

**DAVID MATSITSIRO**

**Versus**

**CHAMUNORWA MUSINDO**

IN THE HIGH COURT OF ZIMBABWE

KAMOCHA J

BULAWAYO 16 FEBRUARY AND 10 MARCH 2011

*H Shenje* for applicant

*C P Moyo* for respondent

Opposed Court Application

Ex Tempore

**KAMOCHA J:** This matter was handled in very cavalier fashion by the applicant's erstwhile legal practitioners. The present legal practitioners were trying to rectify the many errors made by the previous lawyers. The new lawyers had, however, not made a formal application for condonation.

Mr *Shenje*, appearing for the applicant then made an oral application for condonation which was opposed. I, however, granted it after hearing both parties although I had held that the applicant and his erstwhile legal practitioners had not treated the matter with the urgency it deserved. I did so in the interest of justice in order that the application for rescission could be dealt with.

After listening to both counsels in respect of the application for rescission it was clear to me that the legal practitioners and their client were negligent. The lawyers' negligence was gross. The applicant did not show a keen interest to prosecute his application for rescission. After instructing his legal practitioners he should have made a follow up since he was not getting a feedback from them. Instead he went to his rural home and only came back after a period of 8 months. On his return he went to his lawyers who told him that they had been looking for him but he was nowhere to be found. What he and his lawyers did renders them culpable.

The applicant has no defence. He assaulted the respondent and caused blindness in one eye. The respondent suffered permanent disability due to the blindness in one eye.

He complained about the quantum but produced no precedent to illustrate that what was awarded in the default judgment was out of step.

Judgment No. HB 45/11

Case No. HC 997/10

This was not a proper case where the default judgment should be rescinded. In the result I would order that the application be and is hereby dismissed with costs.

*Shenje & Co. Legal Practitioners*, applicant's legal practitioners

*Moyo & Nyoni* respondent's legal practitioners