

NICODEMUS MASVINYANGE
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHIKOWERO J
HARARE, 9 June 2022

Chamber Application

CHIKOWERO J:

1. This is a chamber application for late noting of an appeal against both conviction and sentence, extension of time within which to note the appeal and for leave to prosecute the appeal in person.
2. On 24 September 2020 the Magistrates Court sitting at Beatrice convicted the applicant on a charge of stock theft as defined in s 114(1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].
3. The conviction was on a plea of guilty.
4. The court did not find any special circumstances.
5. Accordingly, it imposed the mandatory minimum sentence of nine years imprisonment.
6. The application is fatally defective in so far as it relates to an intended appeal against conviction. This is so because the grounds sought to be relied upon in the intended appeal against the conviction are actually grounds for review. That part of the application will be struck off the roll.
7. The intended appeal against sentence has no prospects of success. The applicant predicates the intended appeal on three grounds:
 - The court imposed a sentence which induces a sense of shock.
 - It did not accord sufficient weight to his plea of guilty.
 - It did not accord sufficient weight to the mitigatory factors to wit that he is a first offender, is a married man with two minor children and is the breadwinner.
8. The applicant does not intend to attack the Court's finding in relation to special circumstances.

9. In the absence of special circumstances, the court's hands were tied. It had to impose the mandatory minimum sentence of 9 years imprisonment. It did.
10. Since the Court did not impose a sentence exceeding the mandatory minimum, it means reliance on the intended grounds of appeal is an exercise in futility. The intended appeal against sentence is doomed to fail.
11. The need to discuss the delay in noting the appeal against sentence and the reasonableness of the explanation for such delay falls away.
12. In the result the following order shall issue:
 1. The application for condonation for late noting of appeal against conviction, extension of time within which to so appeal and leave to prosecute the appeal against conviction in CRB BTR 270/20 be and is struck off the roll.
 2. The application for condonation for late noting of appeal against sentence, extension of time within which to appeal and leave to prosecute the appeal in person be and is dismissed.

The National Prosecuting Authority, respondent's legal practitioners