COLFORTH INVESTMENT (PRIVATE) LIMITED

and

DREIBOND INVESTMENTS (PRIVATE) LIMITED

and

SEAN THOMAS NIELSON DORAN

and

SHABIR AHMED OMAR

and

ANTHEA LESLY EVANS

and

ELIJAH GOREDEMA

and

PRESTON GOREDEMA

and

TAVAZIVA TREVOR NYANDORO

and

CLUMSDALE INVESTMENTS (PRVIATE) LIMITED

and

CHRISPEN MADZIYAUSWA

versus

KINGDOM BANK LIMITED

HIGH COURT OF ZIMBABWE

MATANDA-MOYO J.

HARARE, 23 September and 7, 17 October, 2013

*Advocate Girach*, for Applicants

*F. Siyakurima*, for Respondent

MATANDA-MOYO J: This application is an application for rescission of judgment entered against applicants on 18 January 2011. From a reading of the facts of this matter applicants became aware of the judgment in May and June of 2011. Rule 63(1) of the High Court Rules provides;

“Court may set aside judgment given in default

1. A party against whom judgment has been given in default, whether under these rules or under any other law, may make a court application not later than one month after he has had knowledge of the judgment to be set aside.”

Applicants counsel conceded that the application for rescission of judgment was filed without condonation from court and that before condonation was granted such application was not properly before the court. Such concession was properly made. It is a settled principle of law that in terms of r 63(1) a defendant against whom default judgment has been granted has a period of one month from date he became aware of the judgment, to apply for rescission. If he does not meet such deadline, he must first make an application for condonation for late noting of an application for such rescission. There must also be an explanation for the delay in seeking condonation see also *Viking Woodworks (Pvt) Ltd* v *Blue Bells Enterprises Ltd 1998* (2) ZLR 249 (S) *and Ngwende (Estate)* v *Masomera* HC 1308/10. Applicants counsel sought to make an oral application for condonation for late noting of an application for rescission. I obliged him.

It is my finding however that the oral application made by applicants counsel was defective in that no evidence was placed before the court orally. The court had no evidence before it to come to any meaningful decision on the application. Without such evidence the court has no option but to dismiss the oral application for condonation for want of evidence.

On the application for rescission of judgment, it is my finding that without condonation having granted such application was not properly before the court see: *John Harries Jones* v *Kim Graham Strong* SC 67/03 where the court held that failure to obtain condonation is fatal to the proceedings.

Accordingly the application for condonation fails and is dismissed.

Consequently the application for rescission of judgment is not properly before the court. Applicants are also ordered to pay costs on an attorney and client scale.

*GN Mlotshwa & Company*, applicants’ legal practitioners

*Messrs Sawyer & Mkushi,* respondent’s legal practitioners