

**MUNYARADZI GWENYE**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
SIZIBA J  
BULAWAYO 28 AUGUST 2024

*Ex-tempore judgment*

*M.E.P. Moyo* for the applicant  
*K. M. Guveya* for the respondent

**SIZIBA J:** The applicant seeks to be released on bail pending trial. The application is in terms of section 117 A of the Criminal Procedure and Evidence Act. He is facing a charge of robbery and murder. He is jointly charged with 4 others. It is alleged that on 21 July 2024 at 2200 hours, the crew proceeded to rob Pangani Central Mine in Filabusi and that they were armed with axes, catapults, machetes and knives. It is alleged that they met resistance thereat which led to clashes culminating on the death of the deceased Luckson Phiri. The State alleges that the applicant is a flight risk in that after the alleged offence was committed, all the suspects fled. The applicant and some of his co-accused persons were apprehended with use of a fire arm. The State also avers that there are witnesses who saw the applicant at the crime scene participating in the alleged offences.

The applicant places himself at the crime scene by his explanation that he had been hired with 3<sup>rd</sup> accused to carry gold ore. He alleges that he did not participate in the fight as he was not aware that his employers intended to rob the mine. His version is that he had visited his uncle the 1<sup>st</sup> accused in Filabusi to raise money to return to Kwekwe. He had come to Bulawayo to see his young brother who had been injured in Kwekwe. In terms of section 50 (d) of the Constitution, bail is now a constitutional right. In terms of section 115C of the Criminal Procedure and Evidence Act, the applicant has the burden to show that his release on bail will not hamper the interests of justice. He has explained that the 1<sup>st</sup> accused was not at the crime scene. He cannot therefore say that his circumstances are similar to those of the 1<sup>st</sup> accused person who has been granted bail pending trial. The State's fears have been elaborated quite clearly in my view. Although the applicant is still presumed innocent, there is evidence

that he is linked to the crime scene by his own admission. He has failed to show any compelling reasons warranting his release on bail. I agree that he might be tempted to flee due to these serious allegations as it is alleged that he was arrested with difficulty and that his co-accused are still at large. The interests of justice will be defeated by his admission to bail pending trial.

In the result, the application for bail pending trial be and is herewith dismissed.

*Mathonsi Ncube Law Chambers* applicant's legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners