

**SMART DUBE**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO 3 FEBRUARY & 3 APRIL 2014

*L. Mpofu* for applicant  
*Ms N. Ngwenya* for respondent

Bail pending appeal

**MOYO J:** This is an application for bail pending appeal. The appellant was charged and convicted of the offence of assault as defined in section 89(1) of the Criminal Law (Codification and Reform) Act Chapter 9:23). He was sentenced to 12 months imprisonment with three months suspended for 5 years on the usual conditions. Dissatisfied with the conviction and the sentence, applicant then noted an appeal with this court.

The appeal is pending. He now applies for bail pending appeal. In such cases, the court has a discretion whether or not to grant the application for bail pending appeal. In the exercise of this discretion, the court is guided by the following principles:-

- 1) the prospects of success on appeal;
- 2) the likelihood of the accused absconding in view of the gravity of the offence and the sentence imposed;
- 3) the likely delay before the appeal can be heard.

Refer to *S v Dzawo* 1998 (1) ZLR 356.

Of paramount importance is the principle of prospects of success on appeal. In this case the applicant alleges that he acted in self defence when he assaulted the complainant, the 2 had a dispute over a girlfriend. On the day in question the complainant approached the accused saying he wanted to talk to him. Applicant walked away from the complainant and the complainant followed him. At some point where there were stones the applicant says he felt cornered by the complainant who had paced fast behind him, overtook him and blocked his way. This then prompted him to stab the complainant with a sharp stone 3 times on the left side of the abdomen.

During the argument of this matter applicant's counsel conceded that applicant exceeded the bounds of self defence but submitted that nonetheless the trial court should have considered community service since accused was a first offender. I fail to find any misdirection in this regard on the part of the trial magistrate as the magistrate in his reasoning explained why in his view a custodial sentence would be appropriate.

I accordingly find that there are no prospects of success in this matter and the application is dismissed.

*R. Ndlovu & Company*, applicant's legal practitioners

*Criminal Division, Prosecutor General's Office*, respondent's legal practitioners