

**OBVIOUS MLAUZI****Versus****THE STATE**

IN THE HIGH COURT OF ZIMBABWE

MOYO J

BULAWAYO 21 NOVEMBER 2017 &amp; .....

**Bail Application***S. Chamunorwa* for the applicant*N. Ngwenya* for the respondent

**MOYO J:** This is an application for bail pending appeal. At the hearing of the appeal I dismissed it and stated that my detailed reasons would follow, here are the reasons.

The applicant in this matter was convicted of stock theft after a plea of guilty. There being no special circumstances he was given the mandatory minimum sentence of 9 years imprisonment. He then noted an appeal against sentence on constitutional grounds, that is, to say that the mandatory minimum sentence is inhuman and degrading and consequently flouts the provisions of the declaration of rights in the new constitution.

Clearly the applicant does not contest his conviction as he pleaded guilty. He does not challenge the sentence on any other ground except that it is unconstitutional. I dismissed the application for the following reasons:

1. Firstly, that this is a technical point that has absolutely nothing to do with the merits of the matter. The conviction being proper and the sentence being in accordance with the law as it stands, without any legal principle to the contrary the applicant is under an obligation to serve the sentence that he was given in terms of the law.
2. That a similar challenge was made but in the case of *Chichera v AG SC-98-04* and our Supreme Court held the view that there was nothing unconstitutional about a mandatory minimum sentence. Counsel for the applicant argued that the current constitution is

different from the Lancaster House constitution hence there is chance that our Supreme Court may come to a different conclusion. I hold the view that the constitutional provisions do not differ to such an extent that the current one can be held to outlaw mandatory minimum sentences and since our Supreme Court has already shown an inclination towards the part that such sentences are not inhuman and degrading, there is a real likelihood that it will ..... that position.

3. That the South African Constitution has held that mandatory minimum sentences are constitutional in a constitutional dispensation that is similar to our current constitution. This coupled with the fact that our Supreme Court may have shown an inclination towards upholding mandatory minimum sentences as being constitutional, it is likely to be persuaded by the South African legal position on this point rather than the Namibian position where mandatory minimum sentencing have been held to be unconstitutional. Even looking at the development of an jurisprudence one can see that South African authorities largely constitute the basis for a decision more than any other jurisdictions. Refer to the South African case of *Min of Justice & Anor v Masingili & Ors* 2013 ZAGC 41.
4. I also declined the application on the basis that, being rightfully convicted and correctly sentenced, applicant, who is merely challenging the mandatory minimum sentence does not deserve to be free and roam the streets pending his technical challenge for the simple reason that were if the Concourt, may (in the wildest of scenarios), agree with him, it does not entail that he will not be imprisoned for a lesser period than 9 years. He was properly convicted and duly sentenced in accordance with the law as it currently stands, that there could be a remote chance the mandatory minimum sentenced may be outlawed does not mean that he should in the meantime be freed as, an appropriate sentence of whatever period. Applicant's opportunities surely do not deserved that he be set free on the basis of the constitutional challenge whose prospects of success are in their own quite remote. Even if he did have bright prospects on a technical point that would meet ..... that he be freed on bail pending appeal.

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It is for these reasons that I decline to exercise my discretion in favour of the applicant and I accordingly dismiss the application.

*Calderwood Bryce-Hendrie & Partners, applicant's legal practitioners*  
*National Prosecuting Authority, respondent's legal practitioners*