

JARNEY MUMANYI
and
THE STATE

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 27 May 2022

Bail Application: Reasons for Judgment

IN CHAMBERS

MUZENDA J: Applicant, 32 years old, was convicted of 2 counts of stock theft and sentenced to 18 years imprisonment. He appealed against conviction and sentence and the appeal is pending before this court. He now applies for bail pending appeal. The application is opposed by the State. On 27 May 2022 I dismissed the application and on 22 June 2022 applicant's legal practitioners requested written reasons for the dismissal.

In this application for bail applicant attacks the entire judgment of the trial magistrate and contended that the conviction was not safe, to the applicant there are prospects of success on appeal and the entire appeal is free from predictable failure.

On the other hand, the State opposed the application indicating that the application was defective since applicant did not attach an affidavit to the application. On the merits the State is of the view that the trial magistrate did not err nor misdirected itself at law and on facts to convict and sentence the applicant. It also added that the appellant's appeal lacks merit and since the prospects are slim on appeal that will encourage the applicant to abscond if this court grants him bail pending appeal.

It is common cause that applicant has since been convicted and the presumption of innocence no longer applies. Further it is common cause that applicant was sentenced to a fairly long custodial sentence. The law cited by the applicant in his papers is equally common cause and need no repetition. In considering the application of this nature the court, has to balance interests of the applicant and those of justice whether applicant will not abscond if granted bail so as to make futile the whole machinery of justice, more so if prospects of success on appeal are not so certain *albeit* having an arguable case on appeal. It is also necessary to add that the aspect of time comes into consideration as to how expeditious the appeal would be presented

or heard by an appeal court. I am not told as when the appeal would be heard but am not in doubt that criminal appeals of late have been set down at a reasonably prompt time so as to attain finality in litigation of appeals. Applicant's appeal is not an exception.

The State has urged the court to reject the appeal for lack of an affidavit filed by the applicant. I have dismissed that request simply because that the State cannot argue that it is not properly appraised of the exact nature of what applicant seeks to get as a relief as well as the grounds. In as much as the applicant ought to have included such an affidavit as required for an application of this nature it does not make the application fatal.

I have however come to a conclusion that it will be in the interests of justice that applicant remains in custody until his appeal is finalised and the application is dismissed.

Maposa and Ndomene Legal Practitioners, for the applicant.
National Prosecuting Authority, for the State.