

GODFREY DARA
versus
THE STATE

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 19 February 2025

Reasons for Judgment

MUZENDA J: On this date 19 February 2025 I received a memo from the Registrar of the Supreme Court of Zimbabwe calling for judgment in this record/matter where a chamber application for leave to appeal was declined. It is important to note that there are three orders 2 under HCMTCR 878/24, the first one dated 14 June 2024 and second one dated 5 December 2024. In both orders leave was refused and reason was that “there were no prospects of success on appeal.” Under HCMTCR 1915/24, the criminal chamber application for extension of time, an order dated 20 December 2024, effectively stated that the application had previously been dealt with by the same court and leave declined, so it was not properly before the court, and it was therefore struck off the roll.

Background facts

Applicant and 3 of his accomplices were arraigned before the Regional Court at Rusape facing Robbery charges as defined in s 126(1) of the Criminal Law Code [*Chapter 9:23*]. Initially they were all in all 6 but two were discharged at the close of the state case due to lack of evidence. The state had alleged that applicant and his co-accused teamed up and unlawfully used violence against complainant by pointing a gun at her, assaulting her with sticks and burnt her with a hot iron on the thighs. They then took cash, a 12 volt car battery, a Honda Fit, 3 cell phones and various clothing items. The applicant was convicted and sentenced on 25 July 2023 and sentenced to 12 years imprisonment of which 2 years imprisonment was suspended on conditions set by the trial court.

Between the date of sentence and the date when the application for condonation for late noting of appeal, there were initially 10 months, that is by June 2024. The time may not have been that inordinate but it was the prospects of success on appeal that blew the breeze against the applicant.

The trial Regional Magistrate assessed the evidence led by the state on trial and came to a conclusion that the applicant knew the complainant as well as her financial status well before the offence was committed. Applicant had a conversation with one Tinotenda Mutemaringa indicating that the complainant wanted to purchase a haulage truck. When applicant and his accomplices invaded the complainant on the date of robbery they demanded all the money she had saved to purchase the haulage truck. The trial court then made a finding that applicant was the master-mind of the robbery.

It is upon this finding by the trial court that militates against applicant's prospects of success on appeal that led me to refuse the chamber application for both leave and condonation.