

SHEPHERD MAKWASHA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
FOROMA J  
HARARE, 29 September 2021

**Reasons for refusal of application for bail pending appeal**

*R.Dube*, for the applicant  
*A. Bosha*, for the respondent

FOROMA J: The applicant was charged with rape of two 11 year old girls. The date when the rape took place could not be determined accurately as neither of the complainants had made a timeous report to any adult who would have been expected to advise the complainants to make a report to the police.

The applicant was convicted of the rape allegations after the court found the two complainants to be credible witness. A reading of the magistrate's judgment illustrates an eloquent alertness to the risks of attendant on the evidence of young children. The accused's defence was a bare denial of the allegations of rape and he argued that he could not have raped the complainants one after the other an argument which the court dismissed as not being practically impossible.

Dissatisfied with his double conviction and a lengthy imprisonment and sentence applicant noted an appeal against both conviction and sentence. He had followed up his appeal with an application for bail pending appeal which was dismissed in an *ex-tempore* judgment. Appellant has since requested detailed reasons for the dismissal of his bail application. These are they. His complaint on appeal largely is that the court *a quo* erred in believing the testimony of the two complainants and that had he committed the offence a prompt report ought to have been made. Applicant over played the delay in reporting the complaint of rape by both complainants.

The trial court believed the complainants' explanation for not reporting- the alleged rape promptly namely that they had both been threatened with death.

It is common cause that on medical examination both complainants were found to have been ravished as confirmed by healed hymenal tears. The court accepted the complainants' evidence and reasoned that there was no basis for them to falsely implicate the applicant out of all the male residents of the village. The court was satisfied with the explanation given by the complainants for not reporting the sexual assaults i.e. that they feared for their lives after the death threats by the applicant. It is significant to note that neither complainant dared report the sexual assault. I found applicant's appeal against conviction to be without any prospects of success. As for the appeal against sentence I found that any prospects of success were not significant to justify the grant of bail. Applicant cannot avoid some lengthy imprisonment even if the appeal court should find some justification to reduce it e.g. that sentences may have to run concurrently. For the foregoing reasons the court considered the applicant to be a flight risk as there are no prospects of success on appeal against the applicant's conviction. Consequently the application for bail pending appeal was accordingly dismissed.

*Kwiriwiri Law Chambers*, applicant's legal practitioners  
*National prosecuting Authority*, respondent's legal practitioners