

PATRICK RUTSVARA
versus
THE STATE
and
MAGISTRATE CHITAU

HIGH COURT OF ZIMBABWE
KWENDA J
HARARE, 6 June 2023

Chamber Application for Stay of Execution of Sentence pending Appeal

T Mudzuri, for the applicant
T Kangai, for the respondent

KWENDA J: The applicant named this a chamber application for stay of execution of sentence pending appeal in terms of r 60. Applicant could only have been referring to the High Court Rules, 2021. I looked at r 60 and noticed that it is the rule that governs the procedure of chamber applications. I do not see its relevance to criminal procedure and, more particularly, the suspension of sentences.

In this case the applicant was convicted of negligent driving as defined in s 52(2) of the Road Traffic Act [*Chapter 13:11*] and sentenced, on 2 April 2023, to pay a fine. In addition, he was prohibited from driving classes 2, 3 and 5 motor vehicles for an unspecified period. His licence was cancelled and he was ordered to surrender the licence to the clerk of court.

This is an application for the suspension of that part of the punishment which relates to the prohibition from driving, and cancellation of the applicant's driver's licence. At the hearing I was advised that the applicant surrendered his licence within 7 days of being sentenced.

Litigants are expected to ascertain the law which applies to the substantive relief sought and the legal framework which governs the procedure to be followed in approaching the court for such relief. Had the applicant's legal practitioner checked, he would have noticed that r 60 of the High Court Rules, (*supra*), does not provide the procedural route to approach this court for the relief sought. He would have also have noticed that the part of the sentence which he wants suspended is suspended by operation of the common law as soon as the sentence is

appealed against. The suspension of sentences is governed by s 63 of the Magistrates Court Act [*Chapter 7:10*] which I reproduce below:-

“63 Execution of sentence of imprisonment, fine or community service not suspended pending review or appeal unless bail granted

The execution of any sentence of imprisonment, fine or community service shall not be suspended by—

(a) the transmission of or the obligation to transmit the record of the proceedings in the case for review in terms of section *fifty-seven* or for scrutiny by a regional magistrate in terms of section *fifty-eight*; or

(b) the noting of an appeal referred to in section *sixty*; unless

(i) in the case of imprisonment or fine, bail is granted by a judge or magistrate in terms of section 123 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]; or

(ii) in the case of community service, an application is granted by the magistrate to suspend the operation of the sentence pending determination of the appeal.”

See also *S v Masendeke* 199(1) ZLR 352 where this court stated that the order of the sentencing court suspending the convict from driving or cancelling his licence is suspended by the noting of an appeal.

This application is therefore unnecessary and is not contemplated in our criminal procedure.

In the result I order as follows:

The application is struck off with no order as to costs.

KWENDA J:.....

Lawman Law Chambers, applicant’s legal practitioners
National Prosecuting Authority, respondents’ legal practitioners