

IN THE LABOUR COURT OF ZIMBABWE
LC/H/28/2014
HARARE, 28 NOVEMBER 2013
LC/H/235/11
AND 31 JANUARY 2014

JUDGMENT NO.

CASE NO.

In the matter between:-

NORTA MARKETING AGENCY (PVT) LTD

Applicant

And

TAFADZWA MUCHAYA

Respondents

Before Honourable R. Manyangadze, J

For Applicant - **Mr. T.H. Gunje (Legal Practitioner)**
Respondent - **In person**

MANYANGADZE J:

This is an application for rescission of a default judgment granted by this Court on 2 July 2012.

The brief background to the matter is that the Applicant employed the Respondent as a computers teacher during the period September 2009 to March 2011. On 7 April 2011 an arbitral award was granted in terms whereof Applicant was to pay the Respondent arrear salaries and benefits amounting to \$3 186, 35.

The Applicant filed an appeal against the arbitral award, in this court on 4 May 2011. The Respondent obtained a default judgment on 2 July, 2012, in which the arbitral award was confirmed.

On 21 November 2013, the Applicant was granted condonation for late filing of an application for rescission of the default judgment of 2 July 2012, paving the way for the present application, which was filed on 27 November 2013.

In her Founding Affidavit, (simply filed as an “affidavit”), Applicant’s Managing Director avers that she was not in wilful default. She explains that the notice of set down was sent to her old mail box by registered mail, Box 312 Chitungwiza. It was re-directed to her current address, shop number 2 Unit L, Seke, Chitungwiza, and she had sight of it on 25 September 2012. She indicated that she had travelled to South Africa on 1 July 2012, and returned on 5 July 2012.

On the basis of the above sequence of events, surrounding the service of notice and the court hearing, Applicant avers she was not in wilful default.

It is significant to note that the Respondent, in her opposing Affidavit (wrongly termed Answering Affidavit) does not challenge the Applicant’s averments regarding the wilfulness of the default. In her oral submissions Respondent pointed out that she was not arguing against the explanation for Applicant’s failure to attend court and the passing of the default judgment. She said she wished to argue on the prospects of success. This is what she stated:

“I am not arguing that she (Applicant) could not attend the court proceedings and passing of the default judgment. I wish to argue on prospects of success.”

In the circumstances, it must be accepted that Applicant was not in wilful default.

It seems to me both parties are keen to have the matter disposed of on the merits. The arguments at the hearing in fact shifted from the wilfulness of the default to the merits of the case, almost turning the application for rescissions of the default judgment into a hearing of the appeal itself.

If no issue was raised about Applicant's default, in my view, the proper course of action would be to proceed to have the appeal heard on the merits. On 2 July 2012, when the default judgment was granted, Applicant was not heard through no fault of hers. It is note worthy that the Respondent herself accepts this. It is therefore undesirable to dispose of the matter on the basis of the default judgment. It is, I think, in the interests of justice that the merits be argued fully on appeal.

In the result, it is ordered that

1. The default judgment granted on 2 July 2012 under case No. LC/H/235/11 be and is hereby rescinded.
2. The Registrar to set down the appeal under case No. LC/H/235/11 on the earliest available date.
3. There shall be no order as to costs.

Gunje and Chasakara - Applicant's Legal Practitioners