

MIDSON KAMUNGA
AND
THE STATE

HIGH COURT OF ZIMBABWE3
CHIKOWERO J
HARARE, 9 June 2022

Chamber Application

CHIKOWERO J:

1. This chamber application for condonation for late noting of an appeal against both conviction and sentence, extension of time within which to appeal and leave to prosecute the appeal in person is a flagrant abuse of court process.
2. The applicant was convicted of rape as defined in 65 of the Criminal Law Code. He was sentenced, on the same date, to 19 years imprisonment of which 3 years imprisonment was suspended for 5 years on the usual conditions of good behaviour.
3. This was on 4 May 2016.
4. He filed the present application on 3 May 2022 which is six years later.
5. The delay is excessive. He has already served six years of the sentence.
6. His explanation for not noting the appeal in time is unacceptable. He pleads poverty and the Covid 19 restrictions.
7. There is need for finality to litigation. I am satisfied that even the applicant himself has accepted the propriety of the conviction and sentence. That is why he has been serving for the past six, years without doing anything to exercise his right of appeal. He has now decided to try his luck. The reasons for this can only be known to him.
8. I think the present is an appropriate case where the application should simply be dismissed whatever the prospects of success of the appeal might be. To do otherwise would be to sanction an abuse of court process. It will set a bad precedent.

9. The application for condonation for late noting of appeal against conviction and 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