

GEORGINA NDLOVU

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 29 MAY & 12 JUNE 2008

G Nyoni for the applicant
W Nyabadza for the respondent

Judgment

BERE J: The allegations in this case are quite unusual but equally disturbing. The accused, a female whose age has been estimated at 60 years sexually abused a 20 year old young man by forcing him to have sexual intercourse with her. The abuse occurred on several times during the period extending from early 2007 to April 2008.

In doing this the accused used the witchcraft threat to silence the young male complainant. When the complainant could no longer put up with the abuse, he gathered courage and reported the matter to the police.

Upon being arraigned and brought before the court the accused offered an unequivocal plea of guilty to contravening section 66 of the Criminal Law (Codification and Reform) Act, Chapter 9:33 (Aggravated Indecent Assault) and pleaded with the presiding magistrate to pass a more lenient sentence emphasising the offence had utterly embarrassed her.

After all had been said and done the learned magistrate settled for a 20 year prison term five years of which were suspended on the usual conditions of future good behaviour. This sentence prompted the applicant to file a notice of appeal against it, followed by the instant application for bail pending appeal.

The broad considerations for bail pending appeal are a matter of settled law. Cumulatively the court is enjoined to consider the prospects of accused's success on appeal together with chances of applicant's likelihood of absconding in the event of bail being granted.

I propose to deal with the likelihood of applicant absconding. It is noted that the applicant is a simple old lady who regards Sikobokobo Village, Mtshatshane area, Nkayi as her permanent home. Her counsel stated during his submissions that the applicant has no travel documents and is committed to abide by any stringent conditions this court might deem necessary.

Respondent's response has not countered the absence of travel documents on

the part of the applicant. The emphasis in the respondent's notice of opposition filed has been the seriousness of the offence and the substantial period of imprisonment imposed as a possible inducement for applicant to abscond.

It is significant that as part of his submissions in this court, state counsel made a concession that to some extent the sentence imposed by the court *a quo* appears excessive but was quick to qualify it by arguing that it was highly impossible the applicant would escape a prison term even if her appeal were to partially succeed.

In the court's view, once it is agreed that higher court is likely to interfere with the sentence of the court *a quo*, then the accused must be granted the benefit of the doubt created.

Accepted, this is a serious offence but one gets the impression after ploughing through the record of proceedings of the court *a quo* that there was too much emphasis by the court *a quo* on the aggravating features of this case at the expense of

the mitigatory features. I am certain the appeal court will be at large when it entertains the appeal.

Fro these reasons the applicant is granted bail pending appeal in terms of the draft order.

It is ordered:

1. That applicant be and is hereby admitted to bail on the following terms

and conditions;

That she deposits the sum of \$100 000 000 with the Registrar of the High Court, Bulawayo.

That she resides at her Veletsheni Ndlovu's homestead, Magwayi Village, Mabayi area, Nkayi until her appeal is heard.

That she does not go to Robert Moyo's homestead; Sikobokobo Village, Mtshatshane area, Nkayi.

Messrs Moyo & Nyoni, applicant's legal practitioners

Criminal Division, Attorney-General's Office, respondent's legal practitioners