HB 88-16
HC 473-16
XREF HCA 25-13
XREF BB189-12

SOLOMON MHENYU
**versus**
RUTH MLAUDZI

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 16 MARCH 2016 AND 18 MARCH 2016

**Urgent Chamber Application**

*J. Maweni* for the applicant
*S. Mlaudzi* for the respondent

**MATHONSI J:** The applicant was ordered by the magistrates court sitting at Beitbridge to pay the respondent a sum of $9800-00 by a judgment delivered on 28 January 2013. He lodged an appeal to this court on 1 February 2013.

By letter dated 13 November 2015, which he says was received by his legal practitioners "sometime in November 2015", the registrar of this court notified the applicant of the sad news that his appeal had lapsed in terms of the rules of court by reason that he had failed to pay the costs of preparation of the record and to give security for the respondent's costs of the appeal.

The applicant did not do anything about that outcome until he received notification from the messenger of court on 22 February 2016 to the effect that his house number 4542 Medium Density Beitbridge had been attached for sale in execution on 4 March 2016. Rising from his slumber he deposed to the founding affidavit in this urgent application the following day on 23 February 2016.

He has therefore brought this application on a certificate of urgency seeking what is in essence final relief being the reinstatement of his appeal and a condonation of his failure to pay the costs of preparation of the record and the respondent's security for costs.

The application is fraught with irregularities. In the first place the applicant cannot seek final relief in an application of this nature. Secondly, he cannot seek condonation or a

reinstatement of an appeal by urgent application and certainly cannot hope to stay execution by such an application where he does not even seek an order for stay.

The applicant seems to wallow in the misconception that by reinstating his appeal that takes care of execution against his property. He has simply made a wrong application. He should have made an application for stay of execution. Whichever way, the applicant cannot be heard on an urgent basis at all because this appears to be self-created urgency, that urgency which stems from a deliberate inaction until the day of reckoning is nigh.

The applicant was aware of the dismissal of his appeal in November 2015 but did nothing. It is only after three months that he has decided to come on an urgent basis and only because of the attachment of his property. It does not work that way.

This is an application which should not have been made in the manner that it has been made especially in light of the fact that the applicant is represented by a legal practitioner. For that reason there is need for costs to be awarded to the respondent, who has been unnecessarily put out of pocket, on a higher scale as a seal of the court's displeasure at such blatant disregard of the rules.

In the result, it is ordered that:

1. The hearing of the matter as urgent is hereby refused.

2. The applicant shall bear the respondent's costs on a legal practitioners and client scale.

*Mutendi and Shumba C/o Sansole & Senda*, applicant's legal practitioners
*W. Tshakalisa, C/o S. Mlaudzi & Partners* respondent's legal practitioners