

EDITH MARUME  
(In her capacity as the Executrix Dative to Estate  
Late Ennety Charambira, DR597/20)  
versus  
JOSEPHINE MURWIRA

HIGH COURT OF ZIMBABWE  
TAGU J  
HARARE, 27 October 2021 and 16 March 2022

**Opposed application**

*C Sakupwanyanya*, for the applicant  
*C Chakawa with V Vera*, for the respondent

TAGU J: The applicant who was appointed executrix Dative to the Estate of the Late *Ennety Charumbira* DR 597/20 sometime in 2020 approached this court with a simple application for condonation for late filing of an application for rescission of default judgment granted against her late mother the Late Ennety Charumbira sometime on 25 July 2018. The applicant averred that she only became aware of the default judgment against her late mother on 1 April 2021. She does not know if the late Ennety Charumbira had knowledge of the default judgment before she died on 21 December 2018. Hence the application for late noting of an application for rescission of the default judgment. She attached a copy of the Court application for rescission of default judgment as Annexure “J1-J2”.

The applicant prayed for the following order;

“IT IS ORDERED THAT:

1. Applicant be and is hereby condoned for late filing of Court Application for Rescission of Judgment.
2. The costs of this application shall be costs in the cause.”

The application is opposed by the Respondent. The Respondent averred among other things that the Applicant was aware of the default judgment as far back as 2019. The Respondent in her opposing papers filed firstly, a letter dated 31 January 2019 addressed to Mr and Mrs Marume with an endorsement that the said letter was served by handing to a lady refused to be named on 18 February 2019. According the Respondent the lady who refused to be named must be the

Applicant. Secondly the attached another letter dated 1 October 2020 Addressed to Edith Marume as Annexure “JM2” which the Applicant refused to accept. According to the Respondent these letter brought to the Applicant the existence of the court order but the Applicant did nothing about it and lied that she got to know of the default judgment on 1 April 2021. She again made reference to several court cases that the Applicant withdrew. There is no endorsement on the letter dated 1<sup>st</sup> October 2020. The Respondent prayed that the application is out of time and does not comply with High Court Rules. According to C. Chakawa what the Applicant said are lies and prayed for the dismissal of the application.

To add her voice *V Vera* submitted that on the relief sought if the Court is to grant the application she prayed for timelines since the relief is open handed.

The Applicant in response submitted that at the time letters referred to where served, if at all they were served she was not in occupation of the property hence did not see the said letters she insisted that she only became aware of the judgment at the time the respondent came to evict tenants from the property.

What is clear is that there were a number of tenants residing at the property in question. In respect of the first letter there is no clear evidence that the Applicant is the lady served. It may be that the letter was served on one of the tenants and the letter was not brought to the attention of the Applicant. While the second letter is addressed to the Applicant there is no proof that it was served on the Applicant apart from the Respondent’s mere say so.

In an application of this nature for it to succeed the following requirements have to be satisfied.

- a) The delay involved was not inordinate, having regard to the circumstances of the case,
- b) There is a reasonable explanation for the delay; there are prospects of success on the main matter should the application be granted; and
- c) There is no possible prejudice to the other party should the application be granted.

If regard is had to the circumstances of this case the default judgment was granted during the lifetime of the applicant’s mother who had taken all steps to defend the matter until she passed on. The applicant only became aware of the default judgement at a time she had been appointed Executrix Dative to her late mother and when tenants were being evicted. As soon as she became aware of the judgment she filed an application for rescission without delay. There is therefore a

reasonable explanation for the delay. As to prospects of success the property in question belongs to the estate late Ennety Charambira and not the Chakabvuta family. Prospects of success on the main matter are bright.as to the prejudice to the respondent, she is only clinging to a default judgment and she was not declared the owner on the merits. A different court might come up with a different view once the evidence has been presented.

In my view the application for condonation must succeed. However, on the relief sought I agree with Madam Vera that the relief is open handed and not properly drafted. The court will grant an amended order.

IT IS ORDERED THAT

1. The applicant be and is hereby condoned for late filing of Court Application for Rescission of Judgment granted in case HC 10394/17.
2. The applicant be and is hereby ordered to file and serve her application within 14 days of this order.
3. The costs of this application shall be costs in the cause.

*Hungwe and Partners*, applicant's legal practitioners  
*Tamuka Moyo Attorneys*, respondent's legal practitioners