

THE STATE
versus
PARADZA BENJAMIN

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 16th November, 2004

Criminal Trial

Mr Musona and *Mr Phiri*, for the State
Mr Gauntlett SC and *Mr Matinenga*, for the accused

BHUNU J: Ladies and gentleman being a sitting judge who has been assigned to preside over this case involving a fellow sitting judge, I have agonised over this case for a very long time regarding whether or not I should preside over this case.

As you will undoubtedly appreciate the bulk of my fellow judges if not all are in the same predicament.

Previously I thought as a professional judge I would be able to disabuse my mind of any extraneous influence and preside over the matter dispassionately. I however regret to say that I have been progressively overwhelmed by the enormity of the task before me as the trial date drew nearer.

I was with Justice Paradza in the liberation struggle. We worked together as magistrates and he appeared before me as a legal practitioner. We are now fellow judges and colleagues.

I strongly feel that this is a case which should perhaps be best handled by a retired judge or someone from outside our jurisdiction.

I am of the view that whatever my decision is going to be in this case justice would not be seen to be done and yet justice must not only be done but it must be seen to be done. I therefore feel compelled to recuse myself.

I feel comforted in taking that stance by the decision in the case of *South African Motor Acceptance Corporation (EDMS) BPK v Oberholzer* 1994(4) SA 808. In that case it was held that:-

“Where two judicial officers are attached to the same bench as colleagues and one of them is a litigant or an accused then there is a reasonable ground for the other legal officer to be recused from trying the action.”

In recusing myself I feel constrained to point out that neither the State nor the defence has prompted my recusal. The decision is purely mine coming from the depth of my heart and conscience.

I accordingly recuse myself and withdraw from presiding over this case.

Civil Division of the Attorney-General's Office, the State's legal practitioners Dube, Manikai and Hwacha, the accused's legal practitioners