

MUNYARADZI MACHIYA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
FOROMA J  
HARARE, 23 & 28 February 2018

### **Bail application**

Applicant in person  
Mrs *S Fero*, for the respondent

FOROMA J: On 12 January 2018 the applicant applied for bail pending appeal. In his affidavit in support of the application for bail he submits that there are real prospects of success on appeal. According to the applicant the fears for absconding are non-existent.

The State is opposing the application. The respondent contends that there are no prospects of success on appeal and that applicant would abscond thereby prejudicing the ends of justice.

The following factors are common cause:

- (a) the applicant was caught red handed by the police detectives having sexual intercourse with the complainant.
- (b) the applicant admits sexual intercourse with complainant but argues that the complainant was consenting.
- (c) the trial court rejected the applicant's defence during trial and convicted the applicant.

The applicant is challenging both conviction and sentence and lambasts the trial Regional Magistrate for finding the complainant to have been a credible witness. He also attacks the sentence passed as being excessive. The important question for this court at this juncture is to adjudge on the aspect of prospects of success on appeal. The applicant had failed to convince this court on the prospects of success on appeal. The criticism of the trial court on the aspects of conviction and sentence are groundless. The complainant clearly indicated during

trial that she had not consented to sexual intercourse. Although the applicant attacks the sentence of 18 years passed by the trial court he had not shown that any sentence short of a long prison term might be imposed by the superior court should it interfere with the lower court's sentence. The prospects of appeal against both conviction and sentence are not bright.

In the circumstances there is a real likelihood that the applicant will be tempted to abscond and not await to serve the prison term at the conclusion of the appeal. The application for bail pending appeal is dismissed.

*National Prosecuting Authority*, respondent's legal practitioners