

DISTRIBUTABLE (21)

ANNA MARANGE v JOSEPH CHIROODZA

SUPREME COURT OF ZIMBABWE
HARARE, MARCH 29, 2012

T Mudambanuki, for the applicant

A Debwe, for the respondent

Before: MALABA DCJ, in chambers.

This is a matter which reflects a high degree of negligence on the part of the legal practitioners who handled the applicant's appeal. The appeal was noted out of time about eight years ago on 13 February 2004. The judgment of the court appealed against had been given on 14 January 2004.

All this time there has been no appeal against that judgment. The application for condonation of non-compliance with the rules of court is made and there is no explanation at all as to why the notice of appeal was filed out of time. There is no affidavit from the legal practitioner who filed the notice out of time.

To make matters worse Mr *Mudambanuki* did not file heads of argument. He was made aware of the points taken on behalf of the respondent in the heads of argument that he admitted receiving. When asked why there was no affidavit from the legal practitioner who filed the notice of appeal out of time. Mr *Mudambanuki* could not give an answer. He asked that the applicant be given another chance to get the affidavit in question.

The point he failed to appreciate is that there was no explanation let alone an acceptable one for the failure to comply with the rules. There cannot be condonation of non-compliance with the rules on the application which the applicant deliberately brought to court seeking the relief she clearly was not entitled to obtain. Any legal practitioner must know the basic requirements for an application for condonation of failure to comply with the rules of Court and extension of time within which to appeal.

It is clear that there is a point at which this Court cannot tolerate the degree of lack of diligence by a legal practitioner. The applicant cannot escape the consequences of the negligence of her legal practitioners.

This is a case in which it is not necessary to consider the issue of prospects of success. There is just no explanation of non-compliance with the rules to consider. In any case it is a matter of exercise of discretion by the court *a quo*. There is no evidence that the court *a quo* misdirected itself.

The application is dismissed with costs.

Mudambanuki & Associates, applicant's legal practitioners

Debwe & Partners, respondent's legal practitioners