

DISTRIBUTABLE (10)

Judgment No. SC 17/08

Civil Application No. 35/08

ZIMBABWE BANKING CORPORATION
v
CECIL MADONDO

SUPREME COURT OF ZIMBABWE
HARARE, APRIL 2 & AUGUST 28, 2008

J C Andersen SC, for the applicant

F Mutamangira, for the respondent

Before CHEDA JA: In Chambers, in terms of r 34 of the Supreme Court
Rules.

This is an application for an order allowing the applicant condonation of one day's delay in noting an appeal.

The application is opposed by the respondent.

The applicant's case is that the delay of one day was a result of an error made by its legal advisors on computing the time within which to appeal.

However, once the error was noticed and appropriate action taken the application for condonation was filed on 22 February.

On the merits, it is clear that the amount of interest charged is an arguable amount which requires that evidence be led to establish certain aspects of the matter.

The respondent rightly concedes that the Court has a discretion in such a matter.

I am satisfied that the period of delay, resulting from an error, is not unduly long in this case, and that the applicant should be afforded an opportunity to contest the issue of the interest charged by the respondent.

The applicant was at fault because of the error by its legal advisors and the respondent should in turn have appreciated the issue raised by the applicant concerning interest.

Opposing the application was therefore unjustified in my view.

I am reluctant to grant costs to either party in the circumstances.

I therefore order as follows -

1. Leave to note an appeal out of time is hereby granted.
2. Each party will bear its own costs.

Gill, Godlonton & Gerrans, applicant's legal practitioners

Mutamangira, Maja & Associates, respondent's legal practitioners