

SIMELUBABA SIBANDA

Versus

TOENDEPI NELSON SENGU

And

CITY OF BULAWAYO

And

MINISTER OF NATIONAL HOUSING AND SOCIAL AMENITIES

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 9 SEPTEMBER 2011 & 16 FEBRUARY 2012

T.Muganyi for the applicant
Mrs N. Tachiona for the respondent

Judgment

NDOU J: On or about 15 May 2010, under case number HC 908/10, the 1st respondent filed a court application seeking an order declaring the transfer of stand number 16040 Cowdray Park, Bulawayo from his name into applicant's name as of no force or effect and that the transfer be reversed. The 1st respondent obtained the order by default in December 2010. The order was served on the applicant's wife soon thereafter. The applicant filed an application for rescission of the default judgment five (5) months later. This application for rescission was obviously filed out of time. He did so without being condoned. He, thereafter, filed an application for condonation. The application was filed three (3) months after the filing of the application for rescission. It is, therefore clear that he only filed his application for condonation eight (8) months after the default judgment was granted. His only explanation for the delay is that he did not have money to engage a legal practitioner. The applicant does not state when he got money to engage the legal practitioners. Even after securing of the services of a legal practitioner it took him at least three (3) months to file this application. There is no explanation at all for the latter dilatoriness. This failure to explain by the applicant is fatal to his case. In any event the explanation for the initial delay is unreasonable and lacks *bona fides*. There is a need to finality in litigation. The applicant was aware of the order and did nothing for five months. After five months he comes to court on the wrong procedure. When this is pointed out, he took another three months to bring this

application. Eight months down the line he comes up with a scant explanation for the delay. This shows that he is not serious with the litigation – *Songare v Olivine Industries (Pvt) Ltd* 1988 (2) ZLR 210 (S); *Bishi v Secretary for Education* 1989 (2) ZLR 240 (H) and *Ndebele v Ncube* 1992 (1) ZLR 288 (SC) at 290C-E.

This application is devoid of merit and it is accordingly dismissed with costs.

Dube-Banda, Nzarayapenga & Partners, applicant's legal practitioners
Bulawayo Legal Projects Centre, 1st respondent's legal practitioners