

JOANA CHITIGA  
And  
PATRICIA MUDZVITI  
And  
ROSEMARY RASHAMIRA  
And  
PATRICIA MATSIDZE  
And  
ESTATE LATE IRENE MUTAIZA  
Versus  
ESTATE LATE ELIZABETH DIANA MATSIKIDZE  
And  
CHIWORD INVESTMENT TRUST  
And  
MASTER OF THE HIGH COURT BULAWAYO N.O  
And  
ASSISTANT MASTER OF THE HIGH COURT,  
MASVINGO N.O  
And  
REGISTRAR OF DEEDS HARARE N.O  
And  
REGISTRAR OF THE HIGH COURT MASVINGO N.O

HIGH COURT OF ZIMBABWE  
ZISENGWE J  
MASVINGO, 18 March 2024  
Judgment delivered on 9 May 2024

**Opposed matter**

*J. Mpoperi*, for the applicant

*G. Nyoni*, for the second respondent

ZISENGWE J: This is an application for the reinstatement of a pre-trial conference (PTC) which was erroneously deemed abandoned and lapsed by the registrar. The dispute has its

roots case No. HC 211/20(the main matter) the latter which was claim bought an motion but referred to trial by the court after it was rules to be incapable of resolution on the papers.

Consequent to such referral to trial, the court directed as part of the case management process that the parties were to appear before Mawadze J on 29 October 2021 for a PTC and that the parties were to file their PTCC issues not later than 27 October 2021. For reasons .....in their founding affidavit of the present, application in particular the death of one of the parties to the to the intended trial, Elizabeth Daina Matsikidze necessitated the registration of her estate and the ..... of as executor who would then take over her role.

Following letters directed to the court by the applicants on the one hand and the second respondent on the other, I gave the following directions.

**RE: JOANA CHITIGA & OTHERS v ELIZABETH DIANA MATSIKIDZE N.O &  
OTHERS: HC 211/20: FURTHER DIRECTIONS BY THE COURT**

In light of the contents of the letter by the plaintiff's legal practitioners dated 1 November 2021 and that of the 1<sup>st</sup> defendant's legal practitioners dated 26 October 2020 (erroneously indicated thereon as 26October 2020) advising of the death of Elizabeth Diana Matsikidze, and in light of the meeting held in chambers between the Judge and Ms Zvanaka for the plaintiffs and Mr Ruvengo for the Defendants, it is hereby directed as follows:

1. The PTC in the above matter is hereby postponed *sine die* pending the appointment of a new executor or executors for Estate Late Sinai Alias Zinai and Estate Late Lucas Matsikidze.
2. The matter is similarly postponed pending the registration of the estate of the late Elizabeth Diana Matsikidze.
3. The Master of the High Court (Bulawayo) is hereby directed to transfer the file for the proceedings in DRB 1087/16 (Estate Late Sinai Alias Zinai) to the Master of the High Court (Masvingo).
4. The Additional Assistant Master Masvingo is hereby directed to transfer the file containing the proceedings Estate Late Lucas Matsikidze (WE 189/15) to the Master of High Court Masvingo.
5. The Master of High Court Masvingo to convene an edict meeting of deceased's relatives within 12 weeks of receipt of this minute for the appointment of a new executor or

executors for each of the above mentioned estates to replace Elizabeth Diana Matsikidze who is now deceased.

6. Pursuant to 5 above the Master of High Court Masvingo is directed to file a report with this court not later than seven days after convening the said edict meetings.

## ZISENGWE J

To: Saratoga Makausi  
Plaintiff's Legal Practitioners

And To: Messr moyo & Nyoni  
% Ruvengo & Maboke Legal Practitioners

And To: Master of the High Court  
Bulawayo

And To: Additional Assistant Master  
Masvingo

And To: Master of the High Court  
Masvingo

On 2 December 2021 the registrar wrote to the applicants on the standard form as follows:

We refer to the above matter which was postponed *sine die* by the Honourable Judge on 10 November 2021.

Please be advised that in terms of paragraph 10 of practice direction 3/15 you have 3 months, calculated from the date of postponement/removal from the roll, with which set this matter down.

Failure to set the matter down within the stipulated time will result in the registrars regarding the matter as abandoned and deeming it to have lapsed in terms of paragraph 10 of Practice Direction 3/13.

Some 3 months later, on 23 February 2022 to be exact, the registrar the wrote to the applicant in the following terms

*“It is noted that your matter was postponed sine die on 10 November 2021. In terms of Rule 66 (3) of the High Court Rules 2021, you have 3 months from the date of payment sine die within which to set the matter down.*

*We note that you have not set down the matter and in terms of rule 66 (3) of the High Court rules, 2021 the matter is hereby regarded as abandoned and therefore deemed to have lapsed.*

*Should you be aggrieved by this decision you will find recourse in the Rules of the court.”*

It is common cause that the above decision by the registrar was made in error because the setting of the matter for PTC was conditional upon fulfilment of certain conditions as itemised in paragraph 1-6 of the courts directions of 10 November 2021.

It would appear that those conditions have would been satisfied hence the applicant’s desire to have the matter set down for PTC. However, the said respondent while acknowledging the error, insists, as a preliminary objection to the set down of the PTC, that the course taken down by the applicant is wrong and procedural. It argues that the applicant’s must first have the erroneous decision of the registrar set aside on review. Its argument is that the said decision being an administrative decision, cannot be ignored or disregarded as it acts as a barrier to the application for the application for the ..... of the PTC.

Relying chiefly on the decision in *Basera v The Registrar of the Supreme Court & Ors* sc 35-22, it was argued by the second respondent that the effect of the decision of the registrar was that the matter was no longer before the court as same had been terminated and was therefore no longer before the court as same had been terminated and was therefore no longer available for adjudication.

I then inquired from the parties whether the court could not invoke rule 7 of the High court rules or its inherent power to set aside the registrar’s erroneous decision and have the application heard on the merits. The parties then agreed to file supplementary leads of argument to address they specific point. They have since done so and I must express my gratitude to in council for that well-..... heads.

Rule 7 of the High Court Rules, 2021 “the rules” provides as follows:

.....  
.....  
.....

The decision of the registrar was a quasi-judicial decision of the Supreme Court, realising her error in prematurely deeming an application as abandoned and dismissed invited the applicant to proceed in terms of rule 13 of the Supreme court rules.

Rule 13 is a special procedure embedded in those rules for setting aside orders of the registrar. It sets out in elaborate fashion the stages that must be followed by a party aggrieved by the decision of the registrar they is precisely what the applicant did in that matter.

There is no equivalent provision in the High Court rules, 2021.

I briefly pause here solely for purposes of comparison to refer to Practice Direction 1 of 2022 which deals with summons that are deemed lapsed and the avenue for redress available to a parties affected by such decision it reads

.....  
.....  
.....

There is no equivalent to this provision under Practice Direction 3/2013.

The closest the rules come to addressing the present scenario is rule 29 (1) which provides as follows;

.....  
.....  
.....

However, sub rule (3) circumstances the set nation under which the court may (either on application or mero motu) correct, rescind or vary an order or judgement namely, that- “..... *it must be satisfied that all parties ..... may be affected have been notified of the order proposed.*”

See *Changnete v Minister of Home affairs* 1990 (2) SA 836 (W) where the following was

The common law power of the High Court (alongside the Supreme Court and Constitutional Court) is captured in section 176 of the Constitution which reads:

*“176 Inherent powers of the Constitutional Court, Supreme Court and High Court  
The Constitutional, the Supreme Court and the High Court have inherent power to protect and regulate their own processes and to develop the common law or the Customary Law, taking into account the interests of justice and the provisions of the Constitution.”*

The case of *Changnete v Minister of Home affairs* (Supra) provides comprehensive analysis of the impart of the inherent power of a superior court in general and its inherent power to regulate its processes in particular. After referring to a passage in *Brenner Vulkan Schiffbau and Maschinenfabric v South India Shipping Corp* (1981) 1 ALLER 289 (HL), Flemming J concluded

“A court can retain its character.....

.....

.....

In *The President of the Senate & Ors v Innocent Gonese & Ors* CCZ -01-21, the Constitutional Court used its inherent power to regulate its own process in a novel situation which had arisen for which there was no existing legal principle. The issue was whether or to extend the life of a bill where its passage in the Senate had been interrupted by some the occurrence of an unforeseen event in circumstances where the bill would otherwise have been lapsed.

MAKARAU JCC had this to say at page 4 of the judgement

*“It is further common cause that section 176 of the Constitution, grants inherent jurisdiction to this court to protect and regulate its own process in addition to developing the law in the interests of justice and in accordance with the law.*

*This application, being an application to extend the lifespan of an order given earlier by the court, as an incident of the exercise of the inherent jurisdiction of this court to control and regulate its own processes.”*

This court can in my view use its inherent powers to regulate its own processes to set aside ton erroneous decision of the registrar to deem a matter abandoned an lapsed. To insist that an application be mounted would be to unnecessarily dog the system with an application who’s virtually forgone.

Was the decision of the registrar erroneous?

As earlier stated the direction of this court issued on 10 November 2021 postponong the PTC *sine die* was that the resumption of the setting down of that PTC was conditional upon the fulfilment of a number of events. I must also add that the formulation of this condition was by consensus through the direct report of the parties. This was on upon realisation that the PTC could not be held *inter alia* on account of the demise of one of the parties to the litigation.

The Registrar erroneously assumed that this was a postponement *sine die* in the ordinary sense hence invoked the provisions of Practice Direction 3/2023 and rule 66 (3) of the rules.

Having thus concluded that the decision of the registrar was erroneous, not only does the decision lead itself to being set aside but also it renders the discussion on the events of the application for reinstatement virtually unnecessary. The vacation of the erroneous order of the registrar implies that no order exists for the reinstatement of the PTC. This latter was only held in abeyance pending the fulfilment of certain conditioned which have now been satisfied.

Even if one were to be overly cautious and insist on the satisfaction of the requirements for reinstatement of a matter that has been deemed abandoned, applicants have imply satisfied the same.

**Costs**

- a) The applicants did not pray for costs which they mounted the chamber application for the reinstatement of the PTC. In all probability they did not expect the application to be opposed.
- b) Accordingly the application for the reinstatement of the Pre-trial conference (PTC) in HC 211/20 succeeds and the 6<sup>th</sup> respondent is hereby ordered to reinstate the Pre-trial conference undo case number HC 211/20.
- c) There shall be no order as to costs.

*Saratoga Makausi Law Chambers*, applicant's legal practitioners.

*Moyo & Nyoni, Legal practitioners*, the second respondent's legal practitioners