

SINGLE JUDGE OF COURT OF APPEAL

Francistown Case No. 282 of 1981

Criminal Appeal No. 65 of 1981

C/A Crim. Appeal No. 19 of 1981

In the matter between:

NATHAN MAZHINE

Applicant

and

THE STATE

Respondent

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RULING ON APPLICATION  
FOR LEAVE TO APPEAL

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O'BRIEN QUINN, CJ

This application comes before me as a single judge of the Court of Appeal under Rule 36 of the Court of Appeal Rules, it having already been refused by the Trial Judge on 15th October, 1981.

The applicant wishes to be heard on the points which he raised in previous correspondence and, in particular, in his letter of 30th October, 1981.

Having read the papers and the correspondence I do not consider that the presence of the applicant to argue the matter in person is necessary.

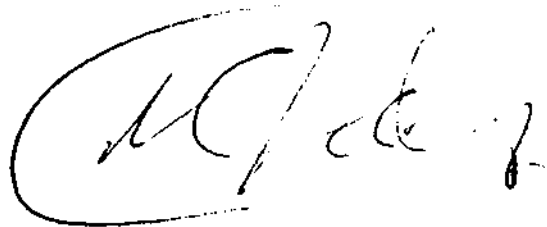
His main grounds are, as before, and throughout the case, that the two main prosecution witnesses PW1 and PW2 were not telling the truth and that they were part of a conspiracy or a clique in the Ministry of Education which was bent on discrediting him. However, at no stage, did the applicant produce any evidence that this may have been so. There was no burden on him to do so; all he had to do was to raise a reasonable doubt in the mind of the Senior Magistrate on the matter. This he failed completely to do. The learned Appeal Judge, likewise, was not impressed with the arguments advanced by Counsel for the applicant on appeal to the High Court on the same point.

In my opinion, the conduct of the applicant when initially questioned by the two witnesses, even as explained by the applicant himself, was most unlikely. If, as the applicant argued, he felt that PW1 and PW2 were hostile to him when they first questioned him, it seems incongruous that he did not open his press and take out the P700 immediately and have declared his innocence of any allegations of dishonesty made by the Bursar. Instead of which, on his own version, he produced certain Telegraphic vouchers only and did not open his press and produce the P700 until the witnesses said they were going to call in the Police. The evidence of the two witnesses was unshaken, was credible,

logical and reasonable and was believed by the Senior Magistrate. In my view there was no reason to doubt their evidence and I cannot see any reason why the full bench of the Court of Appeal could come to any other conclusion.

I, therefore, refuse the application for leave to appeal.

RULING made at the High Court, Lobatse, this 4th day of December, 1981.

A handwritten signature in black ink, appearing to read 'J. A. O'Brien Quinn', written in a cursive style.

J. A. O'BRIEN QUINN  
CHIEF JUSTICE