

**TENDAI JAMES MUKUTE**

**VERSUS**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO

*Mr I Nyengera*, for the applicant  
*Mr W. Mabhaudi*, for the respondent

Judgment

**MOYO J:** This is an application for bail pending appeal. The applicant was convicted of rape. In contravention of Section 65 of the Criminal Law (Codification & Reform) Act Chapter 9:23. He was sentenced to 15 years imprisonment of which 23 years was suspended on the usual condition.

Applicant avers that he has prospects of success on appeal in that:

- 1) the court *a quo* grossly misdirected itself in convicting the applicant without applying the law regarding the manner in which the report of rape was made. He avers that it was not made freely and voluntary.
- 2) the court *a quo* averred in convicting the applicant without applying the law on the causes of the delay in making the report of rape. He avers that the report was only made after an interrogation by the victim's parents concerning her pregnancy.

The complainant alleges that she was raped sometime in July and the beginning of August 2013. The complainant is a 13 year old minor. She said she did not tell anyone about the alleged rape. She said that the offence came to light when her mother and aunt noticed changes on her and that she was no longer active. Complainant said she did not report to her mother as applicant had told her not to tell anybody. The aunt who discovered the offence stated that she noticed through observation that complainant was not happy and that she had bodily changes on her, she became suspicious and decided to ask complainant about it. At the same time she consulted complainant's mother.

She said she asked complainant if she was alright and complainant said No. She further asked complainant what was the matter with her and complainant. The complainant then mentioned applicant by his nickname of "*Dot com*".

This witness said it was on 30 August 2013 at 0830 am. She further explained that the applicant had sexual intercourse with her without her consent. The trial magistrate dealt with the issues surrounding the making of the report. It is common course that the complainant and the applicant knew each other well prior to the commission of the offence and that they were close and complainant referred to the applicant as “Dot –Com”. Applicant also referred to the complainant as “Petty” in the proceedings. The complaint itself was made on the 30<sup>th</sup> of August 2013, a few weeks or at most about a month after the alleged rape. There is seemingly nothing that turns on such a period of time warranting that the complainant should then be thrown out. Again on the issue of the circumstances under which it was made, nothing turning on that as the complainant’s aunt upon observing that something was wrong with complainant simply asked her if she was ok and complainant said she wasn’t, she then asked her what was wrong and she mentioned “Dot-com” meaning the applicant. There is nothing that can be said to be interrogative, suggestive or probing in nature to warrant a finding that such a complaint was not made freely and voluntarily.

I accordingly find that there is nothing anomalous with the circumstances in which the complaint was made and I accordingly find that there are no prospects of success on appeal. The application for bail pending appeal is accordingly dismissed.

*Mcijo, Dube and Partners*, applicant’s legal practitioners

*The Attorney General’s Office*, respondent’s legal practitioners