

MRS A. RAMJAN
versus
EBERHARD SERVICES (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 14 November 2013 & 28 November 2013

Urgent application

Applicant in person
A.F. Mujachani, for the respondent

MATANDA-MOYO J: This is an application for condonation for late noting of an appeal.

The brief facts are that judgment against the applicant was granted by the Harare Magistrate's Court on 13 March 2012. Applicant filed this application on 20 June 2012 after realizing that she needed to be condoned before lodging the appeal.

Applicant in her papers explained that the reasons for the delaying in noting the appeal are as follows;

- 1) that she believed the *dies induciae* started to run after taxation;
- 2) that she travelled to South Africa around end of March 2012 to seek medical treatment;
- 3) that she was unaware of the time limits

Let me explore whether the above reasons constitute reasonable explanation for delay. Applicant submitted that she was not aware of the *dies induciae*. She believed that a matter was concluded after taxation and that should she be required to appeal, the clock would start ticking thereafter. Whilst I am aware that ignorance of law is no defence, I believe that such ignorance by the applicant in this case was clothed and constitutes a defence, Applicant also produced before this court evidence showing that she was ill during that period and that she travelled to South Africa to seek medical treatment. I do believe that such explanation is reasonable.

I however do not believe that applicant enjoys any prospects of success on the main appeal. Applicant contracted respondent to drill a borehole at her house. She was given

quotations for such drilling. The borehole was drilled but unfortunately no water was found. Respondent refused to pay for the drilling arguing that full payment could only be done upon water being found. A trial was conducted with the respondent producing invoices and quotations for such drilling. Applicant admitted that she had not paid for such drilling.

The magistrate found that the respondent had proved its case on a balance of probabilities. The magistrate found that the respondent was contracted for drilling as per quotations and invoices produced and that respondent did the job and was entitled to payment. The magistrate did not believe the applicant that the water diviner was contracted by the respondent and that they had an agreement that full payment would only be done after finding water. Such findings on the facts cannot be termed wholly unreasonable.

An appeal court is not quick to offset any factual findings by the trial court unless such findings are grossly unreasonable. The factual findings by the magistrate fall short of such description. I am satisfied that the appeal court would not interfere with the magistrate's decision.

Accordingly the application for condonation for late noting of an appeal fails and is dismissed with costs.

Danziger & Partners, respondent's legal practitioners