

**DISTRIBUTABLE** (39)

**HUMILITY MAGOBEYA**  
v  
**TM SUPERMARKETS (PRIVATE) LIMITED**

**SUPREME COURT OF ZIMBABWE**  
**HARARE: NOVEMBER 3 2020 & MAY 13 2021**

Applicant in person

*Ms M Chinyangarara Kaseke*, for the Respondent

**CHAMBER APPLICATION**

**BHUNU JA:** This is an application for condonation of late filing of application for leave to appeal by an unrepresented applicant.

The background to the application is that the applicant was employed by the respondent as a Delicatessen Assistant. She was dismissed from employment on allegations of theft. She is alleged to have stolen a bottle of mayonnaise and hid it in her underpants on 3 November 2009.

The Disciplinary Committee found her guilty as charged and ordered her dismissal from employment. She unsuccessfully appealed all the way to the Labour Court. Her application for leave to appeal to this Court was equally unsuccessful. She then belatedly turned to this Court for relief.

The judgment she intends to appeal against is dated 11 October 2011. Rule 38 of the Supreme Court Rules, 2018 obliges an applicant aggrieved by the judgment of the court *a quo* to appeal within 15 days of the court's judgment.

Where leave to appeal is refused the litigant is obliged to seek leave of this Court within 10 days of such refusal. On 13 February 2012 the court *a quo* issued an order dismissing the applicant's application for leave to appeal to this Court. The applicant only approached this Court on 25 August 2020 seeking condonation of late filing of the application for leave to appeal. Undoubtedly a delay in the region of 8 years is inordinate and weighs heavily on the applicant. The applicant however managed to proffer a reasonable explanation for the inordinate delay. Her explanation is that after her dismissal she was afflicted with mental illness. She produced a medical report from a registered traditional healer one Charle Kelvin who vouched that the applicant was under his medical care for mental illness during the relevant period. On 23 October 2020 she was certified by a government medical officer to be mentally fit to appear in court.

Counsel for the respondent has not taken serious issue with the inordinate delay but the prospects of success. She argued that the applicant's prospects of success on appeal are virtually non-existent because her grounds of appeal do not raise any points of law as is required by law. She further argued that the applicant was caught red handed after a search by two ZRP police officers. She admitted her guilt and rendered a written confession.

The applicant countered that the two police officers searched and found nothing on her person. As a result, they refused to write a report implicating her because she was innocent. They only implicated her four days later after they had been bribed by the respondent

with drinks. She denied having voluntarily made a written confession. She vacillated between saying she had been forced to make the confession and that she had been duped to make the confession.

The respondent does not deny that it rewarded the two police officers with gifts but says this was an innocent gesture of expressing gratitude after the search. At p 20 of the record of proceedings, the respondent is recorded as having made the following submissions before the Arbitrator:

**“Respondent’s Submission and arguments “**

The Respondent’s submissions can be summarised as follows:

That claimant was dismissed for theft and the evidence revolved around the evidence of two police women.

- That the Claimant was dismissed for theft and that the evidence revolved around the evidence of the two police women.
- That the police officers were only given two litres of Mazoe each not to buy justice but as a token of appreciation as they had refused to be bribed.”

Given that the charges against the applicant were withdrawn before plea in the criminal court this tends to support the applicant’s case that the police had no evidence against her. Otherwise why withdraw the charges before plea if the police had caught her red handed and she had made a written confession.

The conduct of the respondent in giving the two police officers gifts for conducting their official duties with the rider that they had refused to be bribed does not sit

well with the due administration of justice. The police's failure to make a *prima facie* case against the respondent in a court of law lends credence to the respondent's defence that the two police women may have been improperly induced to falsely implicate her.

*RBZ v Granger* SC 34/2001 is authority for the proposition that a serious misdirection on a point of fact converts into misdirection on a point of law. The applicant's complaint is that the two police officers falsely implicated her because they had been bribed with drinks. The respondent does not deny offering the two police officers two litres of Mazoe each as a reward for carrying out their duties. That kind of conduct gives the unpleasant perception by the proverbial reasonable bystander that they were being rewarded for implicating the applicant. Their failure to sustain a *prima facie* case against the applicant in a neutral criminal court of law lends credence to and buttresses her claim that the police officers had no evidence.

The applicant has consistently alleged that the police officers were bribed to falsely implicate her. On the undisputed facts there is evidence tending to point to the corruption of the two police officers by the respondent in its pursuit to dismiss the appellant from employment.

In my view a factual allegation of this magnitude involving the corruption of state agents amounts to an appeal on a point of law. The applicant being unrepresented was unable to articulate her ground of appeal clearly to this effect. The import of her complaint is however clear. She therefore deserves to be heard on appeal. She has not asked for costs preferring that each party should bear its own costs.

It is accordingly ordered that:

1. The application for condonation of late filing of an application for leave to appeal to this Court be and is hereby granted.
2. The applicant be and is hereby directed to file her application for leave to appeal to the Supreme court within 10 days of this order.
3. Each party shall bear its own costs.

*Honey & Blanckenberg*, respondent's legal practitioners.