

FANNY MURONGA  
**versus**  
THE STATE

HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO 4 JUNE 2018 AND 7 JUNE 2018

### **Bail Application**

*N Sibanda* for the applicant  
*Ms N Ngwenya* for the respondent

**MOYO J:** This is an application for bail pending trial.

The applicant faces charges of attempted murder in that it is alleged that he shot the complainant at Motapa mine Inyathi on 17 April 2018.

The state has opposed bail on the grounds the applicant faces serious charges and that upon conviction this charge carries with it a custodial sentence. The other ground is that the accused is on a warrant of arrest on other charges whose court record book numbers have not been availed to the court. They were of critical importance in this case as accused's counsel disputes that and the state was duty bound to prove same.

This leaves the seriousness of the offence as the only ground for opposing bail. There are numerous cases to the effect that the seriousness of the offence on its own cannot stand as a ground for opposing bail. In other words, the court must consider a number of factors whose cumulative effect is such that the accused is a flight risk. The weight of a serious charge without any other complimenting circumstances against the accused person cannot on its own tilt the scales against the accused person's suitability for bail. There should be other observations, concerning the accused's personal circumstances that tilt the scales heavily towards abscondment. In this case the accused is said to have co-operated with the police. Initially he was called to produce his firearm which he did and then went away after leaving his firearm at the police station. Again, he was called by the police when they had decided to press charges

against him and he complied and got arrested. This situation tilts the scales heavily in favour of the accused person in that if he wanted to flee in the circumstances, nothing could stop him. He thus strikes one as a man who does not intend to evade justice. That counts heavily in the accused's favour. The accused person has also proffered a defence that he shot the deceased in self defence during a fracas at that time. Although the state counsel submits that the deceased was shot in the back and could therefore have been fleeing, the full circumstances of the fracas and the relative positions of the accused and the deceased are yet to be fully ventilated through a trial. It is only after the full circumstances of the fracas and the shooting have been determined that the court can deduct the probability of the defence proffered in my view.

In the case of *Mambo v S* 11992 (1) ZLR 245 it was held that even where an accused person faced serious charges, but where he had co-operated with police investigations and surrendered himself to them upon being called by them, counts in on accused's favour in that it removes the flight risk aspect.

It is for these reasons that I find that the state has not produced any cogent reasons compelling the court to deny the accused person his liberty.

Accordingly, the application for bail pending trial is granted in terms of the draft as amended.

*Liberty Mciyo and Associates*, applicant's legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners