

GARIKAYI MHEPO  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
MAXWELL J  
HARARE, 30 June 2022

### **Condonation**

Applicant in person  
*D Muziwi*, for the respondent

MAXWELL J: On 13 May 2022, I dismissed an application for condonation of late noting of an appeal by the Applicant. On 18 May 2022 Applicant requested for reasons for the dismissal. These are they.

Applicant is serving an effective sentence of 27 years imprisonment after he was convicted of Stock Theft. In terms of r 101(2) of S I 202/21, Applicant was obliged to note an appeal within ten days of the passing of the sentences upon him. The attached records of proceedings are stamped 9 December 2019 and 18 June 2020 on the sentence,

Applicant filed an application for condonation of late noting of appeal on 9 March 2022. Applicant was also seeking leave to prosecute the appeal in person.

The reason given for the delay was that applicant lacked support in securing the record of proceedings and that after the record was secured, a bogus lawyer was engaged. That explanation is probable and Applicant gets the benefit of doubt.

However, in considering whether or not to grant condonation, the court considers also the prospects of success and the *bona fides* of the application. See *Fuyana v Moyo* SC 54/06. I was not convinced that there are prospects of success on appeal.

Applicant submitted that he marginally benefitted from the crimes. That cannot be reason for interfering with a prescribed mandatory sentence.

Applicant further submitted that the lower court ought to have made the sentences to run concurrently. He made reference to the case of *State v Damba* 2004 (1) ZLR 296 in support

of his submission. In that case, MAKARAU J (as she then was) clearly stated that where the multiple counts are similar in nature and not merely kindred, and are closely related in terms of time, the sentencing court has an option to either take each count separately or to take all counts as one. She further stated that the resultant sentence should not distort the gravity of each conviction.

*In casu*, the court a quo properly exercised its discretion. Stock theft is viewed so seriously by the legislature that a mandatory minimum sentence is provided for. In addition, s 114(4) (a) provides that where a minimum mandatory sentence is meted, the sentencing court:

“Shall not order that the operation of the whole or any part of the sentence be suspended.”

A total of eight (8) beasts were stolen by the Applicant. I agreed with the submissions for the State that the sentence imposed was actually lenient regard being had to the number of cattle involved. To order the sentence to run concurrently, in my view, would be against the spirit of the prohibition to suspend a portion of the mandatory minimum penalty.

For the above reasons, I dismissed the application for condonation of late noting of appeal. The failure of that application meant the application for leave to prosecute the appeal in person also failed.

*National Prosecuting Authority*, respondent’s legal practitioners