

EPHRAIM MUZIWA  
versus  
THE STATE

HIGHCOURT OF ZIMBABWE  
CHIKOWERO J  
HARARE, 8 March 2023

### **Chamber Application**

#### **In Chambers**

##### **CHIKOWERO J:**

1. The applicant was convicted by the Magistrates Court pursuant to a fully contested trial on a charge of rape as defined in s 65 of the Criminal Law Code.
2. He was sentenced to 15 years imprisonment of which 3 years were suspended for 5 years on condition of good behaviour.
3. He noted an appeal against both conviction and sentence.
4. At the hearing of the appeal Mr *Nyahuma*, who was representing the applicant, conceded that the sole ground on which the sentence was attacked was invalid. With that, the appeal against sentence fell away. It was struck off the roll. This was on 30 September 2019. The applicant, who was serving, did not attend the hearing.
5. On the same date, the court heard argument in respect of the appeal against conviction. That was the only appeal before the court as it related to the applicant. Still on 30 September 2019, the court delivered an *ex tempore* judgment dismissing the appeal against the conviction. Written reasons were furnished to the applicant on request.
6. On 1 July 2022 the applicant then filed an application for amendment of the grounds of the appeal against the sentence and for leave to prosecute the appeal in person. That application was fatally defective because there was no pending appeal against the sentence. The applicant could not therefore apply to amend a non-existent notice and grounds of appeal. Similarly, there was no pending appeal to which the application for leave to prosecute in person could relate to. Consequently, on 11 November 2022, I rendered an

order striking off the roll the application for amendment of the grounds of appeal against the sentence and for a certificate to prosecute such an appeal in person.

7. It seems the applicant did not understand that order. He is a self-actor. I say he appears to have misunderstood that order because on 6 January 2023 he filed another application for leave to amend the grounds of appeal against the sentence and for leave to prosecute the appeal in person. In other words, he is seeking the proverbial second bite of the cherry. I determined that such an application is fatally defective. Hence the order of 11 November 2022. He cannot re-institute the same application, which he sought to do by filing the 6 January 2023 application. It, being the subject of this judgment, is improperly before me.
8. The applicant clearly needs proper legal advice.
9. In the result, the application be and is struck off the roll.

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