

TATENDA HAMUNAKWADI  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
FOROMA J  
HARARE, 10 July 2020

### **Reasons for denial of bail**

Applicant in person  
*R. Chikosha*, for the respondent

FOROMA J: On the 10<sup>th</sup> July 2020 applicant appeared before me in bail court and motivated his application for bail pending appeal in a robbery conviction and I delivered an ex-tempore ruling. In September the applicant requested written reasons for the judgment and these are they.

Applicant and his two co-convicts were convicted by the magistrate's court of the crime of robbery and were sentenced to 4 years imprisonment each one year of which was suspended for 5 years on the usual condition of good behaviour and one month was suspended on condition of restitution of the sum of \$27.00 by the 31<sup>st</sup> May 2019.

Applicant and his co-convicts in their defence outline alleged that the complainant was thrown out of the bar because he was drunk and was misbehaving. Contrary to this defence the complainant testified that he only went into the bar to watch a soccer match and did not drink any beer as he actually does not drink at all.

Complainant identified the applicant and his co-accused by their nicknames which the appellants did not dispute as attaching to them during trial. There can therefore be no issue of mistaken identity as they were known to the complainant.

When complainant initially wanted to report his complaint against the applicants to the police he failed to find police at the Westlea Police Base. As a result he went to the applicants and demanded back his money and cellphone and one of the convicts kicked him with a safety shoe and complainant ended up running away for fear of further assaults.

The complainant also identified the convicted persons by their nicknames which they did not seriously dispute in court when given a chance to cross examine the complainant. The court *a quo* found the complainant to be a very credible witness.

Contrary to the convicts' defence that the complainant was drunk and that he was thrown out of the bar due to his drunken behaviour the complainant was emphatic that he was not drunk as he does not drink beer and goes to church.

His only reason for entering the bar had been to watch soccer on television. Complainant's allegation that accused had dreadlocks at the time of robbery was not disputed. An analysis of the complainant's evidence clearly justifies the court *a quo*'s finding that the complainant was a very credible witness.

The court *a quo* was entitled to convict the applicant and his colleague on the strength of the complainant's single evidence which the court found to be reliable and satisfactory. I did not find the applicant's prospects of success on appeal against conviction to be reasonable.

As for sentence the crime of robbery is a serious crime deserving of a sentence of imprisonment. There was no misdirection in the exercise of the court *a quo*'s discretion in the matter of sentence and for this reason I also did not find the applicant to have demonstrated that his appeal against sentence was in fact arguable. For the foregoing reasons I found that the applicant's appeal against both conviction and sentence had no prospects of success and dismissed his application for bail pending appeal.

*National Prosecuting Authority*, respondent's legal practitioners