

MARTIN MOYO  
**versus**  
THE STATE

HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO 1 JUNE 2018 AND 5 JULY 2018

### **Bail Application**

*A Mushwipa* for the applicant  
*S Ndlovu* for the respondent

**MOYO J:** This is a bail application wherein applicant seeks his release from custody pending his trial. At the hearing of this application I dismissed it and stated that my detailed reasons would follow.

The applicant faces a charge of murder, it being alleged that on 19 November 2017, together with his co-accused he assaulted the deceased resulting in his death from the injuries sustained in the assault. He now seeks bail pending trial and he avers that he is a suitable candidate for bail in that he is of fixed abode. He does not hold any travel documents. He is employed as a herdboy at Karlson Farm Insiza.

The state opposed the application on the basis that the state has a strong *prima facie* case against the applicant as he was involved in the assault of the deceased. Whilst the seriousness of the charges that an applicant for bail faces, cannot be the only ground for denying him bail, its relevance to the risk of abscondment is a factor. Refer on this aspect to the case of *Jongwe v S* SC62/02.

In fact to rebut the risk of abscondment where the state case is *prima facie* strong and the accused is facing a serious charge with hearing penalties. It is desirable that an applicant to bail mention his defence to the charges because where the applicant has a defence to proffer, the state case cannot be held to be *prima facie* strong. Again, where applicant has a defence to proffer, the risk of abscondment is reduced significantly for, applicant will then be encouraged to stand trial as he will be looking forward to being absolved. Where the applicant does not hint at a

defence as is the situation in this case, then he cannot be held to be a suitable candidate for bail where he faces a serious charge and consequently a lengthy custodial term. It is settled law that it is desirable for an applicant for bail to disclose his/her defence and not to merely make a bad assertion that they are innocent. Such defence is of great and often decisive importance in the exercise of the courts' discretion. Refer on this aspect to the case of *Ndlovu v S* 2001 (2) ZLR 261 (H).

I accordingly found that in the absence of a hint at applicant's defence, he cannot be held to be a suitable candidate for bail.

I accordingly dismissed the application for the reasons stated herein.

*Sengweni Legal Practice*, applicant's legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners