HB 377/17
HCB 172/17

TERRENCE NDLOVU

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 21 NOVEMBER 2017 & ……

Bail Application

J. Ndubiwa for the applicant
T. Hove for the respondent

MOYO J: At the hearing of this matter I dismissed the application and stated that my detailed reasons will follow. Here are the reasons.

The applicant in this matter was convicted of rape as defined in section 65 (1) of the Criminal Law Codification and Reform Act Chapter 9:23. He was sentenced to 10 years imprisonment with 2 years imprisonment suspended on the usual conditions. Dissatisfied with the findings of the court *a quo*, the applicant then noted an appeal to this court. He now seeks bail pending that appeal.

The facts of this matter are that the accused who was not related to the complainant lived with the complainant at the request of complainant's father. The complainant told the court that in the absence of everyone else at the house, accused asked her to undress and she refused that was the initial instance where accused did not manage to rape the complainant. At the 2nd instance, he sent complainant to collect his tobacco from a bedroom. While complainant was still in there, he fondled her and forcibly had sexual intercourse with her after he had threatened to kill her if she did not comply. A neighbourhood watch committee member received a tip off on complainant's abuse and interviewed the complainant who then exposed the accused. This matter did not have any factual complexities. It was straight forward. The complainant's version was crystal clear. So was the version of the other state witnesses. No meaningful cross examination was done to show any weaknesses in the state case.

It is trite that in an application for bail pending appeal, there must be reasonable prospects of success on appeal for the court to consider granting bail to an application for bail. Refer to the case of *S* v *Tengende & Ors* 1981 ZLR 445 (S). The gist of the appeal as shown in the notice of appeal is on the findings that the court *a quo* made on the facts. That it erred in believing the complainant and the state witnesses. Clearly the facts of this matter are very simple and straight forward even the trial court did not have any difficulty in resolving them. The applicant seems to have a gripe in the fact that the abuse was reported to the neighbourhood watch committee by an unknown person who was never called to testify in court. The member of the neighbourhood watch committee are Norman Tshuma who acted on the report was called to testify in court and he told the court about his interview with the complainant from his testimony nothing sinister can be deducted on the voluntariness or otherwise of the report.

The complainant herself also explained her failure to report at the nearest opportunity that presented itself, in that the applicant had allegedly threatened to kill her. In such circumstances, it cannot be held that the complaint was not made freely and voluntarily. I hold the view that members of the neighbourhood watch committees, the police, children's organisations and school authorities are duty bound to act and interview children where abuse of any nature is suspected. Except where the manner of questioning is clearly shown to have been suggesting and leading, it cannot be held that the mere fact that a complainant came about as a result of an interview by personnel from such organisations then the court must throw it out for that sole reason. I hold the view that there must be more information in the court record that renders the complaint valid.

It is for these reasons that I dismiss the application for bail pending appeal in this matter as I held the view that there are no reasonable prospects of success.

Mashayamombe & Co. applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners