

**THULANI MPOFU**

**AND**

**BONNET BHEBHE**

**VERSUS**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 8 SEPTEMBER 2006 AND 19 OCTOBER 2006

*Mr Ndlovu* for applicants  
*Mr T Mkwanzu* for respondent

Application for Bail pending trial

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

Applicants are facing a charge of murder. The allegations against them are that they together with Smart Bhebhe and Buhle Mpofu hatched a plan to kill the deceased one Samson Moyo.

Buhle Mpofu was married to the deceased. It is also alleged that she influenced the other accused person to murder the deceased. Second applicant is her brother.

It is also further alleged that the applicants together with Smart Bhebhe collected the deceased from his house in the presence of Buhle Mpofu and drove him in second applicant's motor vehicle to plot number D7 Upper Rangemore, Bulawayo where they took turns in shooting him several times resulting in his death.

They shot him using second respondent's pistol. After shooting him, the two applicants absconded to South Africa, where they were subsequently arrested. Upon their arrest a 9mm pistol was recovered from them.

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Mr Ndlovu, their counsel has argued that they are entitled to their liberty on the basis of the presumption of their innocence until they are proven guilty. This, indeed, is the correct position of our law. I have no problem with that submission.

He also sought their freedom on the basis that they will stand trial. He further submitted that in the event that there are fears that they would abscond, this possibility can be curbed by the imposition of stringent bail conditions.

The granting of bail to a suspect is to ensure that he stands trial. Section 116(7) of the Criminal Procedure and Evidence Act [Chapter 9:07], reads:-

“Subject to subsection (4) of section 13 of the constitution, in any case in which the Judge or magistrate has power to admit the accused person to bail, he may refuse to admit, such person to bail if he considers it likely that such person were admitted to bail he would: -

- (a) not stand his trial or appear to undergo the preparatory examination or to receive sentence.
- (b) .....
- (c) .....

In determining whether an accused is likely to stand trial, serious considerations of the facts and circumstances of the case should be taken into account, see *Moyo v S* HB 23/05.

In *casu*, the fact that applicants who were heavily implicated by their co-accused went to say in South Africa immediately after the alleged commission of the offence is a factor which weighs heavily against them.

In addition, thereto, the fact that they did not voluntarily return until they were arrested adds credence to respondent’s submission that they are likely to abscond thereby failing to stand trial or any other proceedings in terms of the law.

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A person who on the face of allegations against him elects to flee instead of clearing his name has himself to blame in the event of the court concluding that he can not be trusted to attend his trial if admitted to bail.

For the above reason, this application is dismissed.

*James, Moyo-Majwabu, applicants' legal practitioners*  
*Attorney General's Office, respondent's legal practitioners*