

JOHN NYANYIWA
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHIKOWERO J
HARARE, 13 September 2022

Chamber Application

CHIKOWERO J:

1. This is an application for leave to appeal out of time and to prosecute such appeal in person.
2. There is no merit in the application.
3. The applicant was convicted on his own pleas of guilty to two counts of stock theft as defined in s 114 (2)(a)(i)(ii) of the Criminal Law (Codification and Reform) Act, *[Chapter 9:23]*.
4. All the proposed grounds of appeal in respect of the intended appeal against conviction attack the procedure followed by the learned magistrate on the basis that it is not that prescribed where an accused pleads guilty. The learned magistrate meticulously followed the procedure set out in s 271(2)(b) of the Criminal Procedure and Evidence Act *[Chapter 9:07]* and only convicted after satisfying himself that the pleas of guilty were correctly and understandingly made. The words used by the applicant when pleading guilty did not indicate he was raising some defence to the charge. *State v Kwainona and Ors* 1993(2) ZLR 354 (S) at 354D-E.
5. Indeed, the record of proceedings was placed before a judge of this court on automatic review. He confirmed the proceedings as being in accordance with real and substantial justice.
6. The respondent concedes the application on the basis that the learned magistrate did not explain the meaning of special circumstances before finding that there were none, leading

to the imposition of the mandatory 9 years imprisonment with both counts having been treated as one for the purposes of sentence. I disagree.

7. Before the applicant pleaded the learned magistrate explained the meaning of special circumstances, the effect of a finding that there were none and enquired of the applicant whether he wished to be legally represented. He understood the explanation and chose to proceed as a self-actor.
8. Having already explained the meaning and effect of a finding of special circumstances the learned magistrate, after convicting the applicant, asked him if he had any. The response was:

“A. I erred your worship, I committed the offence out of ignorance. I think it’s the evil spirit, the idea to steal and sell I do not understand where it came from for I even borrowed their beasts to till the land also.”
9. There is no need to advert to the other factors normally considered in an application of this nature. The applicant has failed at the first hurdle.
10. The application for leave to appeal out of time and to prosecute the appeal in person be and is dismissed

The *National Prosecuting Authority*, respondent’s legal practitioners