

ZIMBABWE NATIONAL WATER AUTHORITY

Versus

KARIBA MUNICIPALITY

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 12 AND 20 MAY 2010

No appearance for the plaintiff

D Mhiribidi for the defendant

NDOU J: The plaintiff sought and obtained a date for this pre-trial conference in terms of Order 26 Rule 182 (4) of the High Court Rules 1971. Both parties were served with the notice of set down being 12 May 2010. In fact, it seems that it was the plaintiff who ensured that the parties are aware of the set down date. Plaintiff is in default. The absence of the plaintiff prompted the defendant to apply for the dismissal of the plaintiff's claim. Although Mr *Mhiribidi*, for the defendant has not cited the provisions of the Rules he was relying on, it is clear that he had Rule 182 (II) in mind. Sub-rule (II), *supra* provides -

“A judge may dismiss a party's claim or strike out his defence or make such other order as may be appropriate if -

- (a) The party fails to comply with directions given by a judge in terms of sub-rule (4), (6), (8) or (10) or with a notice given in terms of sub-rule (4); and
- (b) Any other party applies orally for such an order at the pre-trial conference or makes a chamber application for such an order.”

In casu, the plaintiff's case is characterized by several procedural flaws. First, the plaintiff set the matter down before replicating, effecting discovery and joinder. In short, the pre-trial conference was set down before the pleadings were closed. After pre-maturely setting the matter down, the plaintiff did not bother to attend. There is adequate proof that the plaintiff was aware of the date of the pre-trial hearing. The plaintiff refused or neglected to attend. There was no explanation advanced for the absence. This type of conduct calls for dismissal of the plaintiff's action.

Accordingly, I dismiss the plaintiff's claim with costs.

Mhiribidi, Ngarava & Moyo c/o Lazarus & Sarif, defendant's legal practitioners