

CANDALICK FINANCE (PVT) LTD  
and  
TAWANDA MAVHUNGA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
MATANDA-MOYO J  
HARARE, 14 January 2014

**In chambers**

MATANDA - MOYO J: This is a chamber application for reinstatement of appeal which was dismissed for want of filing of heads of argument by February 2013. When the applicants failed to do so after being called upon to file such heads, the appeal was dismissed. After such dismissal applicants purported to have filed heads of argument on 12 March 2013.

From the application before me the offence with which the applicants were convicted of is not apparent. What is clear is that the applicants were sentenced on 2 December 2011, to 13 months imprisonment with labour of which 6 months were suspended on condition of good behaviour and a further 7 months were suspended on condition that both applicants restituted the complainant in the sum of \$ 1 800-00. On 6 December 2011 applicants noted an appeal to this court against both conviction and sentence. Heads of argument were not filed until 12 March 2013.

There is no explanation advanced by the applicants on why heads of argument were not filed until the Registrar requested that the heads be filed by February 2013. Again there is no explanation why heads were not filed by February 2013.

The applicants simply purported to have filed heads of argument on 12 March 2013 but have not bothered to attach such heads of argument. Only two documents have been attached namely; the Notice of Appeal and the letter by the Registrar that the appeal was dismissed for failure to file heads of argument by February. The letter by the Registrar calling upon applicants to file the heads of argument was not attached.

There is therefore before me no reasons why such heads were not filed and yet it is a requirement in an application for upliftment of bar or extension of time to file heads to explain the reasons for such failure; See *GMB v Muchero* 2008(1) ZLR 216 (S). It is only after explaining the reasons for the delay that an applicant should therefore convince the court that he has a *bona fide* defence to the claim or charge.

Before me there is no explanation on why heads were not filed on time and I have thus no option save to dismiss the application. In the result the application is dismissed.

*T.K Hove*, applicants' legal practitioners  
*Attorney General's Office*, respondent's legal practitioners