

JEFAT CHAGANDA

Versus

THE STATE

AND

SIDINGUMUZI NCUBE

AND

TYSON RUVAMBO

AND

GODFREY MAKUVADZE

AND

ADMIRE RUBAYA

AND

LADISLOUS TAMBOONEI

AND

LADISLOUS TINACHO

AND

STANLEY CHINYANGANYA

AND

TIMEON TAVENGWA MAKUNDE

IN THE HIGH COURT OF ZIMBABWE
MABHIKWA J with Assessor Mr O Dewa
BULAWAYO 6, 7,8 AND 9 NOVEMBER 2018,
4, 4, 5, 6 AND 7 DECEMBER 2018, 17, 18 AND 21 JANUARY 2019,
12, 13 AND 14 MARCH 2019, 13 MAY 2019 AND 5 JULY 2019,
17 SEPTEMBER, 29 OCTOBER 2019, 14 JANUARY AND 3 MARCH 2020

Ruling on application for leave to appeal

C Ndlovu standing in for Advocate S M Hashiti, for the applicant
Mrs T R Takuva with Ms N Ndlovu, for the 1st respondent
C Ndlovu, for the 2nd, 3rd and 4th respondents
O Marwa and T Tabana, for the 5th respondent
T Muganyi and M Mahaso, for the 6th and 7th respondents
P Butshe, for the 8th respondent
Mr P Butshe standing in for B Mufadza, for the 9th respondent

MABHIKWA J: This court handed down its ruling in which it dismissed an application for discharge at the close of the state case brought by the applicant together with the 2nd to the 9th respondents herein but who were co-applicants in that application.

On 29 October 2019, the applicant filed an application for the Judge's recusal in the matter. This court dismissed the application on 14 January 2020.

On 16 January 2020, applicant then filed the current application in terms of Order 34 Rule 263 of the High Court Rules, 1971 seeking leave to appeal against the said interlocutory judgement of 14 January 2020.

The court notes that there is perhaps an inadvertent error throughout the applicant's application in reference to another interlocutory application brought by the "7th respondent." This may be an unintended error in that **LADISLOUS TINACHO** (7th respondent herein), apart from the application for discharge at the close of the state case which he and all others made, has not brought any interlocutory application standing alone. Applicant therefore intended to refer to the interlocutory application for leave to appeal brought by the 5th respondent herein who is also 6th accused in the main trial .

It is true that the legal position is that leave to appeal should not be granted unless the applicant has reasonable prospects of success on appeal. To that extent, and in particular on the issue of recusal, this court cited and analysed at length all decided cases, including all those that had been cited by the applicant in the judgement dismissing the application for recusal. The court therefore does not intend to revisit its findings therein and the plethora of authorities cited in that ruling.

Suffice to state that from the applicant's submissions, the application for recusal was premised on the 2nd paragraph on page 9 of the court's said judgement in case number HB 74/19 which dismissed the applicant's application together with those of his co-accused. In short the

application was premised on an alleged apprehension that the court's findings in that paragraph meant that the 2nd accused (applicant) was likely to be convicted at the end of the trial.

The law is clear as shown by case authorities, that an application for recusal, or a judicial officer's recusal, should be premised on alleged bias or a reasonable apprehension of bias, not one's alleged fear of possible conviction.

In applicant's application, this court found that the application was premised on an erroneous legal principle. The court found that the applicant had not alleged and shown any bias, simpliciter or judicial as required by law.

Secondly the court found also that the alleged apprehension, whatever it was, was not reasonably and genuinely held.

It is this court's finding that applicant has no reasonable prospects of success on appeal.

Accordingly, the application for leave to appeal against the judgement of this court handed down on 14 January 2020 is dismissed.

Nyikadzino, Simango & Associates, applicant's legal practitioners
National Prosecuting Authority, 1st respondent's legal practitioners
Gonese & Ndlovu, 2nd, 3rd and 4th respondents' legal practitioners
Rubaya & Chatambudza, 5th respondent's legal practitioners
Tanaka Law Chambers, 6th respondent's legal practitioners
Mathonsi Ncube Law Chambers, 8th respondent's legal practitioners
Mufadza & Associates, 9th respondent's legal practitioners