

REPORTABLE (45)

Ex-tempore

ADMIRE MASHIRI
v
THE STATE

**SUPREME COURT OF ZIMBABWE
HARARE: 21 MAY 2025**

The applicant in person

C. Mchemwa, for the respondent

IN CHAMBERS

MATHONSI JA:

[1] There is an unwritten rule that where self-representing litigants are involved, the Court must lean in favour of assisting them navigate the treacherous terrain of filing Court process and must purposely refrain from a strict application of the rules of Court.

[2] But there is a limit beyond which the court cannot assist an unrepresented litigant. This occurs, for instance, in a case such as the present where the jurisdiction of the Court or Judge is not engaged at all. It leaves the Court or Judge helpless and unable to intervene even in the face of a glaring injustice.

[3] The applicant was convicted of rape by the Rusape Regional Magistrates Court on 20 April 2023 and on 24 April 2023 sentenced to 14 years imprisonment of which 2 years imprisonment was suspended for 5 years on condition of future good behavior.

[4] Being a man of straw and having carted away to prison, presenting an appeal became Herculean task indeed. He says his relatives could not summon resources to secure the

services of a legal practitioner and his own efforts, as a lay person, have resulted in him filing many defective applications of one form or the other right up to now.

[5] The last such application is the present one, filed on 29 April 2025, which bears the heading “application for extension of time or leave to appeal out of time in terms of r 21 (1) of the Supreme Court Rules, 2018”. It is a wrong application which is improperly before me.

[6] The rule in question regulates criminal appeals from the High Court to the Supreme Court and not those, such as the applicant’s intended one, from the Magistrates Court to the High Court. Accordingly, my jurisdiction has not engaged by what the applicant has filed.

[7] The background of the matter makes sad reading. The applicant approached the High Court in Mutare in June 2023 seeking condonation for the late filing of an appeal against his conviction and sentence by the Regional Court aforesaid. On 21 June 2023 the respondent filed a response to the application consenting to the application. The response, signed by J. Matsikidze of the National Prosecuting Authority, states in part thus:

“3.1. It is my considered view that there exist some prospects of success in the case *in casu* but only in respect of conviction. A reading of the record of proceedings shows that the trial court’s analysis of the evidence may not pass the test of a finding beyond reasonable doubt.

3.2.

3.3.

4. It is for the above reasons that the respondent prays that if the court is (inclined) the applicant may be afforded an opportunity to be heard by the Honourable Court”.

[8] Notwithstanding the concession by the State, on 21 June 2023 the High Court issued an order in chambers on in the following:

“IT IS ORDERED THAT:

1. Application for condonation to appeal against conviction and sentence refused.”

The High Court did not see the need to give any reasons for the order that it issued thereby putting the applicant in a state of bother which has haunted him up to now.

[9] In October 2024, the applicant filed an application in the Supreme Court for condonation of the late noting of an appeal under case number SC 525/24. According to the applicant, it was struck off the roll to enable him to first seek leave to appeal from the High Court. He says he made an application for leave to appeal in the High Court, under case number HCMTCR 64/25.

[10] On 12 February 2025 the High Court issued the following order:

“IT IS ORDERED THAT:

1. The matter is not properly before the court for the reasons pointed out by the state accordingly it is struck off.” (*sic*)

[11] Unfortunately, what the State had said, which the court was leaning on, was merely pointing out that the applicant was seeking leave to appeal the refusal of condonation 18 months after the application was refused. So, what we have is a situation where the High Court has refused to give reasons first, for refusing condonation for the late filing of an appeal and second, for refusing to grant leave to appeal against its decision.

[12] Still disgruntled, the applicant returned to that Court pleading for reasons for its judgments as would unlock the doors for remedies available to him at law. On 12 February 2025, the Registrar of that Court issued a letter in response to the applicant’s request for reasons in the following:

“Reference is made to your letter of the 11th instant requesting for reasons. Kindly note that your request was placed before the Judge who stated that reasons for dismissal for (*sic*) the application are clearly stated in the order issued by the court.”

[13] It is apparent that there are no such reasons. Distraught and bereft of any sense of solution, the applicant has returned to this Court with the present application. Unfortunately, this Court's hands are tied as there is no procedure allowing him to make this kind of approach where the lower Court has made a decision, albeit without giving reasons.

[14] I mention in passing that, had leave to appeal been denied by the High Court, the applicant would have been entitled to approach this Court in terms of r 20(1) of the Supreme Court Rules, 2018 (now r 27(1) of the Supreme Court Rules, 2025). However, where condonation of the late filing of an appeal has been refused, as happened in this case, all the rules are silent as to what approach the aggrieved party should adopt.

[15] That brings me to the remarks of this Court in *Zesa Holdings (Pvt) Ltd v Munyanyi & Anor* SC 6/24 where, at p 9 it is stated:

“The effect of proceeding to determine the application before me, where condonation was declined by the court *a quo*, is an interference with the judgment of the court *a quo* declining condonation. The decision of the court *a quo* was an exercise of discretion. A single judge, in chambers, is being called upon to interfere with the exercise of discretion of the Court *a quo*. An interference with the exercise of discretion by a subordinate court can only be in terms of a process properly before the Supreme Court challenging that decision. There is no such process before this Court.”

[16] In the absence of a remedy for the grant of condonation by this Court where it has been refused by the High Court, it may well be that the applicant may have to appeal the judgment of that Court refusing condonation and extension of time within which to appeal against a conviction which is not supported by the State.

[17] Mr *Mchemwa*, who appeared for the respondent, reiterated that, indeed, the conviction is problematic. This is more so considering that the complainant belatedly submitted an affidavit disowning her complaint of rape and her evidence at the trial. That

notwithstanding, the applicant continues to languish in prison with no movement whatsoever in his quest for justice as the High Court is not interested in giving reasons.

[18] This judgment must be brought to the attention of the High Court Judge who presided over the applicant's case for him to consider giving reasons for the orders that he issued. That will assist the applicant in his pursuit for justice.

[19] For the present purposes, there is no valid application before me.

In the result, it be and is hereby ordered that:

“The matter is struck off the roll.”

National Prosecuting Authority, respondent's legal practitioners.