

**JEFAT CHAGANDA**

**Versus**

**THE STATE**

**AND**

**SIDINGUMUZI NCUBE**

**AND**

**TYSON RUVAMBO**

**AND**

**GODFREY MAKUVADZE**

**AND**

**ADMIRE RUBAYA**

**AND**

**LADISLOUS TAMBOONEI**

**AND**

**LADISLOUS TINACHO**

**AND**

**STANLEY CHINYANGANYA**

**AND**

**TIMEON TAVENGWA MAKUNDE**

IN THE HIGH COURT OF ZIMBABWE  
MABHIKWA J with Assessor Mr O Dewa  
BULAWAYO 6, 7,8 AND 9 NOVEMBER 2018,  
4, 4, 5, 6 AND 7 DECEMBER 2018, 17, 18 AND 21 JANUARY 2019,  
12, 13 AND 14 MARCH 2019, 13 MAY 2019 AND 5 JULY 2019,  
17 SEPTEMBER, 29 OCTOBER 2019, 14 JANUARY AND 3 MARCH 2020

### **Ruling on application for leave to appeal**

*C Ndlovu standing in for Advocate S M Hashiti, for the applicant*  
*Mrs T R Takuva with Ms N Ndlovu, for the 1<sup>st</sup> respondent*  
*C Ndlovu, for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents*  
*O Marwa and T Tabana, for the 5<sup>th</sup> respondent*  
*T Muganyi and M Mahaso, for the 6<sup>th</sup> and 7<sup>th</sup> respondents*  
*P Butshe, for the 8<sup>th</sup> respondent*  
*Mr P Butshe standing in for B Mufadza, for the 9<sup>th</sup> respondent*

**MABHIKWA J:** This court handed down its ruling in which it dismissed an application for discharge at the close of the state case brought by the applicant together with the 2<sup>nd</sup> to the 9<sup>th</sup> respondents herein but who were co-applicants in that application.

On 29 October 2019, the applicant filed an application for the Judge's recusal in the matter. This court dismissed the application on 14 January 2020.

On 16 January 2020, applicant then filed the current application in terms of Order 34 Rule 263 of the High Court Rules, 1971 seeking leave to appeal against the said interlocutory judgement of 14 January 2020.

The court notes that there is perhaps an inadvertent error throughout the applicant's application in reference to another interlocutory application brought by the "7<sup>th</sup> respondent." This may be an unintended error in that **LADISLOUS TINACHO** (7<sup>th</sup> respondent herein), apart from the application for discharge at the close of the state case which he and all others made, has not brought any interlocutory application standing alone. Applicant therefore intended to refer to the interlocutory application for leave to appeal brought by the 5<sup>th</sup> respondent herein who is also 6<sup>th</sup> accused in the main trial .

It is true that the legal position is that leave to appeal should not be granted unless the applicant has reasonable prospects of success on appeal. To that extent, and in particular on the issue of recusal, this court cited and analysed at length all decided cases, including all those that had been cited by the applicant in the judgement dismissing the application for recusal. The court therefore does not intend to revisit its findings therein and the plethora of authorities cited in that ruling.

Suffice to state that from the applicant's submissions, the application for recusal was premised on the 2<sup>nd</sup> paragraph on page 9 of the court's said judgement in case number HB 74/19 which dismissed the applicant's application together with those of his co-accused. In short the

application was premised on an alleged apprehension that the court's findings in that paragraph meant that the 2<sup>nd</sup> accused (applicant) was likely to be convicted at the end of the trial.

The law is clear as shown by case authorities, that an application for recusal, or a judicial officer's recusal, should be premised on alleged bias or a reasonable apprehension of bias, not one's alleged fear of possible conviction.

In applicant's application, this court found that the application was premised on an erroneous legal principle. The court found that the applicant had not alleged and shown any bias, simpliciter or judicial as required by law.

Secondly the court found also that the alleged apprehension, whatever it was, was not reasonably and genuinely held.

It is this court's finding that applicant has no reasonable prospects of success on appeal.

Accordingly, the application for leave to appeal against the judgement of this court handed down on 14 January 2020 is dismissed.

*Nyikadzino, Simango & Associates*, applicant's legal practitioners  
*National Prosecuting Authority*, 1<sup>st</sup> respondent's legal practitioners  
*Gonese & Ndlovu*, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents' legal practitioners  
*Rubaya & Chatambudza*, 5<sup>th</sup> respondent's legal practitioners  
*Tanaka Law Chambers*, 6<sup>th</sup> respondent's legal practitioners  
*Mathonsi Ncube Law Chambers*, 8<sup>th</sup> respondent's legal practitioners  
*Mufadza & Associates*, 9<sup>th</sup> respondent's legal practitioners