

SIMBARASHE CHAUNOITA**Versus****THE STATE**IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 28 FEBRUARY 2019**Chamber Application**

MAKONESE J: The applicant appeared before the High Court at Gweru on the 18th of May 2009 on a charge of murder. He was convicted of murder with actual intent. The learned judge sentenced the applicant to life imprisonment. The applicant sought to appeal against both conviction and sentence and brought this application before this court on 17 October 2018, some nine years after conviction and sentence.

The applicant filed an application he referred to as a chamber application for failure to apply for leave to appeal timeously and leave to appeal. The application was purportedly brought in terms of Rule 266 of the High Court Rules, 1971. The application was brought through the chamber book and not as court application. The Registrar advised the applicant of the patent defects in the application and advised him to comply with the rules. Numerous other defects were detected by the Registrar but the applicant refused to comply with the requirements by the Registrar.

An application for condonation for leave ought to have been made and submitted to the court in the proper form. This was not done. The application further purports, firstly, to be both an application for condonation for failure to apply for leave to appeal timeously, and secondly an application for leave to appeal. In terms of the High Court Rules there is no provision for such a hybrid application. The application itself fails dismally to address the issue of prospects of success against conviction and sentence. The draft notice of appeal itself discloses no prospects of success on both conviction and sentence. The application does not refer to any misdirection by the learned judge who presided over the matter.

This court is always reluctant to condone non-compliance with the Rules of Court, and when such condonation is sought there must be a formal application and the applicant must furnish an explanation satisfying the court of the failure to comply with the rules and must show that there is a proper case for condonation. See; *R v Rail* 1959 (1) RFN 220 (SR).

The point must therefore be made, that this court will not entertain applications that are not properly before the court. This application is an abuse of court process. The Registrar was correct in declining to place a defective application before a judge in chambers. I was compelled to make a ruling on the application because of various unsubstantiated complaints against the Registrar.

In the result, the application is dismissed with costs.