

VENGAI VHARE
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 13 February 2024

Chamber Application-Condonation

In person, for the applicant
C Muchemwa, for the respondent

ZHOU J: This is an application for condonation of the applicant's failure to apply for leave to appeal to the Supreme Court against the judgment of this court timeously. The judgment in question was given on 3 November 2022 in case No. CA 64/22 which was an appeal from the Magistrates Court following the conviction of the applicant on a charge of robbery.

The application is opposed by the respondent.

In an application for condonation of non-compliance with the rules of court, the factors to be considered include the degree of non-compliance with the rules, the explanation therefor, the prospects of success, the avoidance of unnecessary delay in the administration of justice, and the need for finality in litigation. These factors are not individually decisive but are considered together and with the application as a whole.

The judgment in respect of which leave to appeal is being sought was delivered on 3 November 2022. The instant application was filed on 21 June 2023, some seven months later. This delay is inordinate. There is no sound explanation that is given as to why leave to appeal was not sought at the time that the judgment was given. Equally, no reasonable explanation is given as to why the application for condonation was not made earlier than the period of seven months. The approach to the Supreme Court without seeking leave certainly does not constitute a reasonable explanation for the delay.

Regarding prospects of success the address before me focused on matters that were adequately dealt with by the Learned Magistrate. The factual finding which was upheld on appeal was that prior to the robbery the complainant did not know the applicant. Applicant was referred to the complainant by a relative Shepherd Manyange who testified and was believed by the court *a quo*, that he referred applicant to complainant only in connection with the sale of a motor vehicle. The applicant is being deliberately mendacious by seeking to twist facts regarding the complainant's statement that he knew him in connection with the sale of a car. The transaction concerning the sale of a motor vehicle was the one that the applicant exploited to rob the complainant. This the applicant did by luring the complainant to Mazowe where he offered to meet him in connection with the sale of the car. When they met the applicant then robbed complainant of the cash that he had carried for the purpose of paying for the motor vehicle. So, it is true that at the time of the trial the complainant indeed knew the applicant as the person who had robbed him. The story about gold dealing was correctly rejected by the Learned Magistrate.

The present application seeks to rely on only two factors in connection with the prospects of success. Applicant alleges that no cash was recovered from him, and no firearm was recovered from him. The charge was not of possession of cash or a firearm but of robbery. Recovery of these two is not an element of the offence which the applicant was convicted of. The applicant was arrested subsequent to the robbery and the fact that at the time of his arrest he no longer had the cash or firearm on his person does not in any way mean that he did not commit the offence. This robbery was committed in broad daylight.

The appeal contemplated and, indeed, the application for leave to appeal, would therefore be meritless.

In the result, IT IS ORDERED THAT.

1. The application is dismissed.

National Prosecuting Authority, respondent's legal practitioners