

LEVISON POPI
versus
THE STATE

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 27 May 2025

REASONS FOR JUDGMENT

MUZENDA J: On 11 May 2025 I gave the following order in a chamber application for condonation and extension of time:

- “1. The defective appeal was struck off on the 26th of March 2025 and the applicant had 30 days to act in terms of Practice Direction No. 3 of 2013, and had up to 26th April 2025 to file the application.*
- 2. The prospects of success on appeal do not exist.*
- 3. On both of these grounds the application is refused.”*

On 15 May 2025 applicant’s lawyers wrote to the Registrar seeking reasons for judgment and the record was brought to my attention on 22 May 2025. The following were my reasons for declining the application.

The applicant (51 years) was charged with unlawfully and with indecent intent inserting his penis into the anus of a male adult without the consent of the adult. He was convicted of attempting to commit aggravated indecent assault as defined in s 189(1)(a) as read with s 66(1)(a) of the Criminal Law Code. He was sentenced to 5 years imprisonment, 2 years of which was suspended for 5 years on condition.

The Regional Court after assessing evidence adduced by the state came to the above conviction after having concluded that there was no tangible medical evidence to prove penetration of the anus but complainant’s evidence was credible and the applicant had reached the commencement of the consummation of the offence of aggravated indecent assault for he had already inserted his erect penis between the survivor’s buttocks.

The applicant was convicted and sentenced on 16 December 2024. He filed his appeal on 3 January 2025. On 26 March 2025 the defective appeal was struck off the roll. Applicant was all along legally represented. After the matter was struck off, applicant amended the notice of appeal and as again noted by the state, the new notice of appeal is again fatally defective. The amended notice of appeal was filed in May 2025, a month and some days after its dismissal in March 2025.

The applicant was sleeping in the same room with the complainant. Complainant was woken up by a sharp pain on his anus and upon waking up, he detected applicant on top of him. He told someone else that very time. Applicant and complainant were known to each other and the learned Regional Magistrate exhaustively analysed the issue of debt, alibi and fabrication in his judgment. I am unable to detect the erring or misdirection by the court *a quo* in its reasons for judgment. The paramount dominant issue for consideration for an application of this nature is whether applicant has an arguable case or simply put whether there are prospects of success. In addition whether the explanation for delay is reasonable.

Practice Direction No. 3 of 2013, deals with matters which have been struck off or removed from the roll. An applicant has 30 days to take action to reinstate the action or appeal. *In casu* applicant is found wanting and no cogent explanation is given albeit being represented. The application for condonation is therefore not in compliance with Practice Direction 3 of 2013. On the aspect of prospects of success, it is my conviction that the reasoning of the trial court is unlikely to be upset by an appeal court. Hence no prospects of success on appeal exist. In addition the proposed amended appeal as pointed out by the respondent in its papers have challenges which may again irresistibly lead to the matter being struck off for lack of compliance with the rules of this court.