

TITO MWANA
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHIWESHE JP
HARARE, 22 September 2010 and 6 October 2010

Mr *Muyemeki*, for the applicant
Mr *Taruvinga*, for the respondent

CHIWESHE JP: The applicant is charged with two counts of rape in terms of s 65 of the Criminal Law (Codification and Reform) Act [*Cap* 9:23].

On 13 July 2010 the applicant appeared before my brother HLATSHWAYO J seeking bail pending trial. His application was duly dismissed in view of the following factors:

- (i) That investigations were complete and the State was ready for trial;
- (ii) That offences of this nature are on the increase and that vulnerable members of society such as minors must be protected by keeping would be offenders under incarceration pending trial; and
- (iii) That the applicant is facing serious charges and if convicted would be liable to a long prison term. This would induce him to abscond if granted bail.

In order to succeed in the present application, the applicant must show that since the order of my brother on 13 July 2010 denying him bail, circumstances have changed. In my view the applicant has not demonstrated any changes in support of the order he seeks. It has not been shown for example that the State case has since been weakened in a material respect or that certain circumstances which did not exist at the time have since arisen.

During the course of hearing this application I did ask for details of the allegations made against other persons who stand accused of raping the same minor in order to gain a greater insight into this matter. I postponed the proceedings for that purpose. I have since acquainted myself with such allegations and remain of the view that the present application cannot succeed.

However, during the course of the postponement the record was not returned to me. This was due to an oversight on the part of the Registrar. Inevitably the result has been a delay in the finalization of this matter.

For reasons already stated I order that the application be and is hereby dismissed.

Antonio & Associates, applicant's legal practitioners
Attorney General's Office, respondent's legal practitioners