

**MONICA LUBIMBI**

**VERSUS**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 26 AUGUST 2011 AND 29 AUGUST 2011

*Mr Jamela and Mrs Chanaiwa* for applicant  
*Ms A. Munyeriwa* for respondent

Bail Application

**NDOU J:** The applicant is charged with murder as defined in Section 47 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. It is alleged that sometime between 27 July and 3 August 2011, the applicant and seven (7) accomplices kidnapped and killed the now deceased Mgoli Ndlovu Majola. It is alleged that after the murder they removed his tongue, brain, nose, lips and four fingers. It is alleged that the applicant took the now deceased's tongue. The application is opposed on two grounds that is likelihood of abscondment and likelihood of interference with investigations. The Respondent filed an affidavit deposed to by the Investigating Officer, O. Mudyazvavanhu of the Criminal Investigations Department, Homicide Squad, Bulawayo. What can be gleaned from the evidence therein is that the applicant was linked to the offence by one, Nkosilathi Khumalo, that is accused 2 in the case.

According to the Investigating Officer, Nkosilathi Khumalo was implicated by his own sister Cecilia Khumalo. After his arrest, Nkosilathi Khumalo indicated that he organised the murder with his aunt, Pisi Nxumalo that accused 1 in the matter. He said that he and Pisi Nxumalo then hired the other six accomplices, including the applicant to carry out the murder. Xolani Ncube's vehicle was used in the kidnapping of the now deceased from his house.

He was taken to a bushy area in Richmond. After the murder it is alleged that Nkosilathi Khumalo and other accomplices took the tongue to the applicant. The inference is that the

applicant was not at scene where the murder occurred but was aware of it because she “had requested for the parts”. There is no other evidence linking the applicant to the offence murder other than the statement of the accomplice Nkosilathi Khumalo. It has been brought to my attention by counsel for the applicant that when these ex-curia statements implicating the applicant were taken to the magistrates court for confirmation, the makers disowned them resulting in them not being confirmed. In a nutshell, the state is relying on these unconfirmed ex-curia statement in linking the applicant with the murder.

This is evinced by the contents of the Request For Remand Form 242 which describes how the applicant’s accomplices are alleged to have participated in the murder. There are also allegations that they contacted an Inyanga to assist in the murder. They are also alleged to have made “positive indications at the scene”. All these allegations do not state participation of the applicant save for the implication by Nkosilathi Khumalo. There is also a discrepancy on what was taken to the applicant. In the Form 242 the accomplices took the tongue, fingers and brain to the applicant and yet the Investigating Officer in the sworn statement alludes to the tongue only.

The applicant is a Councillor for Ward 9 of the Bulawayo City Council. She is an elderly woman aged 57. She owns the immovable property that she lives in. She is a mother of four (4) children. The parts allegedly given to her were not found in her possession. As alluded to above, the alleged accomplice who implicated her has disowned the statement before a magistrate resulting in the ex-curia statement not being confirmed. The court should always lean in favour of granting bail provided that the interests of justice are not prejudiced. – *S v Biti* 2002 (1) ZLR 115(H), *Attorney General v Kanoda* HH 200/90, *S v Hussey* 1991 (2) ZLR 19 (S) and *Aitken and Another v Attorney General* 1992 (1) ZLR 255 (S). Although the charge here is serious, looking at all the other relevant factors outlined above, the seriousness of the offence is not likely to induce the applicant to abscond. The applicant is a suitable candidate for bail. The fears raised by the Respondent can be addressed by the imposition of stringent conditions.

Accordingly it is ordered that:

- (1) The applicant be and is hereby admitted to bail in the sum of US\$300-00.

- (2) The applicant is to reside at Number 3755 Magwegwe North, Bulawayo until the finalisation of the matter.
- (3) The applicant shall not interfere with investigations or state witnesses in this matter.
- (4) The applicant shall report thrice a week on Mondays, Wednesdays and Fridays between the hours of 6am and 6pm at Magwegwe Police Station until the matter is finalised.
- (5) The applicant shall not leave the 40 kilometre radius of the Bulawayo Main Post Office without a written authority of a Bulawayo magistrate.

*Zimbabwe Lawyers for Human Rights*, applicant's legal practitioners  
*Criminal Division, Attorney General's Office*, respondent's legal practitioners