

TICHAONA FIDELIS CHATITWA
versus
THE STATE

HIGH COURT OF ZIMBABWE
FOROMA J
HARARE, 24 June 2021 & 31 March 2022

Judgement

Applicant in person
R. Chikosha, for the respondent

FOROMA J: On 24 June 2021 the applicant appeared before me in bail court seeking the grant of bail pending appeal.

The application for bail pending appeal was opposed by the state. The applicant who was jointly charged with two others was convicted of 3 counts of robbery as defined in s 126 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. On conviction the court *a quo* sentenced the offenders each to a total of 16 years imprisonment 30 months of which were suspended on condition of restitution and one year was suspended on condition of good behaviour.

In his grounds of appeal the applicant listed five grounds of appeal against conviction. Two of the grounds allege that the court did not explain to the applicant what constitutes special circumstances before sentencing the applicant. There is no provision for a mandatory sentence in the absence of special circumstances in s 126 of the Criminal Law Codification and Reform Act. These two grounds of appeal are clearly invalid.

In the third ground of appeal applicant complained that the magistrate did not advise applicant of his right to apply for a discharge at the close of the state case thus applicant was not afforded his right to a fair trial. This ground if factually proven is a ground for review and does not show how the court erred in convicting the applicant. It cannot therefore support any prospect of success on appeal. The fourth ground is a complaint by applicant that the court *a quo* erred by not assisting the unrepresented applicant in cross examining state witnesses. The court record

shows that the purposes of cross examination were explained to the accused and understood by them before the applicant was afforded an opportunity to cross examine the state witness. There is no requirement at law for the court to assist the accused cross examine the state witness. At any rate any such complaint as was raised under this ground of appeal is a ground for review and not appeal. Lastly the 5th ground was couched as follows:

“The conviction is not safe and is likely to be quashed on review or appeal.” This is not a ground of appeal but more an argument or comment on the prospects of success on appeal.

Having considered the state’s grounds for opposing the applicant’s application for bail pending appeal against the invalid grounds of appeal against conviction I was satisfied that applicant’s prospects of success were non-existent.

In considering whether the court *a quo* may have made an error in not ordering part of the sentence of imprisonment to run concurrently I noted that the magistrate explained why he decided against ordering that any part of the of the sentence should run concurrently and the reasoning of the court could not be regarded as a misdirection. I therefore did not find any merit in the appeal against sentence and for these reasons found that the appeal against both conviction and sentence had no prospects of success and dismissed the application for bail.

National Prosecuting Authority, respondent’s legal practitioners