

**MZILIKAZI INVESTMENTS (PVT) LTD**

**Versus**

**DR IBBO MANDAZA  
T/A INDUNA DEVELOPMENT PROJECT**

IN THE HIGH COURT OF ZIMBABWE  
BERE J  
BULAWAYO 12 & 20 SEPTEMBER 2007

*B Ndove* for the plaintiff  
*J Sibanda* for the defendant

Judgment

**BERE J:** On 27 August 2007 at 12 noon defendant's counsel acknowledged receipt of a notice to attend a pre-trial conference from plaintiff's counsel.

On 28 August 2007 plaintiff's counsel followed up the notice for a pre-trial conference proposing the holding of a round table conference before the holding of a pre-trial conference. Defendant's counsel neither responded to the notice to attend the pre-trial conference nor to the invitation for a round table conference as a precursor to the pre-trial conference.

Before setting the matter down for a pre-trial conference, plaintiff had on 9 July 2007 filed its synopsis of evidence and duly served it on defendant's counsel on 11 July 2007. This had been preceded by the filing and service of plaintiff's pre-trial conference memorandum of issues on 23 May 2007.

The court record clearly indicates that there was no effort made by defendant's counsel to reciprocate the effort made by his learned friend to try and expeditiously deal with this matter.

To compound defendant's position, defendant absented himself from the pre-trial conference. No application had been filed to seek defendant's excusal from

attending the pre-trial conference. Defendant's counsel arrived at court 15 minutes late into the proceedings.

In default of both defendant and his counsel plaintiff through its counsel moved the court to strike out defendant's defence and to further dismiss defendant's counter claim and be given leave to set down plaintiff's case on the unopposed roll. It was when plaintiff's counsel was in the middle of the aforesaid application that defendant's counsel arrived.

Defendant's explanation for the failure of his client to attend court was that he had been invited to attend court for the pre-trial conference at short notice and that a day before the pre-trial conference hearing he had through his secretary made an abortive attempt to have the matter postponed because he had not been able to secure the attendance of his client who was said to be either in South Africa or making

preparations to go to South Africa to fulfil prior arrangements. Defendant's counsel further told the court his unsuccessful attempt to secure the attendance of his client had been made a day before the scheduled date for the pre-trial conference. Counsel also speculated on his other pressing commitments in this same court as the reasons for his failure to timeously file his client's synopsis of evidence as well as defendant's pre-trial conference issues. The same reason was given as one of those which failed him in timeously alerting the defendant of the need to avail himself for a pre-trial conference.

I must confess, the submissions by defendant's counsel did not constitute a pleasant hearing at all. If anything his submissions in opposing plaintiff's application clearly demonstrated his lackadaisical approach in handling this matter. It will take ages to convince this court that a legal practitioner has failed to timeously comply

with the practice directives and court rules of this court because of his other commitments elsewhere or in this same court. At any given time a legal practitioner must have a load which he is able to handle or carry.

In this particular case, plaintiff through its counsel did all it could to try and have this matter expeditiously dealt with. Defendant's counsel was given a reasonable time to prepare for the holding of a pre-trial conference. In response defendant's counsel adopted too casual an approach which screams for censorship from this same court. The submissions that defendant's counsel made in opposition to the application made place the blame squarely at the doorsteps of his office. There is no evidence placed before the court which show that blame lies with his client. There are times, I think, when the court must be able to discern between a lawyer's fault from that of his client. This is despite the commonly held position that a client must bear the consequences of the shortcomings of his chosen legal practitioner. See the case of *Bishi v Secretary for Education* 1989 (2) ZLR 240 and *Ndebele v Ncube* 1992 (1) ZLR 288 (S).

The court is not able to find fault on defendant. There is nothing placed before the court to show he was timeously requested to provide a synopsis of evidence, let alone to attend the pre-trial conference.

It is for the above reasons that the court has been dissuaded from granting the drastic remedy prayed for by plaintiff.

It is ordered:

1. That the application made by plaintiff be and is hereby dismissed.
2. That the matter be and is hereby postponed *sine die*.
3. That defendant's legal practitioner personally bears the wasted costs incurred on 12 September 2007.

*Messrs Maronedze, Mukuku, Ndove & Partners*, plaintiff's legal practitioners  
*Messrs Muzangaza, Mandaza and Tomana c/o Messrs Job Sibanda and Associates*,  
defendant's legal practitioners