

SIMBARASHE TAVENGWA

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 1 & 25 MARCH 2004

G Nyathi for the applicant
H S M Ushewokunze III for the respondent

Bail Pending Trial

CHEDA J: This is an application for bail pending trial. Allegations against applicant are that on or about 21 January 2003 accused together with his colleagues attached and killed the deceased. Applicant was arrested, detained and charged with murder.

On 21 January 2004 he applied for bail pending trial. This application was set down for hearing on 25 February 2004 further set down for 26 February 2004, but respondent's legal practitioner Mr *Ushewokunze III* did not attend. No reason for his non-attendance was proffered. I ordered that the matter be again set down for hearing on 1 March 2004 at 1415 hours. Again respondent's representative did not appear and no reason was advanced to me on all the three occasions.

The liberty of an individual is expressly paramount to an extent that he should not be deprived of it with ease. An accused's presumption of innocence is the hallmark of our justice system. Unless and until it is shown on a balance of probabilities that an accused if granted bail, is unlikely to stand trial, the courts should be ready to admit him to bail. It is respondent's duty to present facts and/or arguments which the court must weigh in order to properly determine the issue of bail.

HB 21/04

In *casu* respondent filed heads of argument but on three occasions without any reason whatsoever failed to appear in pursuance of those arguments. I find this behaviour quite reprehensible. The Attorney-General's office has a duty to safeguard the interest of justice and one of the requirements is the strict adherence to timeous attendance in court.

The importance to admittance to bail or denial therefore should never escape officers of the court as it should always be borne in mind that pre-trial incarceration carries a punitive element in that it works against the principle of the presumption of innocence. It is for that reason that those involved in the assistance of the determination of bail applications should attend to such applications promptly in the circumstances.

This has not been the case here. I therefore find in favour of applicant and accordingly this application succeeds and bail is granted as follows:

- (a) That applicant pays a bail deposit of \$100 000,00 with the Criminal Registry High Court, Bulawayo.
- (b) That applicant resides at house number 487 First Street, Makokoba, Bulawayo until the finalisation of this matter.
- (c) That applicant shall not interfere with evidence or state witnesses.
- (d) That applicant reports twice a week at the Criminal Investigations Department Homicide, Bulawayo Central Police Station on Mondays and Fridays between the hours of 6am to 6pm.

Sansole & Senda applicant's legal practitioners
Attorney-General's Office respondent's legal practitioners