

KUMBULA SIBANDA

Versus

THABANI SIZIBA

And

MASTER OF THE HIGH COURT – BULAWAYO

And

DIRECTOR OF HOUSING & COMMUNITY SERVICES – BULAWAYO

And

THE DEPUTY SHERIFF – BULAWAYO

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 4 & 13 SEPTEMBER 2007

Tsvangirai for the plaintiff

B Moyo for the 1st defendant

BERE J: This matter was initially set down for a pre-trial conference on 3 September 2007 and was by consent rolled over to 4 September 2004 for same.

It is not in dispute that on 1 August 2007 the plaintiff's legal practitioners duly served a notice of set down on the defendants' legal practitioners who acknowledged receipt of the said notice on the 1 August 2007 – a month before the set down date. In preparation for the pre-trial conference the plaintiff filed both his synopsis of evidence and proposed issues.

The defendants and in particular the first defendant (the principal defendant) filed no such documents. There was no cogent explanation given as to non-compliance with the court rules except the averment that there were administrative problems encountered in the administration of the estate in question.

There was no application made by the first defendant's counsel to seek the court's indulgence to put things right. Instead, the first defendant's counsel dwelt at length on the substantive issues involved when in fact his papers were not in order.

What further compounds this matter is that the first defendant did not attend the pre-trial conference hearing. Instead, it was the first defendant and one alleged beneficiary who attended. The alleged beneficiary is not party of the cited defendants.

In litigation, there comes a time when the court must adopt a robust approach

so as to encourage guided litigation.

A legal practitioner who is given a month's notice for the holding of a pre-trial conference and does nothing – completely nothing in preparation of same must expect no protection from this court. Such limping service to clients cannot be rewarded by this court.

Consequently, it is ordered as follows:

1. That the first defendant's defence be and is hereby struck out.
2. That the plaintiff be and is hereby given leave to set down this matter on the unopposed roll.
3. That costs be dealt with in the main application.

Dazinger & Partners, plaintiff's legal practitioners

Dube & Partners, 1st defendant's legal practitioners