

MENDSON M. MPOFU

Versus

BULAWAYO PUBLIC LIBRARY

And

JOSEPH SIGOBA

And

**MINISTRY OF PUBLIC SERVICE
LABOUR & SOCIAL WELFARE**

IN THE HIGH COURT OF ZIMBABWE
MAKONESE & KABASA JJ

BULAWAYO 20 & 30 SEPTEMBER 2021

Civil Appeal

Appellant in person
Ms S. Sithole for 1st and 2nd respondents

MAKONESE J: This is an appeal against the whole judgment of the magistrate sitting at Bulawayo on the 19th December 2019.

The notice of appeal is couched in the following terms:

“Please take notice that the above named appellant hereby notes an appeal against the whole judgment of the Magistrates’ Court including the order for costs handed down by her worship A. Mbeure on 19th December 2019 in case number CC 442/2019.

Please take further notice that the appeal exposes and challenges the nature of the misdirection by the trial court including some glaring omission as well as the reasoning of the court *a quo* ...”

The appellant, a self-actor, then goes on to set out lengthy “grounds of appeal spanning some 7 pages. There are 14 grounds of appeal. The grounds of

appeal are extensive and contain case law authorities and direct attacks on the magistrate in the court *a quo*.

Factual background

On 19th December 2019, the applicant filed a court application in the Magistrates' Court seeking an order in the following terms:

“It is ordered that

1. The applicant's application be and is hereby granted.
2. The 1st respondent and 2nd respondents are hereby interdicted from holding an Annual General Meeting on 30th September 2019 pending an intervention by the Minister of Public Service Labour and Social Welfare.
3. In the event that at the time this honourable court sits to hear the arguments in this matter on 7th October 2019 or at any time hereafter, 1st and 2nd respondents be and are hereby automatically barred from organizing and holding any other meetings in future of 1st respondent without clean hands until and unless the Minister of Public Service Labour and Social Welfare intervenes in terms of the Private Voluntary Organisations Act.
4. No order as to costs.”

In simple terms, the appellant sought in the court *a quo* to interdict the 1st and 2nd respondents from holding an Annual General Meeting on 30th September 2019. The learned magistrate dismissed the application in a detailed judgment. Not only did the court *a quo* make a finding that the order sought had been overtaken by events as the Annual General Meeting had already been held at the time the matter was heard, but more importantly the court determined that the appellant had failed to meet the requirements for an interdict. In his founding affidavit the appellant alleged that the management committee of the Bulawayo Public Library was afflicted with maladministration and engaged in criminal activities. Appellant alleged that 2nd respondent and other management committee members did not qualify to hold meetings on behalf of 1st respondent (Bulawayo Public Library). In the appellant's view an interdict had to be granted preventing the holding of an Annual General Meeting, pending the intervention of the Minister of Public Service, Labour and Social Welfare. The court *a quo* found no merit in the application and dismissed it. That decision is the subject of this appeal.

Whether the notice of appeal lacks precision and therefore null and void

Order 31 Rule (1) (4) (b) of the Magistrates' Court (Civil) Rules, 2019 provides that:

“A notice of appeal or of cross-appeal shall state the grounds of appeal, concisely and clearly the findings of fact or ruling of law appealed against.”

The position of the law is now well established that a notice of appeal must comply with the mandatory provisions of the Rules, and that if it does not, it is a nullity and cannot be condoned or amended. See *Jansen v Acavalos* 1993 (1) ZLR 276 (S) and *Econet Wireless (Pvt) Ltd v Trustco mobile & Ors* SC-43-13.

The appellant's purported grounds of appeal are rumbling and lengthy statements that are argumentative. They do not state concisely and clearly the findings of fact or ruling on the law appealed against. While it is not necessary in this judgment to repeat verbatim the entire grounds of appeal, I shall illustrate the impropriety of the grounds in the notice of appeal by setting out in detail one of the grounds of appeal raised in paragraph 11. The appellant contends that:

11. Misuse of the requirements of an interdict

The court a quo grossly erred and seriously misdirected itself on the facts which amounted to misdirection on the law in misusing the requirements of an interdict as they are quoted in Nyika Investments (Pvt) Ltd v Zimasco Holdings & Ors HH-53-01, and several other judgments. The matter under consideration involves maladministration and also meets the four requirements for an interdict with the one of “irreparable harm” and that of “no other satisfactory remedy”, featuring prominently. Appellant as the 1st respondent's key witness has no other way of making 2nd respondent and accomplices face justice for alleged fraud and theft at 1st respondent since the criminal court requires evidence in the form of an audit report accompanied by a resolution document by the board. Appellant has furnished the court a quo with abundant documented evidence that reveals how 2nd respondent and accomplices have masqueraded as 1st respondent's legitimate committee which has enabled them to manipulate system and thwart all efforts to bring them to book. Thus the dismissal of appellant's court application does not only permit 2nd respondent and accomplices to escape justice, but they are now able to circumvent accountability, transparency and other principles of good corporate governance to the detriment of 1st respondent.”

It is undoubtedly clear that this cited ground of appeal and several others offends against the requirement that the grounds of appeal must be clear and concise. The grounds of appeal are not only lengthy but contain matters of argument. These grounds of appeal are essentially heads of argument.

The appellant insisted that his grounds of appeal complied with the Rules and that he was entitled to be heard by the court. He argued that he wished to raise points *in limine* as well. What the appellant failed to appreciate was that where a notice of appeal is fatally defective there is no appeal before the court. The notice of appeal in this matter is defective in several respects. The prolixity of each ground of appeal offends Order 31 Rule (1) (4) (b) of the Magistrates' Court Rules which requires that the grounds of appeal shall set forth concisely and clearly the findings of fact or rulings on the law appealed against. All the grounds of appeal filed by the appellant do not fall within the definition of short and concise as envisaged by the rules.

See -*The Master of the High Court v Lilian Grace Turner* SC-77-93.

The grounds of appeal are unnecessarily long, repetitive, argumentative and not concise as contemplated by the Rules.

See – *N J Z Resources HIC Ltd v Zinyemba & 18 Ors* HH-261-66

In *Songono v Minister of Law & Ors* 1996 (4) SA 384 is was held at page 385G-H that;

“... it has been held that grounds of appeal are bad if they are so widely expressed that it leaves the appellant free to canvass every finding of fact and every ruling of the law made by the court a quo, or if they specify the findings of fact or ruling of law appealed against so vaguely as to be of no value either to the court or to the respondent, or if they, in general, fail to specify clearly and in unambiguous terms exactly what case the respondent must be prepared to meet ...”

The lengthy and rambling notice of appeal filed in this matter falls woefully short of what is required by the Rules.

The applicant's 14 grounds of appeal render the notice fatally defective for non-compliance with the rules. Further, and in any event the grounds of appeal must be clearly and succinctly set out in clear and unambiguous wording to enable the court to discern what it is exactly the appellant wants to argue on appeal. It is not for the appeal court to have to analyse a lengthy document in an attempt to

establish what grounds the appellant intends to rely upon on appeal. On this basis, the notice of appeal is fatally defective. The point *in limine* is upheld.

In the result the following order is made;

1. The notice of appeal is fatally defective.
2. The matter is struck off the roll.
3. The appellant is ordered to pay the costs of suit.

Kabasa J I agree

Mutatu, Masamvu & DA Silva, Gustavo Law Chambers, 1st and 2nd
Respondent's Legal Practitioners