3 That he reports to Glen View Police Station every Monday, Wednesday and Friday, between 6.00 am and 6.00 pm.
- 4 That he does not interfere with any State witness's or evidence.
- 5 That he surrenders his passport to the clerk of court, at Harare Magistrate's court.

Simon Mapanzure 16th Applicant

He stays at number 3, 53 Avenue Mabelreign, Harare. He is a divorcee with 3 children. He is gainfully employed earning US\$600-00 per month. He is a holder of a Zimbabwean passport, which he is willing to surrender to the court. He has no connections outside the country, and can not therefore easily settle outside the country. His being a family man and being, gainfully employed will be an inducement for him not to abscond but stand his trial. The investigating officer did not, point out, any indications that he might abscond. He merely said he “was arrested at his work place after he was linked to the deceased’s murder by informers”. Stringent conditions will be imposed as additional safeguards against abscondment. He is granted bail on the following conditions:

- 1 That he deposits US\$300-00 with the clerk of court Harare Magistrate’s court.
- 2 That he resides at number 3, 53 Avenue Mabelreign, Harare, until this matter is finalised.
- 3 That he reports to Mabelreign Police Station every Monday, Wednesday and Friday, between 6.00 am and 6.00 pm.
- 4 That he does not interfere with any State witness’s or evidence.
- 5 That he surrenders his passport to the clerk of court, at Harare Magistrate’s Court.

Edwin Muingiri 17th Applicant

He stays at number 3558, 15th Road Glen View 4 Harare. He is married and has two children. He is self- employed as an airtime vendor. He is a holder of a Zimbabwean passport. He has no connections with anyone outside the country. He seems to be unable to settle himself outside the country. The investigating officer merely mentions his being arrested at his house, without any adverse indication pointing to his being a flight risk. He is therefore not a flight risk and should be granted bail on the following conditions:

- 1 That he deposits US\$300-00 with the clerk of court Harare Magistrate’s court.
- 2 That he resides at number 3558, 15th Road Glen View 4 Harare, until this matter is finalised.
- 3 That he reports to Glen View Police Station every Monday, Wednesday and Friday, between 6.00 am and 6.00 pm.
- 4 That he does not interfere with any state witness’s or evidence.
- 5 That he surrenders his passport to the clerk of court, at Harare Magistrate’s Court.

Augustine Tengenyika 18th Applicant.

He stays at number 7242 Budiro 4 Harare. He is married to two wives and has four children. He is employed by the City of Harare as a general worker earning a salary of US\$150-00 per month. He has no passport, and has no connections with anyone outside the country. The investigating officer merely said he was arrested “in a kombi in Budiro 4.” That does not make him a flight risk as he was in the vicinity of his residence. Nothing further was said about his being in the commuter omnibus. His being a family man, who is employed, gives him strong roots in this country. His limited means spread over a large family, limits his ability to settle himself in a foreign country. He is a suitable candidate for bail. He is granted bail on the following terms:

- 1 That he deposits US\$300-00 with the clerk of court Harare Magistrate’s Court.
- 2 That he resides at number 7242 Budiro 4 Harare, until this matter is finalised.
- 3 That he reports to Glen View Police Station every Monday, Wednesday and Friday, between 6.00 AM and 6.00 PM.
- 4 That he does not interfere with any State witness’s or evidence.

Francis Vambai 19th Applicant

He stays at number 6967 Budiro 4 Harare. He is married with two children. He is self employed selling chocolates. He is not a holder of a valid passport. He has no connections outside the country. The investigating officer did not say anything about him which indicates that he is a flight risk. He only said he was arrested in a kombi in Budiro 4. That, as has already been said in respect on the 18th applicant, does not make him a flight risk. He seems to me to be an unsophisticated applicant who may not abscond if granted bail. He is unlikely to be able to settle himself outside Zimbabwe. He is granted bail on the following conditions:

1. That he deposits US\$300-00 with the clerk of court Harare Magistrate’s Court.
- 2 That he resides at number 6967 Budiro 4 Harare. until this matter is finalised.
- 3 That he reports to Glen View Police Station every Monday, Wednesday and Friday, between 6.00 AM and 6.00 PM.
- 4 That he does not interfere with any State witness’s or evidence.

Nyamadzawo Gapara 20th Applicant.

He stays at number 7089 Budiriro 4 Harare. He is married with three children. He is employed by Team Security, as a security supervisor, earning US\$265-00 per month. He is not a holder of a valid passport, but has applied for one which is yet to be paid for and issued. He like the 18th and 19th applicants was arrested in a kombi in Budiriro 4. He stays in Budiriro 4, so nothing turns on his being in a Kombi near where he stays. The investigating officer did not point out anything he did which makes him a flight risk. He is an employed family man who can not easily abandon his family and employment. I am satisfied that he is not a flight risk. He is granted bail on the following conditions:

- 1 That he deposits US\$300-00 with the clerk of court Harare Magistrate's Court.
- 2 That he resides at number 7089 Budiriro 4 Harare, until this matter is finalised.
- 3 That he reports to Glen View Police Station every Monday, Wednesday and Friday, between 6.00 am and 6.00 pm.
- 4 That he does not interfere with any State witness's or evidence.
- 5 That the passport the applicant has applied for shall on issuance be surrendered to the clerk of court Harare Magistrate's court by the Registrar General's office.

Mbidzo Muchadehama & Makoni, applicants' legal practitioners
Attorney General's Criminal Division, respondent's legal practitioners