

**IN THE LABOUR COURT OF ZIMBABWE  
HELD IN HARARE, 17 JANUARY, 2014 &  
14<sup>TH</sup> FEBRUARY, 2014**

**JUDGEMENT NO. LC/H/53/14  
CASE NO. LC/CON/H/156/12**

In the Matter Between

**DOUGLAS MAKOSA**

**Applicant**

**And**

**UNIVERSITY OF ZIMBABWE**

**Respondent**

Before The Honourable E. Makamure: Judge

**For Applicant : Mr L. Mauwa (Legal Practitioner)**

**For Respondent: Mr S. Zingano (Legal Practitioner)**

**MAKAMURE J.**

This matter was set down for the purposes of hearing argument on an application for condonation of late noting of an appeal. The parties did not file heads of argument as required by the Rules of this Court – Statutory Instrument 59/2006 (Rule 19). When parties appeared I enquired as to why heads not been filed.

Counsel for the applicant apologised for the non-compliance. Thereafter he told the Court that the respondent's erstwhile legal practitioners had agreed with him (Counsel for the respondent) that they would argue the matter on the basis of the record and without filing heads of argument as required by Rule 19.

With the greatest respect I found this attitude by legal practitioners unacceptable. Legal practitioners are officers of this Court. They should assist the Court in ensuring that labour disputes are resolved in an effective and expeditious manner. The present application was filed on 25 September 2012. On 9 October 2012 the respondent filed its notice of opposition. Thereafter neither party filed any papers. On 16 December 2013 parties were served with

notices of set down. Still no papers were filed on behalf of the parties. Rule 19 provides as follows:-

- (1) Where an applicant or appellant is to be represented by a legal practitioner at the hearing of the application, appeal or review, the legal practitioner **shall** –
  - (a) within fourteen days of receiving a notice of response to the application, appeal or review, lodge with the registrar heads of argument clearly outlining the submissions he or she intends to rely on and setting out the authorities, if any, which he or he intends to cite; and...
- (2) ...
- (3) Where heads of arguments that are required to be lodged in terms of sub rule (1) or (2) are not lodged on behalf of the applicant, appellant or respondent, as the case maybe, within the period or at the time specified in those provisions –
  - (a) the registrar shall nevertheless set own the application, appeal or review for hearing in terms of rule 21, unless, at any time before the matter is set down, the party who is not in default applies to a President of the Court in chambers for the application, appeal or review to be dismissed or granted, as the case may be;
  - (b) the defaulting party shall (if no application under paragraph (a) is made or granted) be barred and the Court may deal with the matter on the merits.” (emphasis added)

The Rules are clear, legal practitioners are required to file heads of argument. They have no option. In the present case, no heads were filed so the registrar was obliged to set the matter down. The aim of setting a matter down where heads of argument have not been filed is not an encouragement for legal practitioners avoid to compliance with the Rules and thereby lead them to making arrangements other than what is intended. Rather the aim is to ensure that all matters are heard. Where parties appear to have forgotten about their case, the Registrar is not expected to leave that uncompleted matter on their records. The aim is to reduce the backlog in a practical fashion. Thus where a matter has been set down without heads of argument, it is a warning by the Registrar that the parties should act. If parties are serious, they will ensure that one way or the other, they comply with the Rules.

The fact that there is a provision for matters to be set down without heads of argument should not be seen as a weakness in the Rules. It is a source of

strength. Its aim is to ensure that all matters are heard and therefore reduce the backlog. That way industrial justice is delivered as expeditiously as humanly possible.

In the result I find that the parties in the present matter are not serious with litigation. The Court has noted the apology tendered by Counsel for the applicant. However, the Rules must be observed. The matter will therefore be struck off the roll.

Accordingly it is ordered that the matter be and is hereby struck off the roll.

***Mutezo and Mugomeza***, Legal Practitioners for the Applicant  
***Ziumbe and Partners***, Legal Practitioners for the Respondent