

IN THE LABOUR COURT OF ZIMBABWE

JUDGMENT NO LC/H/40/14

HELD AT HARARE 17TH JANUARY 2014 &

CASE NO LC/ CON/ H/107/13

31ST JANUARY 2014

In the matter between:-

SINCEDISO SIBANDA

Applicant

And

QUETECH HOLDINGS

Respondent

Before The Honourable L. Kudya, Judge

For Applicant

T. Deme (Legal Practitioner)

For Respondent

E. Jera (Legal Practitioner)

KUDYA, J:

This is an application for condonation of the late noting of an appeal by the Applicant against an arbitral award which was made in favour of the Respondent employer on 26th April 2013.

Facts of the case are that, following the Applicant's dismissal by the Respondent Company where she had been accused of breaching the Respondent's Code of Conduct in that, she received a loan from one of the Respondent's customers in conflict of interest with her work, the matter found its way to arbitration.

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At arbitration, the Arbitrator ruled in the Respondent's favour. Aggrieved by the award Applicant was supposed have lodged her appeal 21 days from the date she received the award.

She however claims that the Unionist whom she engaged did not act timeously. When she discovered that she was out of time she decided to make the instant application to have her delay condoned. She contends that she has a good case on appeal hence her application should be granted.

The Respondent opposed the application. It argued that, Applicant did not exercise due diligence in not trying to prosecute her appeal timeously. Besides, her appeal prospects are slim and she should accordingly be denied the relief which she is seeking.

Two issues presented at the outset before hearing the merits of the application. The first issue is that, when the Applicant realised that she was out of time she delayed further to seek the condonation hence displaying lack of seriousness to pursue her claim.

Secondly when the condonation application was made, no effort was made by the Applicant's Legal Practitioner to file Heads of Argument and no explanation was proffered for such a failure. On the basis of the above 2 points, the Respondent moved the Court to dismiss the application.

Respondent relied heavily on the cases of **Musiyarira v Rufaro Marketing SC 96/05** and **Ganda v First Mutual Life Assurance Society SC/01/05**. The basic principle in the 2 cases is to the effect that, it is not enough for one seeking condonation to simply explain the delay of the failure to observe the rules in the main appeal but need to do that also with the delay

in the seeking of the condonation. Further to that, repeated breach of the rules in such a case would disentitle one to relief.

Applying the above precept it is clear that, Applicant erred in more than one respects. Firstly she delayed to lodge the appeal and when she decided to seek condonation she delayed further and did not explain that delay. Over and above that, she did not file Heads of Argument as required by the rules of Court. No explanation for noncompliance in that respect again was given. In a nutshell, it is apparent that, there has not been any diligence on the Applicant's prosecution of her matter.

The continued flouting of the rules without adequate explanation militates against her grant of the relief which she is seeking. It thus becomes unnecessary to get into the merits of the application itself as it has been demonstrated that is not properly before the Court.

IT IS ORDERED THAT

Application for condonation of the late noting of an appeal being improperly before the Court for noncompliance with the rules of Court it be and is hereby dismissed.

Each party to bear its own costs.

Chibune & Associates, Applicant's Legal Practitioners

Jera & Moyo & Partners, Respondent's Legal Practitioners