H. J. VORSTER (PVT) LTD
versus
SAVE VALLEY CONSERVANCY

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 3 April 2013

OPPOSED APPLICATION: EX TEMPORE

D. Dube, for the applicant
E. Morris , for the respondents

      MATHONSI J: There are 2 applications before me, namely an application for condonation of the late filing of an application for rescission of judgment and the application for rescission of judgment. The parties agreed that both matters be heard at the same time.

      Ideally the application for rescission of judgment should not have been filed without condonation of its late filing. Filing it at the same time as the application for condonation does not cure the defect. Now that it has been filed it still cannot be considered without its late filing being condoned. Therefore a dismissal of the application for condonation essentially brings the rescission of judgment application to its knees.

      The applicant is barred in both matters by reason of failure to file heads of argument timeously, it having attempted to file heads of argument this morning. Mr Dube appearing for the applicant confirmed that the applicant was served with the respondent's heads of argument on 7 March 2013, almost a month ago.

      I do not agree that whatever order HLATSWAYO J made directing that the 2 matters be set down urgently to be heard at the same time, had the effect of suspending the operation of the rules of court as argued by Mr Dube. In fact that argument is simply disingenuous.

In terms of r 238 (2b), I intend to deal with the matter on the merits. Looking at the application, it is clear that the applicant has not made a case for condonation especially as the papers show that its predicament is as a result of its own dilatoriness.

Accordingly both applications are hereby dismissed with costs on a legal practitioner and client scale.

Cheda & Partners C/o Mawere & Sibanda, applicant's legal practitioners
Coghlan Welsh & Guest, respondent's legal practitioners