

TAWANDA MATANHIRE  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
CHIKOWERO J  
HARARE, 3 November, 2022

### **Chamber Application**

Applicant in person  
*L Chitanda*, for the respondent

#### **CHIKOWERO J :**

1. After hearing submissions from the applicant and counsel for the respondent, I delivered an *ex tempore* judgement dismissing this application for leave to appeal out of time and for a certificate to prosecute the appeal in person. This was on 3 November 2022.
2. The applicant has now requested written reasons for the decision. These are they,
3. The applicant and four others pleaded guilty to and were convicted of robbery as defined in Section 126 (1) (a) of the Criminal Law Code. He was sentenced to ten years imprisonment of which one year was suspended on the conditions of good behaviour. A further one year was suspended on condition he paid restitution.
4. His accomplices were similarly sentenced.
5. The robbery was committed in aggravating circumstances.
6. On another record the applicant pleaded not guilty to but was convicted of two counts of robbery.  
These were also committed in aggravating circumstances.
7. He, as were his accomplices, was sentenced to twelve years imprisonment of which two years were suspended on the conditions of good behaviour. Another year was suspended on condition the applicant paid restitution.

8. He filed a combined application for leave to appeal out of time and a certificate to prosecute the appeal in person. He expressed dissatisfaction with the sentence on the first record and the conviction and sentence on the other record.
9. The intended appeal has no prospect of success.
10. There was nothing wrong in the court *a quo* proceeding to sentence the appellant on the record in respect of which he had pleaded guilty and was convicted. That the same court was about the same time also seized with the other record in respect of which a plea of not guilty was tendered by the applicant could not be a sound basis for the court not to have disposed of the plea matter before the other matter was finalised.
11. The applicant complains that he missed an opportunity to have the sentence on the one record taken as one with the two counts on the other record for purposes of sentence. There is no legal basis for such a complaint. That being so, there is no prospect of success in the intended appeal against the sentence in respect of the record wherein he pleaded guilty.
12. I agree with Ms Chitanda that there is no prospect of success in the intended appeal against conviction on the other record.
13. The first proposed ground of appeal amounts to contending that the state did not prove its case beyond reasonable doubt.  
That would be an invalid ground of appeal. The proposed ground merits no further attention.
14. The second proposed ground of appeal is in the nature of heads of argument. That seals its fate for the purposes of the present application.
15. The third proposed ground of appeal is invalid. Without identifying any finding either of fact or law the applicant simply says the evidence of the “ other three witnesses did not bring in the ingredients of the Court to convict the applicant.” That is meaningless.
16. The arresting detail testified on what he did. That cannot be hearsay evidence. That evidence was admissible. In any event, the applicant does not identify the particular finding by the Court which he seeks to impeach on appeal on the basis that it was predicated on inadmissible evidence.
17. The proposed fifth ground of appeal is again in the nature of heads of argument. To put this beyond doubt, the applicant cites an old South African decision to buttress his submissions. Heads of argument have no place in a statement accompanying an

application for leave to appeal out of time and for a certificate to prosecute the appeal in person.

18. Similarly, what is put forward as the other proposed ground of appeal against the sentence is nothing but heads of argument. The applicant caps that lengthy paragraph by citing *S v Ngulube* HH 48/2002.
19. Having failed to persuade me that there are prospects of success, it became unnecessary for me to consider, among others, the extent of the delay and the reasonableness or otherwise of the explanation for not filing the appeal in time.
20. I record also that the application itself was ample proof that the applicant was in any event incapable of prosecuting the appeal in person. To a large extent he failed to couch valid grounds of appeal.
21. These, then, are the reasons why I ordered that :  
“The application for leave to appeal out of time and for a certificate to prosecute the appeal in person be and is dismissed.”

*The National Prosecuting Authority*, respondent’s legal practitioners