

**MTHANDAZO MOYO**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
TAKUVA J  
BULAWAYO 3 MARCH 2023 AND 23 MARCH 2023

**Bail Application Pending Trial**

Applicant in person  
*Ms Kanengoni*, for the respondent

**TAKUVA J:** This is a bail application in terms of section 50 (1) (d) of the Constitution of Zimbabwe Amend No. 20 as read with section 117 of the Criminal Procedure and Evidence Act.

Allegations are that applicant murdered the deceased by kicking him on the head with booted feet repeatedly. Applicant is jointly charged with 5 others who were all granted bail with the consent of the respondent. During submissions, it emerged that the only reason why the respondent is differentiating applicant's case is that the applicant was seen by at least two witnesses kicking the deceased on the head. While conceding that the other five also assaulted the deceased *Ms Kanengoni* submitted that they directed their blows away from deceased's head and since the post-mortem report speak to intracranial haemorrhage as the cause of death it can therefore be concluded that it is the applicant who delivered the fatal blows and therefore the state has a strong *prima facie* case against applicant only.

I disagree with such reasoning for the simple reason that once it is established that the applicant and his friends are co-perpetrators, it will be irrelevant who pulled the trigger as it were. In any event if we closely examine the applicant's defence it becomes clear that it is doubtful that it is only the applicant who assaulted the deceased in a serious manner. I find

that the State case against applicant is weakened by the fact that the deceased was attacked by two groups of people on the same day.

As regards the risk of abscondment, the State conceded that the applicant is of fixed abode, and is employed at a mine.

I find for the above reasons that the applicant is a good candidate for bail as there are no compelling reasons to deny him bail.

Accordingly applicant is granted bail on the following conditions;

- (1) That applicant deposits a sum of RTGS \$20 000-00 with the Clerk of Court Inyathi Magistrate Court.
- (2) That applicant reports once every week on Fridays at Inyathi Police Station between 0600 hours and 1800 hours.
- (3) That applicant continues residing at Martin Ndlovu's homestead, Maqaqeni Ext. Mpolompolo Inyathi.
- (40) That Applicant does not interfere with State witnesses or evidence.

*National Prosecuting Authority, respondent's legal practitioners*