HB 81-16
HC 475-15

FESTOR CHINEKA
versus
PRO-VICE CHANCELLOR
and
NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY
and
STUDENT DISCIPLINARY COMMITTEE

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 10 MARCH 2016

Opposed Application: Ex tempore

Applicant in person
N. Mazibuko for the respondents

MATHONSI J: In this application the applicant seeks a review of the decision of the National University of Science and Technology Student Disciplinary Committee taken on 30 July 2014 in terms of which he was found guilty of contravening Ordinance 30 of the Rules of Student Conduct and Discipline. The results of his examinations were nullified and he was ordered to retake the examinations after he had allegedly entered the examination hall with a cellphone, a banned gadget in the examination, room.

The decision was initially communicated to him by letter of the Vice Chancellor dated 13 September 2014 which was later amended by one dated 17 November 2014. Aggrieved by that decision, the applicant launched a chamber application on 23 February 2015 which is opposed by the respondents on a number of grounds including the misjoinder of the first respondent and the non-joinder of the Vice Chancellor.

It is however the fatal failure to comply with Order 33 of the High Court of Zimbabwe Rules, 1971 which has brought the application to its knees. In terms of rule 256, a review application must be made by way of a court application and not by chamber application. That on its own does not defeat the application regard being had to the provisions of rule 229C which provides that the fact that an applicant has instituted a chamber application when he should have

proceeded by way of court application shall not in itself be a ground for dismissing the application.

There are however, other grounds. In terms of rule 257 the application for review shall state shortly and clearly the grounds upon which the applicant seeks to have the proceedings set aside or corrected and the exact relief prayed for. This application falls foul of that rule as it does not contain the grounds for review. The application also does not comply with rule 256 as it is not directed against the chairman of the tribunal whose proceedings it seeks to impugn.

In addition, the application falls foul of rule 259, which is of peremptory application, that a review application must be made within eight weeks of the termination of the suit. It was only brought on 23 February 2015 well outside the eight weeks period and the applicant did not seek and obtain condonation for the late filing. It is trite that condonation must precede the filing. The record of proceedings has not been submitted in breach of rule 260(1).

Whichever way one looks at it, there is no competent review application before me.

Accordingly the application is hereby dismissed with costs.

Calderwood, Bryce Hendrie & Partners' respondents' legal practitioners