

IGNATIUS MUCHANYU
versus
THE STATE

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 26 MARCH 2014

APPLICATION FOR CONDONATION OF LATE NOTING OF APPEAL

Miss *D. Machaya*, for the applicant
T. Mapfuwa, for the respondent

TAGU J: This is a chamber application for condonation of late noting of appeal filed by Machaya And Associates Legal Practitioners of the applicant. The brief facts are that the applicant Ignatius Muchanyu in the company of 11 other co-accused persons committed an armed robbery using a pistol and 3 motor vehicles at Southern Granites on 28 September 2012. They stole cash amounting to US\$ 185 032.00, Zambian Kwacha 1 128 050.00 and Kenyan Shillings 10 050.00. The applicant was arrested on 30 September 2012 and the police recovered from him 29 050 Zambian Kwacha, 15 050 Kenyan Shillings and Honda CVR Registration no. ABO 5877 valued at US\$ 5 300.00 which applicant had bought using proceeds of crime from Simpson Marara on 28 September 2012. On 20 December 2013 the applicant was convicted on his on plea of guilty to the offence. He was sentenced on 21 December 2013 to 12 years imprisonment of which 2 years imprisonment was suspended for 5 years on the usual condition of good behaviour and another 2 years was further suspended on condition of restitution leaving an effective prison sentence of 8 years imprisonment.

Since then the applicant did nothing up to 13 February 2014 when he filed this application for condonation of late noting of appeal against sentence only. His reasons for the delay are that he was in custody hence did not have the financial capacity to engage a legal representation but his relatives have since contributed towards engaging a legal practitioner. He submitted that the delay is not inordinate. Secondly he further submitted that he has prospects of success on appeal against sentence.

His prayer is that the sentence imposed by the court a quo be quashed and or set aside and be substituted with a fine.

The application is opposed by the state. Mr *T. Mapfuwa* for the respondent submitted that the applicant enjoys no prospects of success on appeal. He relied on the case of *S v Nherera* HH 38/06 where BHUNU J had this to say:

“.....magistrate should not hesitate to mete out stiff penalties where they are warranted. They must take a cue from the superior courts which have taken a serious view of offences of this nature. In *S v Madondo* HH 60 /90 the High Court indicated that for robbery where little or no violence is used a sentence in the region of 4 to 5 years is appropriate”

The applicant on the other hand cited the cases of *Jack v Commissioner of Oaths Taxes* HH 283 / 82, *S v Baka* 1995 (2) ZLR, *R v Lowe* (1997) 66 CR APP R 122 and *S v Gorogodo* 1998 (2) ZLR. But did not cite any case authority where an accused who committed an armed robbery using a pistol was granted a wholly suspended sentence or a fine.

In the present case the applicant at the time of the armed robbery was employed as a member of the Zimbabwe Republic Police Neighbourhood Watch Committee attached to Waterfalls Police Station in Harare. He was putting on a Police Riot Uniform. He thus abated in the commission of the robbery the very offence he was conscripted in the force to prevent. His moral blameworthiness is very high.

I totally agree with the submissions by Mr *T. Mapfuwa* for the respondent that an effective sentence of 8 years imprisonment in the circumstances cannot be said to be one which induces a sense of shock. I am also of the firm view that no superior court would just quash his sentence or impose a fine in this case. The applicant deserves an effective custodial sentence. There are therefore no prospects of success on appeal against sentence.

Wherefore the application for condonation of late noting of appeal is dismissed.