

ANTIOCK CHORUMA v THE STATE

SUPREME COURT OF ZIMBABWE,
BECK, JA, GUBBAY, JA & McNALLY, JA,
HARARE, JUNE 3, 1985.

M.J. Gillespie, for the appellant

F.S. Chambakare, for the respondent

BECK, JA: In this matter the State has applied for the appeal to be struck from the roll and for the appellant's bail to be cancelled because the appellant's Heads of Argument were filed five days late.

The facts are that Mr Gillespie, who appears for the appellant, was only briefed on the very day that the appellant's Heads of Argument should have been filed, and even then the record that accompanied his brief was incomplete in material respects. The fault, therefore, does not lie with him.

Nor does the fault lie with the appellant. It appears to lie with Mr Gillespie's instructing legal practitioner, who, due to an oversight, failed to instruct Mr Gillespie timeously.

In these circumstances we are not prepared to accede to the request of State counsel that the appellant's bail be cancelled. On the other hand, we are also not prepared to condone the breach of this Court's rules, for which no good cause has been shown. It is moreover a breach of a kind that has become distressingly frequent to the great inconvenience of the Court and of the Attorney-General.

Accordingly the appeal is struck from today's roll.

The appellants bail will stand until 17 June 1985 to enable an application to be made before that date for the re-instatement of the appeal to the roll. Failing such application within the time allowed, the appeal will automatically be dismissed. The costs of making any such application for re-instatement are not to be charged to the appellant.

GUBBAY, JA; I agree.

McNALLY, JA; I agree.

Stumbles & Rowe, appellant's legal representatives