

PISI NDLOVU (NEE NXUMALO)

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 6 SEPTEMBER 2011

G Nyoni for applicant

Miss A. Munyeriwa for respondent

Judgment

NDOU J: This is an application for bail pending trial. The applicant is facing a charge of murder as defined in section 47 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. It is alleged that on an unknown date between 27 July and 3rd August 2011, the applicant with seven (7) others struck the now deceased with a sharp object on the head and thereafter removed his tongue, brain, nose, lips and four fingers. The application is opposed on three grounds, namely;

- (a) likelihood of abscondment
- (b) likelihood of interference with investigations, and
- (c) likelihood of interference with state witnesses.

The applicant was initially implicated by one Nkosilathi Khumalo. She was pointed out as having masterminded the murder. The meeting at which the plan to murder the now deceased person is alleged to have taken place at her place of abode. She is the one who is alleged to have come up with the plan to hire persons to carry out the physical aspects of the plan. She is alleged to have hired two of her accomplices and one Nhlanhla Mhlanga and promised to pay them US\$1 500 after the mission is accomplished. She is alleged to have hired Zibusiso Mkandla's vehicle to be used in the murder. She is said to have been the one who spoke to Zibusiso Mkandla. She is the one who is said to have hired a police detail to participate in the crime. The police detail she hired was to put on a police uniform and go to the now deceased's place of residence and pretend to place him under arrest. Although initially her role was not known to the police, she became implicated and her prominence in the crime became clearer when accomplices were arrested and other witnesses interviewed. Key factors in this application are the nature and gravity of the offence charged and the strength of the

prosecution case – *S v Jongwe* 2002 (2) ZLR 209 (S); *S v Nichos & Anor* 1997 (1) SA 263 and *S v Moyo* HB-23-05. In applicant's favour is that she was not immediately arrested after the police initially interviewed her. However, as alluded to above, her alleged prominent involvement had not yet been detected at that stage. The situation has dramatically changed since then. She has now been confronted with evidence of witnesses who evince her involvement in the crime. The inducement to abscond is now present. She now knows what the others have told the police about her involvement in the crime. She now knows that it has been evinced that she is the alleged brain behind the murder. Her situation is different from her co-accused Luvimbi who was granted bail. The latter was only implicated by a co-accused. In applicant's case there are other factors such as hosting the planning meeting and hiring a vehicle from Zibusiso Mkandla. The evidence against her seems to be far more stronger than the evidence against Luvimbi. She is closely related to key witnesses like Cecilia Khumalo. There is likelihood that she will interfere with witnesses and investigations. Taking into account all the factors cumulatively, I hold the view that she is not a suitable candidate for bail.

Accordingly, the application is dismissed and the accused is refused bail.

Messrs Moyo & Nyoni, applicant's legal practitioners

Criminal Division, Attorney General's Office, respondent's legal practitioners