

THE ATTORNEY GENERAL
versus
VITALIY YEFREMENKOV

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 3 APRIL 2013

In Chambers

MATHONSI J: This application was placed before me in chambers. The applicant seeks leave to appeal against the judgment of the magistrates court acquitting the respondent at the close of the state case on a charge of fraud in contravention of section 136 of the Criminal Law Code [*Cap 9:23*].

The applicant is dissatisfied with the judgment and has approached this court in terms of section 61(b) of the Magistrates Court Act [*Cap 7:10*] as read with section 38A(2)(c) of the High Court Act [*Cap 7:06*] for leave to appeal which leave he requires in terms of the law.

While it is true that there is no time limit for an appeal made by the Attorney General, it is trite that such an appeal must be made within a reasonable time; *Gonese & Anor v The State & Others* HH 54/2012 at page 6.

The accused person was acquitted at the close of the state case on 18 September 2012. This application was only filed on 18 February 2013, a delay of exactly 5 months. The explanation given for the delay is that the applicant was waiting for the transcription of the record of proceedings which took too long. At the trial the applicant was represented by counsel who even filed very competent submissions in response for application for discharge. Those submissions demonstrate a good grasp and understanding of the facts of the matter. In my view the applicant did not need the transcript of the proceedings to appeal.

It cannot be said that a delay of 5 months is a reasonable time especially in a case such as the present which involves the liberty of an individual. I am certainly not persuaded by the reasons given for the delaying in bringing this application.

On the merits of the appeal, I am again not persuaded that it has good prospects of success. The trial court came to the conclusion that the state had failed to establish an essential element of the offence in that there was no misrepresentation made to the complainant. It stated that the charge was baseless suggesting that it did not believe the state witnesses who, I must say, were discredited under cross examination. How could they be relied upon when both of them shifted positions on simple issues like how they got to know the accused person and Pedzayi Sakupwanya doggedly refused to co-operate on the identity of the person who introduced him to the accused.

I conclude therefore, taking into account the totality of the foregoing, that the intended appeal will only harass the accused person several months after his acquittal. He is entitled to his peace of mind and it is a celebrated principle of our law that there must be finality in litigation.

In the result, the application for leave is hereby dismissed.

Attorney General's office, applicant's legal practitioners

Kantor & Immerman, respondent's legal practitioners