

**IN THE LABOUR COURT OF ZIMBABWE  
HARARE, 21 NOVEMBER 2013  
AND 06 DECEMBER 2013**

**JUDGMENT NO. LC/H/665/2013  
CASE NO. LC/H/345/2013**

In the matter between:-

**AFRICARE ZIMBABWE**

**Applicant**

And

**EDWARD MISIHAIRABWI & 14 ORS**

**Respondent**

Before The Honourable F.C. Maxwell,; Judge

**(IN CHAMBERS)**

**MAXWELL J.;**

On 17 September 2013 a default judgment was issued in favour of the Respondent. The matter had been set down for hearing on 17 September 2013 at 0900 hours. Applicant alleges that the legal practitioner of record was unable to attend the hearing due to ill health. He had been ill as from 13 September 2013 as evidenced by Casualty Unit case notes from the Avenues Clinic attached as Annexure A to the application. The deponent to the founding affidavit, one Mafo was requested to attend Court and seek a postponement of the matter to a date convenient to the other party and the Court.

Mafo attended Court and advised Respondent's legal practitioner of the request for postponement. Mafo had another matter set down for hearing at the High Court at 1000 hours. Respondent's legal practitioner was not opposed to the request for a postponement. At 0930 hours the parties were ushered to the President's chambers. The President was not yet in. To avoid being late for the High Court matter Mafo requested the Respondent's legal practitioner to seek a postponement of the matter on behalf of the Applicant. Mafo proceeded to the High Court.

Mafo was later advised that the President refused to hear the application and granted judgment in default. Applicant has submitted that the default was not willful and that the prospects of success on the merits are reasonable. The reasonable prospects are based on the allegation that:

- 1) the appeal is based on factual findings by the Arbitrator.
- 2) the Arbitrator did not err in holding that the Appellant did not have a legitimate expectation to be re-engaged by the Respondent.
- 3) Appellant failed to prove that there was casualisation of labour.

Applicant further alleges that the Respondents stand to suffer no irreparable prejudice by the granting of the rescission.

It is trite that for an application of this nature to succeed, Applicant must establish a good and sufficient cause. In doing so such factors as

- the length of delay in applying for rescission.
- the reason for the default.
- the prospects of success, and
- the balance of convenience should be considered.

see **Redstar Wholesalers v Livingstone Mutomba** SC 142/04

I am satisfied that the explanation given for the default is reasonable. The default judgment was issued on 25 September 2013 and the present application was filed on 27 September 2013. There was no inordinate delay. The balance of convenience favours the granting of the application. Accordingly the application succeeds.

Wherefore it is ordered that

1. The application for rescission of the judgment number LC/H/343/13, being with merit, be and is hereby granted.
2. The default judgment issued in judgment number LC/H/343/13 be and is hereby rescinded.
3. The Registrar is directed to set down the matter for hearing on the merits.
4. There is no order as to costs.