

**PISI NDLOVU (nee NXUMALO)**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 28 SEPTEMBER & 24 NOVEMBER 2011

G Nyoni for applicant  
K Ndlovu for respondent

Bail Application

**NDOU J:** 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 being alleged that on an unknown date between the 27<sup>th</sup> of July and 3<sup>rd</sup> of August 2011, the applicant with seven others struck the now deceased with a sharp object on the head and thereafter removed his tongue, brain, nose, lips and four fingers. The applicant made an application for bail pending trial in this court. The applicant's application for bail was dismissed on 6 September 2011. The basis of the dismissal was mainly the likelihood of abscondment in view of the nature and gravity of the offence and the strength of the case against the applicant. Further, it was held that there was a likelihood that the applicant will interfere with state witnesses like Cecilia Khumalo.

It is contended in the application that there is no longer a risk of interference as a statement has been recorded from Cecilia Khumalo. Further, it is intimated that investigations have been done since 15 August and that the investigations should be complete by now making the applicant not pose a threat to the interests of justice and by extension a good candidate for bail.

In *S v Aitken* (2) 1992 (2) ZLR 463 (S) it was held that where a bail application has previously been refused and a further application for bail is made to the High Court such an application can only be entertained if fresh facts are elicited that were not before the court when it refused bail. Fresh facts were defined as "new facts which viewed in conjunction with other relevant factors both adverse and favourable to the accused tend to reduce in significant degree the risk of abscondment before trial." It is generally recognized that the passage of time since the making of an application for bail can in certain circumstances be viewed as a fresh fact. A month has lapsed since the making of the initial application of this nature, the applicant is entitled to lay before the court facts which have arisen or which have been discovered

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subsequent to initial judgment dismissing the bail application. It is apparent that at the time of the initial bail hearing a statement had already been recorded from Cecilia Khumalo. So reference to it now cannot rank as a fresh fact. In the bail ruling of 6 September 2011, this court made a specific finding that there was a high likelihood of the applicant interfering with state witness Cecilia Khumalo, who is her niece. This finding was vindicated because of what the applicant avers in paragraph 10 of the present application. In her own papers the applicant had evinced that she had already underhandedly interacted and solicited for information from Cecilia Khumalo. At the end of the day fears of interference have not been dispelled but have on the contrary been strengthened. The applicant has not shown that fresh facts exist in relation to the case against her to warrant her being granted bail.

Accordingly, the application is dismissed.

*Messrs Moyo & Nyoni, applicant's legal practitioners*

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