

PHILLIP GUMBO

Versus

JOYCE NDIWENI

And

DEPUTY SHERIFF

And

REGISTRAR OF DEEDS

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 18 FEBRUARY 2010

V Ruombwa for applicant
C P Moyo for 1st respondent
No appearance from 2nd and 3rd respondents

Opposed Court Application

Ex Tempore

KAMOCHA J: The applicant in this matter seeks an order in the following terms:

“It is ordered that:-

- (1) Application be and is hereby granted;
- (2) Rescission of judgment in case number HC 2168/07 be and is hereby granted;
- (3) Applicant is authorized to proceed to request for a pre-trial conference date within ten(10) days of this order;
- (4) No order as to costs.”

The applicant and his legal practitioner failed to arrive on time for a pre-trial conference which he had requested. He did arrive at his legal practitioner’s office at 0830 hours. His legal practitioner advised him that the pre-trial conference was schedule for 1000 hours in the judges’ chambers. The legal practitioner filed an affidavit wherein he conceded his error and accepted that the fault was entirely his. He erroneously believed that the pre-trial conference was at 1000 hours instead of an hour earlier. He and his client got to court at 0940 hours only

to be told that they were late. The matter had been disposed of at 0900 hours and a judgment was granted against him in default.

This explanation in my view seems reasonable and acceptable. There can be no doubt that applicant wanted to prosecute his case except that his legal practitioner made an error. He takes the blame for it.

Applicant seems to have a defence on the question of prescription. He alleged irregularities the manner the power of attorney was executed. He similarly alleged further irregularities about the alleged donation to the 1st respondent. The matter deserves to be properly ventilated at a trial.

Prescription in this matter was subject to judicial interruption in terms of section 7 of the Prescription Act [Chapter 8:11] see section 7(2) and (3).

In the result I would grant the order sought in terms of the draft as amended.

The applicant is a man of straw who cannot afford an award for costs.

There will therefore be no order for costs.

Bulawayo Legal Projects Centre, applicant's legal practitioners
Messrs Moyo and Nyoni, 1st respondent's legal practitioners