

**RICHARD MOYO-MAJWABU**  
**In his capacity as the Executor of the Estate Late**  
**DR. NICHOLAS MAGQOKANA NDEBELE**

**And**

**ESTATE LATE DR NICHOLAS MAGQOKANA NDEBELE**

**Versus**

**THE PARTNERS FOR THE TIME BEING OF**  
**MASEKO LAW CHAMBERS**

IN THE HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO 22 FEBRUARY AND 10 MARCH 2022

**Opposed Application**

*T. Dube*, for the applicants  
*Advocate W.P Mandinde*, for the respondent

**MOYO J:** This is an application for dismissal for want of prosecution of the main matter which is HC 1627/20. The application is made in terms of Rule 236 (4) of the High Court Rules 1971.

The chronology of events is that on the 23<sup>rd</sup> of September 2020, the respondents instituted a court application in HC 1627/20 and the application was opposed on 2 October 2020. That on 4 November 2020 the applicant in that matter filed an answering affidavit. That in terms of Rule 236 (4) of the High Court Rules 1971, where the applicant would have filed an answering affidavit to the respondent's opposition but has not within one month thereafter, set the matter down for hearing, the respondent on notice to the applicant, may, *inter alia* make a chamber application to dismiss the matter for want of prosecution. That one month had elapsed without applicant in the main matter setting the matter down for hearing. That the main matter also lacks merit.

Respondent raised preliminary objections stating that the application was premature as it was filed before the expiration of the 30 days for the following reasons:-

That per the general notice No. 1492/19 the High Court calendar for the 3<sup>rd</sup> term 2020 ended on 27 November 2020. That in terms of rule 238 (2) (a) the counting of the *dies inducie* is suspended during the vacation period. That from the 3<sup>rd</sup> of November 2020, the 30 days excluding the vacation days would expire on 11 January 2021 but that practice directive No. 1 of 2021 suspended the filing of court processes for 30 days that would lapse on 3 February 2021 and that that directive was later extended to 1 March 2021. This application was then filed on 3 March 2021. That all applications filed before this court are in terms of Order 32 of the Rules of the High Court 1971 and that therefore means Rule 238 (2) on heads of argument applies.

Applicant's counsel submitted that the vacation days should be counted and that factoring them in would mean that the delay is 9 days and that therefore this application was not made prematurely.

I will tend to agree with the preliminary points raised by the respondents for the following reasons:-

- 1) The crafting of rule 236 (4), is to make sure that a party spearheads their matter to finality by not neglecting their matters that they would have initiated to the prejudice of the other party.

For that reason, clearly Rule 236 (4) did not envisage the counting of vacation days within the calculation of the *dies inducie* for the simple reason that opposed matters cannot be set down and heard during the vacation. This court also takes judicial notice of the fact that the current setting down of opposed matters wherein a blank notice of set down is sent to the Registrar is in practice divorced from the set up intended in Rule 236 (4) where clearly the import is that of a party setting the matter down instantly and not applying and waiting for dates to be allocated. As opposed matters cannot be set down during vacation, it therefore follows logically that the vacation days cannot be considered in the reckoning of the 30 day period.

With that rationale, it therefore follows, that the vacation, coupled with the lockdown practice directions, then pushed the reckoning of the 30 days up to the 3<sup>rd</sup> of March 2021 as contended by the respondent.

I accordingly uphold the preliminary point raised by the respondent that this application was therefore filed prematurely.

It is for these reasons that this application will be struck off the roll with costs.

*Messrs James, Moyo-Majwabu and Nyoni*, applicants' legal practitioners  
*Maseko Law Chambers*, respondent's legal practitioners