

TICHAONA MUTOPO
versus
MIDLANDS STATE UNIVERSITY
and
THE STUDENTS DISCIPLINARY COMMITTEE
and
THE VICE CHANCELLOR – MIDLANDS STATE UNIVERSITY

IN THE HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 2 April 2014

Opposed application

Ms *G. Dzitiro*, for the applicant
D.C. Kufaruwega, for the respondents'

MATANDA-MOYO J: This is an application for condonation for late filing of an application for review. The brief facts are that the applicant was a student at Midlands State University. Sometime in early 2013 the applicant sent pornographic video to H- Metro involving two students of the first respondent. As a result the applicant was charged with contravening s 3.1.4 of the Code of the Rules of student Conduct and Discipline (Ordinance 2 of 2000) that is, engaging in conduct likely to be harmful to the interest of the university, members of the university staff on students. The applicant pleaded guilty to the charge and was sentenced to expulsion from the university. Such decision was communicated to him on 8 July 2012. The applicant had 8 weeks from that date to file his application for review, which meant he should have done so by 10 September 2012.

From 8 July 2012 to 30 September 2013 translating to a full year and three weeks the applicant did not lodge his application for condonation.

The Law

In deciding applications of this nature the following factors are taken into consideration

- 1) Length of the delay
- 2) The reasons for the delay in noting the application
- 3) The prospects of success on the merits should the condonation be granted and

- 4) The prejudice likely to be suffered by the respondent should the application succeed.

In as far as I am concerned the applicant did not proffer a reasonable explanation for the 1 year 3 weeks delay in lodging this application, that their initial application for condonation was dismissed for procedural non-compliance does not hold any water, they ought to have withdrawn the defective application and immediately proceeded with a new application.

Prospects of success on merits

The applicant has not prospects of succeed at all and the submissions made on his behalf have not been helpful at all. A bare assertion is made in para 14.1 of the applicant's affidavit wherein the applicant merely states that the decision to expel him "was grossly unreasonable to an extent that no other sober minded tribunal would have reached the same."

No reference has been alluded to pertaining to a misdirection irregularities or malice, bias. In the record of proceedings hence the applicant's case is bound to crumble down before its inception.

I am inclined to agree with the respondents that what the applicant is seeking is an appeal ostensibly cauched as a review.

The prayer asked for by the applicant reads

"a) the decision of the respondents to expel applicant from first respondent's institution be set aside and substituted with an order reinstating the applicant back to his studies at first respondent's institution."

What is clear from this is that the applicants are attacking the merits of the decision not the manner in which the decision was arrived at. See *Zhou v Global Motors and Anor* SC67/04, *Dandazi v Colliery Co Limited* 2001 (2) ZLR 298 H @ 302 A, *Kambuta & Ors v Dunlop Zimbabwe Limited & Anor* HB 14/04 and *Exparte Miss* 1993 (1) ZLR 233H.

In light of this lack of bearing as to the requisites for review proceedings I see no reason to proceed with other requirements for an application for condonation.

The application is accordingly dismissed with costs.

Mudambanuki & Associates, applicant's legal practitioners
Dzimba, Jaravaza & Associates, respondents' legal practitioners