

TENDAI CHIDODO
versus
ST MICHAELS HIGH SCHOOL

HIGH COURT OF ZIMBABWE
CHITAPI J
HARARE, 7 February, 2018

**Chamber Application – Condonation and Reinstatement of dismissed application for
Registration of Arbitral Award**

CHITAPI J: The applicant through his legal practitioners, Messrs Mtsikidze and Mucheche filed this application on 18 August, 2017. The brief background to the filing of this application can be summarised as follows:

1. The applicant was granted an arbitral award against the respondent for payment of damages in lieu of reinstatement following the resolution of a labour dispute arbitrated upon by the Arbitrator Mr Nhimba on 15 October, 2014.
2. The applicant applied for the registration of the arbitral award as an order of this court for purposes of enforcement. The application was filed in this court under case No HC 10331/14.
3. When the application was placed before a judge of this court, the judge raised a query. The query was that the applicant had not filed the certificate by the arbitrator authenticating his award. The query was raised on 25 January, 2017.
4. The applicant's legal practitioner filed the applicant's supplementary affidavit attaching a copy of the arbitrator's certificate on 10 February, 2017. The legal practitioners also wrote an accompanying letter of the same date advising the Registrar that the query had been answered. They requested the Registrar to refer the application back to the judge for determination.
5. On 8 June, 2017, the Registrar wrote to the applicant's legal practitioner a letter placing the applicant on terms to address the judge's query within 30 days, failing which the application would be dismissed pursuant to the provisions of High Court Practice Direction 2/16 as set out in paragraphs 3.2 and 3.3.

6. On 15 June, 2017, the applicant's legal practitioners responded to the Registrar's letter of 8 June, 2017. In the response they advised the Registrar that the query had been addressed. The legal practitioners attached a copy of the supplementary affidavit as well as the letter which I have referred to in paragraph 4 above.
7. On 2 August, 2017, the Registrar purported to act in terms of paragraph 3.3 of Practice Direction 2/16 and dismissed the application for registration of the award. The Registrar recorded the reason for the dismissal as that the applicant had failed to address the judge's query within 30 days as directed in the Registrar's letter dated 8 June, 2017.

The Registrar was of course wrong to dismiss the application because the query was addressed on 10 February, 2017. As to whether the response to the query was adequate, that decision would have been for the judge to make. What appears to have happened in this case was a typical case of the left hand not knowing what the right hand was doing in that the Registrar acted to issue a compliance directive when there had already been compliance. I can only comment that there is needed an improvement in the filing and processing systems in the Registrar's office. The Registrar perfunctorily issued a directive and acted on it without justification. The result was a delay in the disposal of the application by the judge and inconvenience and unnecessary costs occasioned to the applicant.

Following the wrongful dismissal of the application by the Registrar as aforesaid, the applicant then filed the present application for condonation and reinstatement of the dismissed application on 18 August, 2017.

The respondent filed a notice of opposition and opposing affidavit to the application for condonation and reinstatement. The opposing papers were filed on 8 September, 2017. The main ground for the opposition was that the arbitral award had been compromised by the parties in that they had found each other and agreed a payment plan following which the arbitral award had been fully satisfied. There was consequently no reason for the application for registration and the applicant was abusing the court process.

When the record was referred to me, I raised a query after perusing the notice of opposition. I raised the query on 18 September, 2017. The query reads as follows:

"1. The application for condonation is opposed on the basis set out in the respondent's affidavit more particularly that the arbitral award between the parties was compromised.

2. File your response to the opposing affidavit by no later than 22 September 2017 failing which your application will be dealt with on the basis that you do not take issue with the respondent's contentions"

The applicant's legal practitioners did not respond to my query. The Registrar made a follow up on the query with the applicant's legal practitioners. There was no response. It appears to me that it constituted conduct unbecoming of a legal practitioner to fail to respond to a communication from a judge as happened in this case. It is a culpable act of misconduct for a legal practitioner to fail to respond to correspondence from another legal practitioner. It would clearly be a more serious act of misconduct to fail to respond to correspondence generated by a judge of the court that the party ignoring the correspondence looks up to uphold and protect such party's rights.

Legal practitioners are officers of the court and practise under licence issued by the court in that this court admits and registers them as its officers. The failure by the applicant's legal practitioner to respond to the query deserves censure despite the fact that I indicated in my directive that I would uphold the respondent's contentions if I did not receive a response within the time which I gave out.

There has been great inconvenience caused by the failure by the applicant's legal practitioner to respond to my query. The inconvenience lay in that, given the history of misfiling of papers and wrong decisions having been taken by the Registrar previously, I had to await and direct that the records be checked as to whether or not there was no response by the applicant's legal practitioners lost somewhere in the system.

Having expressed my dissatisfaction with the conduct of the applicant's legal practitioner, I hope that like-minded legal practitioners take heed of the court's concerns and avoid engaging in dishonourable conduct of not responding to queries raised by the court or judge.

I dispose the application as follows:

- (a) The application be and is hereby dismissed with costs.
- (b) Copy of this judgment be brought to the attention of the Secretary of the Law Society so that he can take such steps as are necessary to remind legal practitioners to always address queries raised by the judges and the court as this assists in the speedy resolution of matters in line with the constitutional dictates in s 69 (2) which

provides for the right of every person to “a fair” and “speedy” determination of “civil rights and obligations.”

Matsikidze and Mucheche, applicant’s legal practitioners
Mboko T.G Legal Practitioners, respondent’s legal practitioners