RINGIRAI DHLIWAYO

AND

WELLINGTON DUBE

AND

MCASISELI MOYO

VERSUS

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 8 MAY 2012 AND 31 MAY 2012

Mr P. Tererai for the applicants
Mr T. Makoni for respondent

Bail pending appeal

CHEDA J: This is an application for bail pending appeal against sentence. The Applicants were charged, pleaded guilty and convicted of contravening section 36(1)(c) as read with 36(1)(j) of the Immigration Act [Chapter 4:02] ((assisting "border jumpers"). They were sentenced to 6 months imprisonment of which 2 months imprisonment was suspended on the usual conditions.

The brief and salient facts of this case are that the tree applicants connived to assist three minor children aged between 1-2 years to illegally cross the border to South Africa. This offence was discovered by Police Detectives.

The thrust of their argument for bail pending appeal is that they have bright chances of success on appeal and that they undertake to remain within the jurisdiction of the court if granted bail.

In determining an application for bail pending appeal against sentence, it should be noted that the trial court would have adequately dealt with the facts before it and considered all the mitigatory features and weighed them against the aggravating ones.

Should, it appear to the court/judge determining the application for bail pending appeal having taken into account all the circumstances surrounding the commission of the offence that the trial court passed an excessive sentence or that the proceedings were irregular, the court should determine the application for bail pending appeal in applicants' favour in order to avoid actual prejudice as applicant would be in prison. If applicants' circumstances were properly weighed, he should not be admitted to bail only to be sent back to prison again.

In *casu* applicants were charged with a serious offence. Serious, in that they connived to unlawfully remove children out of the jurisdiction of the court. In as much as there is no evidence that they were involved in child trafficking *per se,* the fact that they were assisting the removal of these children, can point to one factor and one factor alone, being that it was in furtherance of the hybrid of this offence.

Bearing in mind that these courts have an onerous task of protecting minors, there is therefore, a need to curb this type of offence. Cases of illegal border crossing are on the increase and courts will be failing in their duties not to stem this scourge at the Beitbridge Border post.

Mr Makoni for the respondent argued in support of their application. I am afraid that I find no merit in his argument as he later confirmed the seriousness of this offence, despite the fact that he holds the opinion that a non-custodial sentence should have been imposed.

I am of the considered opinion that the court of appeal is unlikely to interfere with applicants' sentence, which to me seems to be perfectly in order.

Time without number, we read in the press of the prevalence of these offences. The need for deterrence in my view will no doubt be one of the major factors which will feature in favour of the dismissal of the appeal.

I find no merit in this appeal. The application is dismissed.

Masawi and partners, applicant's legal practitioners
Criminal Division, Attorney General's Office, respondent's legal practitioners