

STANFORD MADZINGARUTSVA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
CHATUKUTA J  
HARARE, 9 October 2019

### **Chamber Application**

CHATUKUTA J: This is an application for condonation for late noting of an appeal. The applicant also seeks leave to prosecute his appeal in person. The applicant was convicted on 19 September 2018 of contravening s 65 (1) of the Criminal Law [Codification and Reform] Act [Chapter 9:23]. He was sentenced to 20 years imprisonment of which 2 years were suspended on condition of future good behaviour.

In an application of this nature, the court considers the following:

- (a) the length of the delay in filing the appeal.
- (b) the reason for the delay, and
- (c) the prospects of success on appeal.

The court in considering the first requirement is guided by the Supreme Court (Magistrates Courts) (Criminal Appeals) Rules, 1979 (SI 504 of 1979) (Appeal Rules). A self-actor is required in terms of r 27 to note his appeal within 10 days of the passing of sentence. The applicant having been sentenced on 19 September 2018, was required to note his appeal by 3 October 2018. This application was filed on 14 November 2018, a month after the applicant was required to have filed his appeal. The delay is not in my view inordinate. Further, it is not necessary, under the circumstances considering that the applicant was in custody, to belabour on the explanation for the delay.

The determination of this application rests on whether or not the applicant has prospects of success on appeal. The facts giving rise to the conviction are as follows: The applicant is the complainant's paternal uncle, having being a brother to the complainant's late father. The complainant was residing with the appellant. Sometime in April 2018, the complainant

remained at the homestead with the appellant. The appellant then raped the complainant and threatened to kill her if she disclosed the rape.

The complainant however reported to her grandmother the following morning. The grandmother asked the complainant to pack her belongings and move in with her which she did. The grandmother did not take any further action. The matter came to light in June 2018 when the complainant reported to her cousin, Albet Gogororo. Albert had come to attend a funeral at complainant's grandmother's home. He called other family members who were present and asked the complaint to relate what had happened. A report was thereafter made to the police.

The applicant did not deny having remained at home with the complainant although he stated that complainant's sister, Mavis, was also present. He conceded that he instructed complainant to prepare him some water to bath. He however denied raping the complainant.

As found by the trial magistrate, the applicant placed himself at the scene at the time when the rape was said to have occurred. He corroborated the complainant's evidence that he instructed her to prepare bathing water for him. He did not challenge the complainant's evidence that when he raped the complainant, they were alone at the homestead.

The complainant was indeed a credible witness as her evidence was in fact corroborated by the applicant himself. She made a prompt report to her grandmother and soon thereafter to her cousin. The reports to both the grandmother and cousin were voluntary. The medical affidavit produced by the state confirmed penetration.

The appeal court is, as rightly noted by the respondent, unlikely to upset the conviction.

Turning to the draft grounds of appeal, the applicant attached to his application his draft grounds of appeal. He subsequently attached another draft to an application filed on 21 June 2019. Both drafts are in my view fatally defective in that they are not concise as is required by the Appeal rules. They do not disclose in what way the alleged misdirections impact on the decision of the trial court.

The application is accordingly dismissed.