

DOUGLAS MUNERI  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
PHIRI J  
HARARE, 27 July 2016

### **Criminal Appeal**

*I Murambatsvina*, for the applicant  
*Ms S Fero*, for the respondent

PHIRI J: This is an application for Bail Pending Appeal.

The applicant was convicted of:

- (a) Contravening s 189 as read with s 47 of the Criminal Law (Codification and Reform Act) [*Chapter 9:23*], that is, attempted murder.
- (b) Contravening s 27 (b) of the Firearms Act, [*Chapter 10:08*] (“knowingly and without lawful cause pointing a firearm at any other person”)

The applicant was sentenced to:

- (i) Ten (10) years imprisonment of which two (2) years were suspended for 5 years on condition that accused does not within that period commit any offence involving an attempt to murder or an assault.
- (ii) A fine of \$200-00 and in default of payment four (4) months imprisonment.

The applicant appealed against both conviction and sentence.

The respondents opposed the application for bail.

The law governing bail pending appeal is well settled and the principles that guide the court in cases of bail pending appeal are;

- (a) Prospects of success on appeal.
- (b) Likelihood of abscondment in light of the gravity of the offence and sentence imposed.

- (c) Likely delay before the appeal is heard and
- (d) The right of an individual to liberty.

See the cases of *S v Dzawo* 1998 (1) ZLR 536 and *Moffat Mugwira v State* HH 216/10.

#### Prospects of Success on Appeal

In its judgment the court *a quo* among other factors found that;

- (i) Complainant's account on how the shooting took place is most probable and likely to be believed. The court found that "Accused told the court, that on two occasions complainant corked his gun and bullets fell off. He said he later picked the bullets and used one of it to shoot the complainant".

The court did not believe complainants version as it was not clear how accused picked up bullets which had fallen from complainants' gun and how complainant could point a firearm at accused when the bullets from complainant's gun, had fallen to the ground. (See p 19 of the record).

Secondly the court *a quo* found that complainant version of events, that he did not disembark from his motor vehicle, was supported by the evidence of one Christopher Joe and the court after assessing this evidence found that "there was nothing like pushing and shoving and that complainant did not have a gun on his person but that complainants gun was under "The driver's seat and wrapped with a cloth" (See p 20 of the record)

The court *a quo* also held that, "The complainant testified in a very impressive manner and I would want to believe he was being honest with the court" (See p 20 of the record).

The court *a quo* held that the accused did not Act in self-defence and that accused had told complainant that "they may end burying two people" See p 33 of the record.

The court also held that accused missed his target as he wanted to shoot at complainant's chest.

It is also clear, from the record, particularly in the cross examination of the complainant (pp 36 to 37 and 50) that the accused harboured thoughts that complainant was in love with accused's wife and this proves the motive for the accused's actions in shooting at the complainant.

It is the view of this court that the court *a quo* correctly made a finding that accused's version of events (at p 50) could not be believed.

This court agrees with the respondents' submissions that the credibility of witnesses remains the domain of the trial court and the evidence aforementioned demonstrates that the appeal court is unlikely to interfere with the finding of the court *a quo* as regards witness credibility and holds that there are no prospects of success on appeal against conviction.

The applicant was found guilty of a very serious offence.

This court also upholds the respondent's submissions that a custodial sentence remains inevitable and accordingly holds that there are also no prospects of success on appeal against sentence.

Accordingly the application for Bail pending appeal is hereby dismissed.

*Murambasvina, Tizirai-Chapwanya*, applicant's legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners