

WITNESS GWESHE  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
HUNGWE AND BERE JJ  
HARARE, 10 July 2014

### **Application for leave to appeal**

*C Kwaramba*, for the applicant  
*F Kachidza*, for the respondent

BERE J: This application was a direct response to the dismissal of the appellant's appeal against conviction by this court on 10 July 2014.

The applicant's counsel has moved this court to grant the appellant leave to appeal against the decision of this court. This application is opposed by the respondent.

It is trite that in an application of this nature the basic considerations are whether or not there are prospects of success in the intended appeal.

The main theme that runs in the applicant's application is focussed on the contradictions that are apparent in the complainant's evidence as regards the dates she alleges she was sexually abused.

It will be noted that in both the judgment of the court *a quo* and the judgment of this court this issue was exhaustively dealt with and I am far from being convinced that the Supreme Court may be persuaded to come to a different conclusion on this point.

It is also clear in the application made by the applicant in this matter that through his counsel he wishes to re-define the role of the appeal court by asking it to go outside the parameters of the appeal record in order to upset the decision of the court *a quo*.

This court has adequately addressed this issue in its judgment and it is highly improbable that its position would be altered in the desired appeal.

It has also been passionately argued by the applicant's counsel that the mere fact that this court has on appeal arrived at two different conclusions in two different matters concerning the complainant is good reason to grant the applicant leave to appeal against the instant decision.

I do not believe that is the correct approach to follow. Each case must be considered on its own circumstances. The circumstances in this case compelled this court to dismiss the appeal for the reasons adequately given. If the other court sitting as a High Court Appeal Court assessed the evidence given in another record of proceedings and came to a different decision, so be it. This court is not bound to follow the reasoning or assessment of evidence in that other court.

The applicant's other grievances with this court are nothing different from those raised in the lower court. I believe all these have been reasonably addressed in the appeal judgment.

As correctly argued by the state counsel, in a proper case, the aggrieved appellant must be allowed to explore every reasonable possibility in his effort to regain his lost liberty through conviction but where there are no prospects of success the door must be shut against him in order to have finality in litigation.

Our unanimous position as a court is that this is one hopeless case where the applicant must be denied another opportunity to embark on a fishing expedition as it were.

Leave to appeal is accordingly denied.

*Mbidzo, Muchadehama & Makoni*, applicant's legal practitioners  
*Prosecutor General's Office*, respondent's legal practitioners

BERE J \_\_\_\_\_

HUNGWE J agrees \_\_\_\_\_