

WEBSTER DODZO  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
CHAREWA J  
HARARE, 16 July & 14 October 2021

### **Bail Application**

Applicant in person  
*T. Mapfuwa*, for respondent

CHAREWA J: The applicant, who was the third accused, together with two accomplices, who were first and second accused, was charged and convicted, after a full trial, of six counts of unlawful entry into premises in aggravating circumstances as defined in s113 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. He has since appealed against conviction and sentence and sought bail pending appeal. I dismissed his application for bail pending appeal in an *ex tempore* judgment handed down on 16 July 2021. He has since requested written reasons and these are, they.

It was the finding of the court a quo, based on witnesses' evidence, that

1. Some of the stolen property was recovered from the applicant's residence.
2. Applicant claimed to have been asked to store the property by first accused.
3. The complainants identified their property, which had been recovered from applicant, at the police station.
4. The first accused's vehicle was identified as the vehicle seen, at the crime scene, by witnesses, being loaded with some of the stolen property.
5. The same *modus operandi* was used in committing the offences in that houses were forcibly broken into and guard dogs and cats were poisoned with rat poison.
6. Granules of similar rat poison were recovered from first accused's vehicle.
7. The accused persons acted in concert and common purpose.

The accused persons were sentenced to five years imprisonment on each count, making a total of thirty (30) years imprisonment of which two (2) years were suspended on the usual conditions of good behaviour and a further eight (8) years were suspended on condition of restitution leaving a balance of twenty (20) years effective.

It is my view, on a reading of the record, that the conviction is proper and unassailable; the applicant was found in possession of the stolen property which complainants identified. The court a quo made a finding on credibility of applicant in that it did not believe that he merely agreed to store what he believed was first accused legitimate property. This court, not being in a position to assess the applicant's demeaner, cannot interfere with that finding. On balance therefore, I cannot find any reason to question the court a quo's finding on the credibility of the witnesses before it, upon which it chose to disbelieve the applicant. In the premises, it is my view that there are no prospects of success against conviction.

However, with regard to sentence, I am of the view that the court a quo misdirected itself in not ordering some of the sentences on some counts to run concurrently. As a result, the sentence appears a little excessive and the appellate court may be at large to interfere with it. But in view of the circumstances of the offences which appeared well planned and sustained as an enterprise, I opine that the sentence is not so shocking that it is likely to be reduced to such an extent that applicant would be entitled to immediate release should he succeed on appeal. Therefore, having taken judicial notice that the criminal appeals division does not currently have a backlog of appeals, the justice of the case requires that applicant should expedite his appeal.

I am also mindful of the fact that applicant's co-accused, Taurai Dodzo, was also denied bail in B1349/18. There being no distinction between the circumstances of the two, there is no justification in treating applicant differently.

Consequently, the application for bail pending appeal is dismissed.