

MIKE MATANGA
versus
THE STATE

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 9 October 2013 and 12 February 2014

Condonation

Applicant, in person
R. Chikosha, for the respondent

MWAYERA J: The applicant filed an application for leave to appeal on changed circumstances. The respondent, The State filed opposing papers to the application.

After considering the papers filed of record, I dismissed the application on 9 October 2013. The applicant has requested for reasons for the court's finding and the reasons will be tabulated herein.

It is imperative to lay down the factual background to this matter. The applicant was arraigned before this court in 2005 and was duly tried, convicted and sentenced to 15 years imprisonment for murder with constructive intent. The brief background of the case being, that applicant and deceased were husband and wife. The marriage relationship was characterised by acrimony which culminated in the murder of the deceased whose body was recovered in a suitcase floating in a dam. Evidence adduced in the trial court showed it was accused who caused the demise of the deceased. In 2010 the applicant filed an application for leave to appeal and the application was dismissed on 29 March 2010. In 2012 the applicant made an application for determination by the Supreme Court and he was directed to seek the remedy available of appealing against conviction and sentence provided he had leave to appeal granted. The application for leave to appeal out of time was again dismissed.

A perusal of the documents filed shows that the applicant is regagitating that this court erred in convicting and sentencing him for murder with constructive intent. There is nothing placed before the court which can be viewed as changed circumstances. The

applicant is seeking to reopen his case and adduce fresh evidence which he says he was not aware of at the time of trial. That certainly is not what is contemplated by changed circumstances and would be an irregularity more so given that what he refers to as changed circumstance is his own assessment of the totality of evidence upon which he was convicted.

In 2013 the applicant filed an application for bail pending appeal effectively when there was no pending appeal because his application for leave o appeal out of tine was dismissed by this court on 29 March 2010.

On 1 February 2013 the applicant made an application for bail pending appeal and the same was dismissed for among other reasons that there is no appeal pending before the Supreme Court.

The application before this court is for leave to appeal on changed circumstances. This application came in despite the fact that the applicant's trial was concluded in 2010 procedurally and there is nothing new necessitating the reopening of the application for leave to appeal. The applicant placed argument that his application is premised on Annexure 'A' and 'C' wherein the Supreme Court directed that the applicant could appeal against the conviction and sentence provided he has leave to appeal granted. That leave has not been granted and the application was dismissed. It is not clear from papers whether or not he appealed against such dismissal.

The prevailing position is that the applicant was properly convicted after careful analysis of evidence adduced and was sentenced. The same argument that there was no eye witness who observed him murder his wife and that evidence was faked was rejected and it is the same submissions he alluded to before this court as changed circumstances. The applicant without any substation alleged that all witnesses faked evidence. There is nothing new placed before the court which applicant was not aware of warranting positive entertainment of the baseless application. One gets the impression that applicant is a busy body who is on a fishing expedition to try his chance to confuse events so as to get attention and a breather in the face of no prospects of success on appeal. There are no changed circumstances warranting the late application for leave to appeal on changed circumstances. The application is baseless and lacks merit hence the dismissal on 9 October 2013 by this court.

Attorney General's office, respondent's legal practitioner