

Judgment No. SC 14/04
Civil Application No. 286/03

TEL ONE v (1) B MHIZHA (2) P MABONEKA

SUPREME COURT OF ZIMBABWE
HARARE, FEBRUARY 27 & MARCH 2, 2004

E Mushore, for the applicant

H Simpson, for the respondents

Before: ZIYAMBI JA, in Chambers, in terms of the Supreme Court Rules

The applicant herein seeks condonation of its failure to note timeously an appeal against the decision of the labour court.

The judgment was handed down by the Labour Court on 7 August and received by the applicant on 27 August 2003. Instructions were given to the applicant's legal practitioners on 28 August 2003. An advocate was briefed on time to file the notice of appeal by 19 September 2003 but was unable to do so because the record of proceedings was unavailable. There followed about two months during which the applicant's legal practitioner, who had not acted for the applicant in the earlier cases, sought to put the records together and finally draw the notice of appeal.

I have considered whether as, Mr *Simpson* argued, the delay is inordinate and the prospects of success on appeal are non-existent.

I concluded that although the delay was lengthy it was not, in the circumstances, inordinate and the prospects of success on appeal are reasonable, as the respondents have admitted that they were among the two hundred-and-thirty-eight involved in the matter of *Peter John Manyonda & Ors v PTC SC 110/99* and the question of whether the Labour Relations Officer had jurisdiction to entertain the applications brought by the respondents in terms of s 93 of the Labour Relations Act or whether their dispute had, by then, prescribed could be decided in the applicant's favour although the labour relations officer apparently found that the disputes had not prescribed.

Also, in view of the respondents' admission in the opposing affidavit that they were involved in the earlier case SC 110/99, a claim of *res judicata* might well succeed.

The third issue which it is sought to have determined on appeal is that the Tribunal was of the view that the issue of prescription, having been raised before the Labour Relations Officer and decided in favour of the respondents, could not be raised before it in the absence of a cross-appeal by the applicant. The applicant, on the other hand, is of the view that this being a point of law it can be raised at any time, irrespective of whether or not there was a cross-appeal.

In my view this is a point of law which ought to be decided by the Court and not by a single judge in chambers. Accordingly, the application is upheld and an order is issued in terms of the draft order filed of record.

Coghlan Welsh & Guest, applicant's legal practitioners

Manase & Manase, respondents' legal practitioners