

**NKULULEKO SOBANTU**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 18 & 21 JUNE 2018

**Bail Pending Trial**

*V. J. Mpofu* for applicant  
*T. Muduma* for respondent

**MAKONESE J:** This is an application for bail pending trial. The applicant is facing murder allegations. The state is opposed to the granting of bail on the grounds that there is a likelihood of the applicant absconding and not attending trial.

The allegations against the applicant as gleaned from the Request for Remand Form are that on the 17<sup>th</sup> May 2018 at Senco Night Club, Inyathi, the applicant stabbed one Tawanda Moyo several times all over the body, leading to his death. In his bail statement applicant avers that he is innocent and there is no evidence that he murdered the deceased. He denies the assertion by the Investigating Officer that there are persons who witnessed the stabbing. Applicant suggests that even if the suggestion that there are eye witnesses is true, section 70 (1) (a) of the Constitution of Zimbabwe (Amend No. 20) 2013, enshrines the presumption of innocence in favour of the applicant. Further, the applicant contends that if granted bail pending trial, there is no prejudice to the administration of justice as he is of fixed abode. There is no risk of abscondment as he seeks to have his day in court and clear his name.

The Investigating Officer in this matter, Nkululeko Sibanda is stationed at Inyathi Police Station. He filed a sworn statement confirming that he was assigned to conduct investigations in this matter. On the day of the murder at around 8:30pm he arrested the accused as soon as he entered his house from Inyathi Township. Upon his arrest applicant's cellphone was siezed and it was discovered that there were various chats wherein applicant was communicating with

Stanley Ndlovu and another person whose contact was served as “X”. In the chats, the applicant was arranging to abscond to South Africa to avoid arrest. It has not been established that Stanley Ndlovu has since absconded to South Africa. The applicant is an artisanal miner. He is nomadic and if granted bail he is likely to abscond trial.

In every application for bail pending trial, the court is enjoined to balance the interests of the individual as against the interests of the due administrative of justice. Where an applicant proffers a bare denial to the allegations in the face of serious allegations, the court is reluctant to exercise its discretion in favour of the applicant. An applicant must give a credible defence in order to take the court into its confidence. It is important to note, as pointed out in the case of *S v Moyo* HB-307-17, that the presumption of innocence as enshrined in the Constitution must not be interpreted in isolation but must still be balanced with the fundamental principle that the proper administration of justice demands an assurance that an accused person will indeed avail himself for trial when the matter is ready to proceed to trial.

The accused in this matter was arrested soon after the commission of the offence. The state alleges that there are persons who witnessed the stabbing. The accused’s mobile phone was found to contain various chat messages indicating an intention to abscond to South Africa. One Stanley Ndlovu who was also linked to this offence has since absconded to South Africa.

In *S v Jongwe* 2002 (2) ZLR 209 (S), the Supreme Court held that in judging the risk of abscondment, the court ascribes to an accused the ordinary fears and motives that sway human nature. It was further observed that the critical factors the court must take into consideration in assessing the risk of abscondment are:

- (a) the nature of the charges
- (b) the severity of the punishment likely to be imposed upon conviction
- (c) the apparent strength of the state case

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In this matter, I am satisfied that the accused is not a suitable candidate for bail pending trial. There is a high probability that the applicant if released on bail will abscond to avoid standing trial.

In the result, the application for bail pending trial is hereby dismissed.

*V.J. Mpofu & Associates*, applicant's legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners