TINASHE BLESSING SANDE
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHIKOWERO J
HARARE, 29 July 2022

Chamber Application

Applicant in person
L Chitanda, for the respondent

CHIKOWERO J:

1. This is an application for leave to appeal out of time and for a certificate to prosecute such appeal in person.
2. The applicant was, on 17 December 2020, convicted of robbery committed in aggravating circumstances as defined in s 126(1)(a) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].
3. He was sentenced to 12 years imprisonment of which 2 years imprisonment was suspended for 5 years on the usual conditions of good behaviour. A further 1 year imprisonment was suspended on condition the applicant paid restitution.
4. The application was filed on 1 July 2022.
5. It turns on whether there are reasonable prospects of success on appeal against the conviction and sentence.
6. There was overwhelming evidence against the applicant. It follows that there are completely no prospects of success in an appeal against the conviction.
7. It was common cause that on 28 July 2020 at Chikwerekwere Village Chief Mangwende in Murewa a gang comprising five robbers threatened the eighty-five year old complainant by brandishing his own Okapi knife (which they had picked up from his table), a hammer and a raser gun, proceeded to bind his hands and legs before stealing property worth RTGS$5 279 580. Such property included a brand new Isuzu KB 300 twin cab registration number AFC 2099.

8. Although the applicant denied that part of the stolen property was recovered from his wardrobe in Marondera, he did not dispute that such property belonged to the complainant. The complainant identified his pair of grey trousers and a short. He also identified his treasured and personally marked Okapi knife, which he had kept for a period spanning thirty to fifty years. Evidence on record shows that the knife was recovered from the applicant's Altezza which had been used as a get-away motor vehicle. Again, the applicant denied that the knife was recovered from his vehicle, but was unable to indicate where such recovery was effected, if not from his car.
9. I see no prospect of an appellate Court faulting the trial court's finding that the complainant was a credible witness. Indeed, his narration of the circumstances of the robbery and identification of his pair of trousers, short and knife, which were produced as exhibits, was not challenged.
10. Similarly, there is no hope that the appellate court will disturb the trial court's acceptance of the evidence of the security guard, who was the respondent's third and final witness.
11. He saw the applicant's vehicle parked by the side of the road, around 6pm, on the day of the robbery. It was near the complainant's home. Its number plates had been removed. There was nobody in the car. Since a theft had recently been perpetrated at the clinic where this witness worked, his curiosity was aroused. He moved round the car, making detailed mental notes of its features and contents. Thereafter, he proceeded to his workplace, which was one hundred metres away, but kept the applicant's car under surveillance. About an hour later, he saw the complainant's vehicle, at high speed, along the same road. It briefly stopped by the applicant's vehicle. The doors of both vehicles were opened and closed. Both vehicles sped off towards Marondera, with the Altezza closely behind. This witness actually thought that the complainant was rushing his elderly and sickly wife to hospital.
12. It was only after getting wind of the robbery that the security guard gave a minute description of the Altezza including its features, both inside and outside, to the police. Using that information, the police traced the vehicle to the applicant's yard in Marondera, leading to his arrest, recovery of the Okapi knife and the clothes.

13. Having failed to discredit the security guard's evidence at the trial, it follows that the applicant will be embarking on a futile exercise were he to be allowed to attack the trial court's acceptance of that witness' testimony on appeal.
14. Indeed, the applicant conceded that the inspection in *loco vindicated* the security guard's evidence relating to the identification and features of the Altezza, with the only difference (which was inconsequential), being that the number plates had been restored by the time that the inspection in loco was conducted.
15. Despite claiming that he was nowhere near the complainant's homestead at the time of the robbery, the applicant effectively failed to challenge the security guard's evidence that it was the applicant's vehicle which the witness had observed parked by the side of the road on the fateful night. What is more, there is clear evidence on record that the persons who stole the complainant's vehicle were the very same persons who briefly disembarked only for the purpose of getting into and driving away in the Altezza. The robbers, among whom the applicant was counted, had brought one vehicle but ended up with two. The learned magistrate's observation that the security guard was the star witness cannot be shaken on appeal.
16. As regards the intended appeal against sentence, the applicant has no basis in seeking to argue that his status as a first offender was ignored in the assessment of sentence. Similarly, I remain unpersuaded that there is any prospect in successfully contending that the sentence imposed is manifestly harsh and excessive as to induce a sense of shock.
17. The record shows that the trial court balanced the mitigation and aggravation in assessing a suitable sentence. This was robbery committed in aggravating circumstances. Weapons were used in committing the offence. The eighty-five-year-old complainant was subjected to a violent attack, as were members of his family. He sustained injuries and sought medical attention. The medical report was produced as an exhibit. The offence was expertly planned and executed. The complainant lost valuable property although his vehicle, okapi knife, short and pair of trousers were recovered. The vehicle had been dumped in Rusape.
18. In all the circumstances, the trial magistrate can only be commended for realising the need to protect the society in its persons and property by meting out a fairly long

custodial sentence. At the same time, in recognition of the mitigation, a quarter of the sentence was suspended on conditions of good behaviour and restitution.

19. This first offender, a former member of the police service, began a life of crime at the deep end. Neither a non-custodial sentence nor a short jail term are realistic options on appeal.
20. The need to consider the degree of non-compliance with the rules relating to the time frame for noting an appeal, the explanation thereof, the importance of the case, the respondent's interest in the finality of the judgement of the court below, the convenience of this court and the avoidance of unnecessary delay in the administration of justice no longer arises.
21. The applicant has failed to surmount the first hurdle. It is not in the interest of the proper administration of the criminal justice system to grant leave not only to appeal out of time but also to prosecute such appeal in person when the intended appeal is a predictable failure.
22. In the result, the application for leave to appeal out of time and for a certificate to prosecute the appeal against both conviction and sentence in person be and is dismissed.

The National Prosecuting Authority, respondent's legal practitioners.