

REPORTABLE (52)

Judgment No. SC. 62/05

Civil Application No. 302/05

(1) JOHN MANGOSHO (2) CONELLIA MANGOSHO v

(1) BILLIE SAINI KAHARI (2) WEBSTER MAFUNDO  
(3) THE REGISTRAR OF DEEDS

SUPREME COURT OF ZIMBABWE  
HARARE, OCTOBER 25 & NOVEMBER 9, 2005

*D T Mugadza*, for the applicants

*Ms J Wood*, for the second respondent

No appearance for the first and third respondents

Before: CHEDA JA, In Chambers, in terms of rule 31 of the Supreme Court Rules

This is an application for condonation of the late noting of an appeal. The applicants are husband and wife. They have been occupying a property known as Stand No. 1134, Glen Norah A Township, Harare (“the property”) since 1989. The applicants say initially they were renting the property from the first respondent but then bought it from him in 1992. They did not take transfer of the property.

In October 2002 the first respondent sold the same property to the second respondent. The second respondent took transfer of the property. This second sale was contested at the High Court, and judgment was granted in favour of the respondents.

The applicants wish to appeal against that judgment, but they are out of time. They now seek leave to note their appeal out of time.

I am not prepared to grant them the leave sought for the following reasons –

1. They have failed to give a satisfactory explanation for the delay.

The first applicant says the judgment was given on 23 February 2005, but he was not advised by his then legal practitioner who was representing him. He only got to know of the judgment on 7 March 2005 when he was served with a writ of ejectment. He asked his legal practitioners to file an appeal on 9 March 2005.

Nothing was done then. The appeal was only filed on 6 April 2005. This was about thirty-three days after the first applicant got to know about the appeal and about forty days from the date on which it was handed down.

2. A letter was written to the applicants' legal practitioners on 13 May 2005, pointing out that they were out of time.

The applicants did not respond to this letter until 23 June 2005. Even after that, the application for condonation was only filed in September 2005.

Mr Mwonzova signed an affidavit in which he says he was campaigning for elections and sought to make an excuse for the other legal practitioner by saying that that other legal practitioner was inundated with work.

3. The applicants also failed to comply with the provisions of rule 34 of the Supreme Court Rules ("the Rules"), in that no arrangement was

made about the preparation of the record and no undertaking was made regarding payment for its preparation.

The appeal is therefore deemed to have lapsed in terms of rule 34(5) of the Rules.

4. The applicants chose to say nothing about the merits and the prospects of success if the application is granted.

Instead the first applicant only referred to the grounds of appeal. Those grounds do not contain anything that can be considered on the merits and the prospects of success on appeal.

Accordingly, the application for condonation of the late noting of the appeal is dismissed with costs.

*Mwonzora & Associates*, applicant's legal practitioners

*Byron Venturas & Partners*, second respondent's legal practitioners