

JANE NETSAI NYAMUKUNDA
versus
GOLDEN SAOPA

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 8 June 2020

Opposed Application

C Chibaya, for the applicant
B. Majamanda, for the respondent

MUZENDA J: This is an application for condonation for late filing of notice of appeal against a judgement handed down at Rusape magistrate court on 20 June 2018 where the court *a quo* granted an interdict to the application and ordered her not to encroach with the respondent's plot 5 Lot 1 Chimbi Source and barring applicant from interfering with farming activities of the respondents at that plot. Appellant was also ordered to remove her structures she had erected in plot 5 forthwith.

The application was filed with this court on 24 August 2018. The respondent is opposing the application

The applicant in her affidavit states that she instructed a fraudster who was masquerading as a legal practitioner and appeared on her behalf at court. A perusal of the record of proceedings before the magistrate shows that a notice of opposition was properly filed and the application was represented on the date of hearing and she was also represented in this application. She lost the matter in the court *a quo* and sought a new legal representative to prepare the appeal as well as this application for condonation. In her application for condonation she stated in her affidavit that she fell ill and sought assistance from her church. The affidavit falls short for detail pertaining to the date she fell ill, the date she learned about the judgement, the date she recovered, the date she consulted her legal practitioners to prepare the appeal and condonation, the date she was advised of the legal fees required by the lawyers as well as the date her children assisted her with the required fees. All this information is scanty from the record. This information would assist this court to determine the reasonableness of the explanation for delay. The heads of argument filed on behalf of the applicant equally came

too short on that aspect and the initial greater part of the heads seem to be addressing issues and law relating to the appeal against the court a quo which appeal is not yet before this court. Such arguments should have properly been dealt with under the heading of prospects of success on appeal. The important subject of condonation was contained on the last 2 pages of the heads, yet that topic should have occupied the greater part of the heads for condonation. The applicant has failed to properly explain the time aspect which is central to the application for condonation. I have found that such a failure goes to the root of the application and it ought to fail.

On the aspect of the probability of success on the merits of the appeal, after reading the draft notice of appeal and record of proceedings, the court a quo clearly ruled that the focal point of dispute between the parties relates to the boundaries of plot 5 and plot 24. That issue can best be resolved by the Ministry of lands and Makoni Rural district council who can intervene and show both parties the extent of their plots and the importance of protecting the boundaries of the dam. Hence the probability of success on the merit does not favour the applicant. I discern no misdirection in the judgement of the court a quo which concluded that the requirements of an interdict application were met by the respondent herein.

As a result the following order is returned.

The application is dismissed with no order as to costs.

Messrs Bvuma and Associates, applicant's legal practitioners
Messrs Khupe Chijara law Chambers, respondent's legal practitioners