

**NOT REPORTABLE**

JOHN CHIZHANJE  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
CHATUKUTA J  
HARARE, 9 October 2018

**Chamber Application**

CHATUKUTA J: This is an application for condonation for late noting of an appeal. The applicant was convicted of eight counts of armed robbery and ten counts of attempted robbery. He was found to have been on a car-jacking spree between 14 and 30 April 2003 in Bulawayo in the company of some foreigners. He was sentenced on 20 January 2006 as follows:

“Counts 1, 2, 3, 5, 6, 7, 8 and 10 – five years imprisonment (each count).  
Counts 4 and 9 as one for sentence - five years imprisonment  
Total 45 years imprisonment. Of the total of 45 years imprisonment 10 years are suspended for a period of 5 years on condition the accused person does not within this period commit an offence of which dishonesty or violence is an element. The sentence on counts 8 and 10 are to run concurrently with the sentences on counts 1 and 2. Total effective sentence 25 years imprisonment.”

In the present application, the applicant contends that he was not aware of his rights to appeal against both conviction and sentence. He only became aware of the rights from other inmates upon transfer to Harare Central Prison. He further encountered challenges in securing the transcribed record of proceedings. Regarding prospects of success on appeal, he contends that he has prospects of success as the trial magistrate convicted him on the basis of inadmissible hearsay evidence of the investigating officer. Further, there was no evidence linking him to the commission of the offence. The trial court erroneously relied on similar fact evidence which was not applicable in the case.

In a totally inadequate response, the State opposed the application.

It is trite in an application of this nature for the court to consider the length of the delay in appealing, the reason thereof, and the prospects of success on appeal. The present application was filed on 7 June, 2018, twelve years after the date of conviction and sentence. The delay in appealing is clearly inordinate.

The explanations for the inordinate delay are unreasonable. The first explanation that he only became aware of his right of appeal 12 years later cannot be true when the applicant has been in custody for such a long period. Whilst ordinary an accused ought to be advised by the trial magistrate upon conviction and sentencing of his right of appeal, an applicant who has been serving sentence for so long cannot expect this court to believe that he did not become aware of such a right earlier.

In any event, the second explanation advanced that he encountered challenges in securing the transcribed record of proceedings is inconsistent with the first explanation. It is either he did not know of his rights or he had difficulties in obtaining a transcribed record of proceedings. The two explanations are not in any way complementary

Whilst a self-actor may have difficulties in articulating grounds of appeal in the absence of a record of proceedings, the applicant does not indicate when he first attempted to secure a transcribed record of proceedings. What is clear, however, is that the record of proceedings annexed to the application was received at Chikurubi Maximum Prison as evidence by the stamp, on 24 November 2011, seven years ago. The stamp is relevant in two respects. It allows for the court to presume that as at 24 November 2011 the applicant had been transferred to Chikurubi Maximum Prison. It secondly provides proof that as at that date the transcript was available. The applicant has not averted to this in his application as it would defeat his reasons for failing to file the appeal soon after receiving the record of proceedings on 24 November 2011. There is no explanation why he failed to do so then.

The last explanation is that he did not have the money to secure the services of a legal practitioner. This explanation presupposes that he was aware of his rights but because of resources he could not pay for legal services. The explanation is not sustainable given the present application that he personally filed without the assistance of a legal practitioner.

The explanations advanced by the applicant are not satisfactory and for that reason alone he cannot succeed. It is therefore not necessary, in my view, to determine whether or not he has prospects of success on appeal. It is trite that even where there may be reasonable prospects of success on appeal, condonation can still be refused, as I have done, where the explanation for an inordinate delay is not satisfactory (see *Kodzwa v Secretary of Public Service* 1999 (1) ZLR 313 (S)).

It is accordingly ordered that the application be and is hereby dismissed.