

**H. J. VORSTER (PRIVATE) LIMITED**  
**v**  
**SAVE VALLEY CONSERVANCY**

**SUPREME COURT OF ZIMBABWE**  
**ZIYAMBI JA, GWAUNZA JA & PATEL JA**  
**HARARE, 27 JANUARY 2014**

*D. Dube*, for the appellant

*E. Morris*, for the respondent

**PATEL JA:** This is an appeal against the judgment of the High Court refusing condonation for the late filing of an application for rescission of default judgment. Both the applications for condonation and rescission were heard together.

The court *a quo* correctly took the view that the main application could only be dealt with after the application for condonation and that the former must fail if the latter is refused. The learned judge found that there was no merit in the application for condonation because the applicant's predicament was due to its own dilatoriness. Having so found, the court proceeded to dismiss both applications with costs on the legal practitioner and client scale.

The grounds of appeal in this matter do not address the merits of the application for condonation or the correctness of the exercise of its discretion by the court *a quo*. Moreover, these grounds of appeal are not only inelegantly framed but also incorrigibly incoherent. In our view, they are utterly devoid of substance.

As for the judgment appealed against, we are unable to find any fault or impropriety in the exercise of the court's discretion. Indeed, counsel for the appellant was unable to identify any misdirection by the court *a quo* in the exercise of its discretion to dismiss the applications for condonation and rescission of default judgment.

As regards costs, we do not think that a case has been made out for an award of costs *de bonis propriis* against the appellant's legal practitioners, as was prayed for by the respondent's counsel. However, we are satisfied that the respondent should receive its costs on a punitive scale because, in our view, the appeal is entirely devoid of merit.

In the result, we are of the unanimous view that the appeal ought to be and is hereby dismissed with costs on a legal practitioner and client scale.

**ZIYAMBI JA:** I agree.

**GWAUNZA JA:** I agree.

*Cheda & Partners*, appellant's legal practitioners

*Coghlan, Welsh & Guest*, respondent's legal practitioners