

PHATISANI NKALA

APPELLANT

Versus

THE STATE

RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO 26 OCTOBER & 15 NOVEMBER 2012

C Dube-Banda for the appellant
W. Mabhaudhi for the respondent

Criminal Appeal

CHEDA AJ: This is an application for leave to appeal to the Supreme Court in terms of section 44 of the High Court Act [Chapter 7:06] against the decision of the High Court upholding the conviction and sentence of the applicant by the Magistrates' Court.

The applicant and others were found at a lay-bye close to the scene where some Zimbabwe Electricity Supply Authority (ZESA) electricity cables had been cut off the poles. They were arrested and tried at the Magistrates' Court at Beitbridge. They were sentenced to 8 years imprisonment each. They appealed against both conviction and sentence. The appeal was dismissed.

This applicant now seeks leave from this court to appeal to the Supreme Court.

It is common cause that some ZESA electricity cables were cut off the poles at Chapfuche area near Beitbridge. This disrupted electricity on that line and plunged the area into darkness.

It is not in dispute that the appellant and his co-accused were found in a vehicle parked at a lay-bye near the same place.

A security guard who is a well experienced former Parks and Wild Life tracker approached them to advise them of the dangers of parking in the area. In response they lied to him about why they were there and where they were going. Between them they gave different explanations about their destination.

It is common cause that the tyre marks of their vehicle was, according to the tracker witness, seen at the spot where the cables had been cut off. Some twigs on the vehicle were

similar to the bushes at the scene of the crime. They disputed this evidence, but a legal practitioner who represented them at some stage commended the evidence of that witness. It is not disputed that the appellant was the responsible driver of the vehicle concerned, which had come from South Africa.

It is not in dispute that some documents found in the vehicle were receipts for selling copper cables in South Africa. The appellant argues that he played no role in what his colleagues were convicted of and there is no evidence to link him with the crime charged, yet he was the driver of the vehicle. He cannot distance himself from the mission of the vehicle and the group found in the vehicle.

The group procured a witness to lie in support of their defence, and that witness later admitted under cross examination that she had been procured for that purpose by the accused persons.

In view of the above it is my view that there are no prospects of success on appeal.

The application for leave to appeal to the Supreme Court is hereby dismissed.

Criminal Division of the Attorney General's Office, respondent's legal practitioners