

ANANIAS MANJORO

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 23 & 29 SEPTEMBER 2016

Bail Pending Appeal

T. Ndebele for applicant
W. Mabhaudi for respondent

MAKONESE J: The applicant appeared before a Regional Magistrate sitting at Bulawayo facing a charge of rape. He pleaded not guilty but was nonetheless convicted and sentenced to 17 years imprisonment of which 3 years was suspended for five years on the usual conditions. The applicant has noted an appeal against both conviction and sentence. He now seeks his release from custody on bail pending appeal. The application is opposed.

Factual Background

The complainant's mother had divorced the applicant at the time of the alleged offence. On a date unknown to the prosecutor but during the year 2014 at around 1400 hours, the complainant was asleep in her bedroom alone. Her mother was away in South Africa. Appellant is alleged to have entered complainant's bedroom and found the complainant asleep. He closed the door and proceeded to have sexual intercourse with the complainant without her consent. After the offence the appellant gave the complainant one dollar and told her not to reveal this incident to anyone else. The matter only came to light when the complainant and her mother had an argument over the complainant's poor results at school. During the heated argument with her mother the complainant had started crying and uttered the following words:

"You do not want to be mother to me, you never want to listen to what I say because of that I could not tell you that Manjoro raped me."

From the evidence adduced before the court *a quo*, the complainant made these remarks because her mother had a tendency of not listening to her. It seems that the remarks were made to stress the point that the complainant's mother was not there for the complainant. The remark triggered a report into the rape allegations and the appellant was arrested. The court *a quo* was thorough in its analysis of the evidence presented before it. Its reasoning cannot be faulted. In rejecting the accused's defence the trial court had this to say:

"The accused's defence was a bare denial. He had not committed the offence. The extension of that defence was that he could not possibly have been at home as he worked a 7am to 4:30 pm shift per day. The state witnesses both said although his knock off time was 4:30pm there were days he arrived home as early as 1pm. This is not probable. Further, there are always days when employed persons are off duty or leave."

I entertain no doubt that the appeal against conviction carries no prospects of success. As regards sentence, the appellant who was HIV positive at the time of the commission of the offence was found guilty of a serious offence. There is no evidence of misdirection by the court *a quo*. It is trite law that sentencing discretion is that of the court *a quo* and the appellate court is reluctant to interfere with that discretion in the absence of a misdirection. See the case of *S v Nhumwa* SC-40-88.

In determining an application for bail pending appeal the presumption of innocence no longer operates in favour of the appellant. It is trite that amongst the factors which the court has to take into account when considering whether to admit an applicant to bail pending appeal are the following:

- (i) the prospects of success
- (ii) whether there is likelihood that if admitted to bail the applicant will abscond thereby defeating the course of justice.

The court will always endeavour to balance the interests of the applicant and the interests of the due administration of justice. See the case of *State v Benatar* 1985 (2) ZLR 205

It is my view that the applicant who has been sentenced to a long term of imprisonment would be tempted to abscond if granted bail pending appeal. If released on bail pending appeal there is every likelihood that the applicant would not await the outcome of his appeal regard being had to the fact that applicant is aware that he has very little prospects of success on appeal. The onus is on the applicant to show that should he be admitted to bail the interests of justice would not be compromised.

I am satisfied that the applicant has failed to discharge the onus to establish that he is a proper candidate for bail.

In the result, the application for bail pending appeal is hereby dismissed.

Lazarus & Sarif, applicant's legal practitioners
Prosecutor General's Office, respondent's legal practitioners