

CLARKSON KATEWERE  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
CHIKOWERO J  
HARARE, 21 & 31 July 2023

### **Bail Application**

Applicant in person  
*LChitanda*, for the respondent

### **CHIKOWERO J:**

1. This is an application for bail pending appeal against conviction only.
2. On 14 April 2022 the applicant was convicted of two counts of rape as defined in s 65 of the Criminal Law Code. With both counts treated as one for the purposes of sentence the Regional Court imposed a sentence of 20 years imprisonment of which 5 years imprisonment was suspended for 5 years on the condition of good behaviour.
3. On 21 March 2023 I granted leave to appeal the conviction out of time as well as a certificate to prosecute the appeal in person.
4. I also extended the period within which the notice of appeal was to be issued and served on the respondent.
5. Although the applicant had also sought leave to appeal the sentence out of time and a certificate to prosecute that appeal in person as well as an extension of time within which to appeal I did not grant that part of the application.. I took the view that there was no reasonable prospect of success in the intended appeal against the sentence.
6. Having noted an appeal against the conviction the applicant is now before me seeking to be admitted to bail pending the determination of the appeal.
7. As pointed out by Ms Chitanda in her written response, the principles applicable in an application of this nature are settled. See *S v Dzawo* 1998(1) ZLR S 36 (5); *S v Benatar* 1985 (2) ZLR 205 (H); *S v Williams* 1980 ZLR 466 (A) and *S v Kilpin* 1978 RLR 282(A). They are the prospect of success of the appeal, the likelihood of the applicant

absconding, the likely delay before the appeal is heard and the right of the individual to liberty.

8. The only factor in favour of the applicant is that the appeal has a reasonable prospect of success. I am aware that in her written response Ms Chitanda advocates a contrary position. However, in light of the fact that the application does not turn on the prospect of the appeal succeeding and that I allowed the applicant leave to appeal the conviction out of time and to prosecute such appeal in person, I think it unnecessary to spell out the reasons for holding that the appeal has a reasonable prospect of success. To do otherwise would be theoretical.
9. I think the likelihood to abscond resides in the sentence that was imposed, which is not subject of the appeal. The applicant knows that if the appeal against the conviction does not succeed he would automatically be required to serve the remaining, larger, portion of the sentence. He has been serving since 14 April 2022. He has served just over a year of the effective 12 year custodial sentence. Considering that he has experienced the rigours of a prison term for more than a year I think the applicant will seize the opportunity presented by admittance to bail pending appeal to abscond. To admit him to bail would be akin to inadvertently giving him a licence to disappear before the appeal is set down for hearing. That would not be in the interests of the administration of the criminal justice system.
10. The appeal record has been transcribed. The trial magistrate has commented on the grounds of appeal. The applicant has collected his copy of the appeal record. There is no backlog in the criminal appeals court at the High Court sitting at Harare. I take judicial notice of that fact as a member of the criminal appeals court. The High court, sitting as a criminal appeals court, is dealing with appeals noted this year. The applicant's appeal is likely to be heard during the third term of 2023. Instead of expending his energy towards seeking to be admitted to bail pending the appeal the applicant, who has already served more than a year of the sentence, would do well to write to the Registrar requesting the setting down of the appeal during the third term of this year, in the event that the matter has not already been so set down. He is prosecuting the appeal in person, so no delay would be occasioned by the need for him to file heads of argument. He is not required to file such heads.
11. Having been convicted and incarcerated, the applicant no longer has a right to be admitted to bail pending the determination of his appeal.

12. This application has been made so late in the day that the need for finality in litigation has become an important consideration. To ensure that the appeal process is not defeated by the likely non appearance of the applicant at the hearing it is necessary to protect the integrity of that process by denying the applicant bail pending the appeal to ensure that the appeal itself is heard and disposed of, on its merits.
13. It is for all these reasons that the application cannot succeed.
14. In the result, it is ordered that :

The application for bail pending appeal be and is dismissed

*The National Prosecuting Authority, respondent's Legal Practitioners.*