

REPORTABLE (17)

Judgment No. SC 17/06

Constitutional Application No. 211/05

BRUCE IRVING WATSON v THE STATE

SUPREME COURT OF ZIMBABWE
CHEDA JA, MALABA JA & CHEDA AJA
BULAWAYO, APRIL 3, 2006

P Dube, for the applicant

T Mkwanzizi, for the respondent

CHEDA AJA: This is an application for a permanent stay of prosecution or proceedings against the applicant in terms of s 24(2) of the Constitution of Zimbabwe.

The brief facts of this case are that on 9 August 1994 the applicant, while driving a Toyota Hilux motor vehicle registration no. 571-878F, along the Ngundu-Chiredzi Road negligently caused the death of one Tapiwa Gukutu. He was thus charged with culpable homicide.

After the accident, the witnesses' statements were recorded, a sketch plan was drawn and a warned and cautioned statement was recorded from the applicant. The matter was then treated as a sudden death and the docket was closed.

The applicant was placed on remand but later placed off remand. He was, however, re-summonsed to appear in court on 12 December 2004, wherein he was remanded to appear in court on 6 April 2005. It is on that date that he applied for the matter to be referred to this Court, on the grounds that his right to a fair trial within a reasonable time had been infringed or violated. It is the applicant's contention that the delay of ten years and eight months before he was brought to trial is excessive and unreasonable.

Indeed, there has been a delay of almost eleven years in bringing the applicant to trial. A delay of any length requires an explanation and such an explanation must be a reasonable one. Mr *Mkwanzzi*, for the respondent, in his submissions conceded that the delay was unreasonably long and the reason given by the Attorney-General's Office, namely that the public prosecutor handling the matter died, is not adequate. The further reason for the delay is that there was a communication breakdown between the State and the applicant's legal practitioners.

This, too, is not a reasonable excuse. The concession by the respondent that there was an inordinate delay by the State in bringing the applicant to trial is well-founded and is therefore proper.

The right to a fair hearing within a reasonable time is enshrined in the Constitution. Section 18(2) of the Constitution states:

“(2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an impartial court established by law.”

The definition of “a reasonable time” is not defined in the Constitution. Therefore, the question of a reasonable time is determined by the circumstances of each case.

In *In re Mlambo* 1991 (2) ZLR 339 (S), where there was a delay of four years eleven months, it was held that the said delay was very long, giving rise to a strong presumption of prejudice to the applicant. (See also *S v Tau* 1997 (1) ZLR 93).

In *S v Nhando and Ors* 2001 (2) ZLR 84 (S), CHIDYAUSIKU ACJ (as he then was) clearly laid down the determining factors which should be considered in the allegations of an infringement of s 24(2) of the Constitution for referral to the Supreme Court, namely –

1. the length of the delay;
2. the reasons for the delay;
3. the assertion by the accused of his or her right to a speedy trial; and
4. the prejudice to the accused caused by the delay.

The delay *in casu* is, by any standards, unreasonably long and cannot be supported by any court of law. (See *In re Mlambo supra*). The reasons for such delay are so flimsy that they are not worthy of serious consideration.

The applicant has always been available to stand trial and has always notified the authorities of his movements, albeit for ten years.

The delay has no doubt, in my view, resulted in anxiety and serious concern to him, which was not necessary at all.

My judgment, therefore, is that there has been an infringement of the applicant's constitutional right by depriving him of a fair hearing within a reasonable time, which is his right in terms of s 18(2) of the Constitution.

It should be appreciated that the right to a fair trial is a basic human right. When it is violated innocent people face conviction, imprisonment and, at times, execution. If this occurs, the justice system itself loses credibility in the eyes of those who look to it for the smooth delivery of justice. It should be emphasised, therefore, that anyone arrested or detained on a criminal charge should be promptly brought before a competent court of law, which will then exercise its judicial power over him/her and such trial should be held within a reasonable time. This is to ensure that the accused does not suffer unduly prolonged uncertainty and that evidence is not lost in the process.

In casu, in my view, the inordinate delay caused irretrievable prejudice to the applicant in the circumstances.

The applicant's relief in essence is the permanent stay of prosecution or proceedings against him.

In the result the application is allowed and the following order is made –

“The proceedings under case no. CRB 360/04 Chiredzi be and are hereby permanently stayed.”

CHEDA JA: I agree.

MALABA JA: I agree.

Calderwood, Bryce Hendrie & Partners, applicant's legal practitioners