

**IN THE LABOUR COURT OF ZIMBABWE**

**JUDGMENT NO LC/H/46/2014**

**HELD AT HARARE, 22 JANUARY 2014 &  
31 JANUARY 2014**

**CASE NO LC/CON/H/136/2013**

In the matter between:-

**DANAI URENGWA**

**APPLICANT**

And

**ZIMBABWE-GERMANY GRAPHITE**

**RESPONDENT**

Before Hon. L M Murasi : Judge

**IN CHAMBERS**

**MURASI J:**

The Applicant was engaged by the Respondent as a Laboratory Technician at its Lynx Mine. It is alleged that the Applicant absented himself from work resulting in his dismissal. The letter of dismissal is dated 14 January 2013. The application for condonation was made on 11 December 2013, some eleven (11) months later.

It is trite that for an application for condonation for late noting of appeal to succeed, the Applicant has to convince the Court on certain criteria. These principles were set out by Hebblestone & Van Winsen in *The Civil Practice of the Supreme Court in South Africa* 4<sup>th</sup> Ed at pages 897 and 898 as:

“Condonation of the non-observance of the rules is by no means a mere formality. It is for the Applicant to satisfy the Court that there is sufficient cause to excuse him from compliance.... The factors usually weighted by the Court in considering an application for condonation ... include the degree of non-compliance, no explanation for it, the importance of the case, the prospects of success, the Respondent’s interests in the finality of the judgment, the convenience of the Court and the unnecessary delay in the administration of justice.”.

The first issue to consider is the degree of non-compliance. The Applicant took a whole eleven (11) months before making any move to appeal against the decision of the

employer to dismiss him. This obviously is an inordinate delay. The second issue to consider is the explanation proffered. The Applicant states that this delay was occasioned by-

“the Respondent who could not provide the dismissal letter and minutes of the hearing within the prescribed time.”

One wonders what the Applicant must have been doing for eleven months, waiting for the letter? The letter which dismissed him is dated 14 January 2013. This means that the Applicant was informed of his dismissal “in writing” and must have been given a copy of the letter otherwise he would have been reporting for work. The letter is quite detailed and the Applicant must have been aware of its contents. Further, the record shows in the appeal minutes of 7 January 2013 that he was informed to appeal to the Labour Court. The record also shows that the Applicant is being represented by Union leaders who would be knowledgeable of procedure. I am not satisfied that the Applicant has explained the reasons for the delay satisfactorily.

The next issue to determine are the prospects of success. The grounds of appeal take issue with the composition of the Disciplinary Committee. A look at the record tells a different story altogether. The hearing of 18 February 2012 did not have Chitendera in the Committee. This is the Committee that recommended the Applicant’s dismissal. The record shows the following:

“A/O : Are we properly constituted?  
A/Offender: Yes.”

Chitendera only features in the Appeals Committee which upheld the decision of the Disciplinary Committee. In fact the Disciplinary Committee hearing had to be postponed to allow the Applicant to bring a representative of his choice. I am not persuaded by the Applicant’s submissions on this point.

The Applicant takes issue with the evidence led from the records of Hurungwe District Hospital. The letter from the Ministry of Health Official which the Committee relied upon, clearly stated that the Applicant had not been treated at the hospital. This gave credence to the fact that the Applicant and some other official had forged the letters to cover for the Applicant’s absence from work. It is trite that an Appellate Court can only interfere with a lower tribunal’s findings if there are gross irregularities. A reading of the record does

not lead to that finding. The Court is therefore of the firm view that there are no prospects of success on appeal. The Court will not go on to consider the other issues pertaining to the convenience of the Court and unnecessary delay in the administration of justice.

SANDURA JA had this to say in *Kodzwa v Secretary for Health & Anor* 1999 (1) ZLR 313 (S) at 315 E –

“It is, therefore, well established that the Court has discretion to grant condonation when the principles of justice and fair play demand it and when the reasons for non-compliance with the rules, have been explained to the satisfaction of the Court. (own emphasis)

The Court is therefore of the view that the reasons for non-compliance have not been satisfactorily explained and there being no prospects of success, the application for condonation for late noting of the appeal must be dismissed.