

TINASHE MUKOTE
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHIKOWERO J
HARARE, 10 June 2022

Chamber Application

CHIKOWERO J:

1. This is an application for leave to appeal out of time (against conviction only) and leave to prosecute the appeal in person.
2. The applicant was, after a protracted trial, convicted of unlawful entry into premises committed in aggravating circumstances as defined in s 131(1) as read with s 131 (2)(a) of the Criminal Law (Codification and Reform Act [*Chapter 9:23*] and malicious damage to property as defined in s 140(a) as read with s 143(a)(i) of the same Act. He was sentenced to 8 years imprisonment on count 1 and to 10 years imprisonment on count 2. The sentence was passed on 29 October 2021 at Chivhu.
3. The applicant has set out eleven proposed grounds of appeal. Most of them are invalid for one reason or another. In particular, some are mere statements of the law, for example:

“10. In a criminal case, accused has no onus to prove a defence....”

Others are in the nature of heads of argument intertwined with grounds for review. An instance is:

“(1) the learned trial magistrate grossly erred in all material respect:

(a).....

(b).....

(c) applicant will further submit that the judicial officer must explain the rules , procedures and evidence to the accused person and it appears in this court *a quo* there was fashioning of rules in order to mitigate the hardships of putting the unrepresented accused person to trial”

4. The applicant was jointly charged with his spouse, Delcy Joe.

5. He claimed to be a prophet. He was a tenant of the complainant.
6. The applicant and his co-accused were left in custody of the complainant's homestead, in Chivhu, as the complainant and his family visited their rural home in Mahusekwa.
7. In their absence the applicant was proven to have unlawfully entered into the complainant's house and proceeded to steal therefrom. He effected such entry by breaking into the house. The subject of the theft included cash.
8. Thereafter, he set the house on fire to destroy evidence of the unlawful entry and theft. By so doing, he committed yet another offence, namely malicious damage to property.
9. The applicant denied committing both offences. While she also denied committing the same offences, his co-accused implicated the applicant.
10. She did this by outlining how the applicant persuaded her, in vain, into committing the offences. She discouraged him by pointing out that embarking upon such a course of action would earn him a lengthy jail sentence. Undeterred, he committed the offences on his own.
11. The co-accused was not called as a state witness.
12. Incidentally, evidence adduced by the state showed that her defence was probable. She was acquitted. Some of the complainant's property was recovered. The applicant had lavished it on his relatives. In the circumstances, therefore, the learned magistrate did not rely on the co-accused's defence to convict the applicant.
13. The testimony of the investigating officer was crucial in convicting the applicant, to wit, that the latter could not explain the source of the money part of which he had used to purchase a vehicle and was using to spoil his relatives.
14. The recovery of the complainant's driver's license from the applicant's bedroom, a black satchel, English Exercise book, Covid exemption letter in respect of the complainant, as well as the complainant's CABS bank account statement and a Sunrise Reader's book from Moses Mafukidze's residence(where the applicant had taken them to) inexorably connected the applicant to the commission of the offences.
15. There was overwhelming evidence against the applicant.
16. The intended appeal against the conviction is certain to fail.
17. It is not in the interests of the administration of justice to burden the criminal appeals court roll with an appeal whose outcome is obvious.

18. This effectively disposes of the application.

19. In the result, the application be and is dismissed in its entirety.

The National Prosecuting Authority, respondent's legal practitioners'