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Judgment No. SC. 17/05
Civil Application No. 83/05

VIOLET ABRAHAM v

(1) RICHARD ABRAHAM (2) THE CITY OF BULAWAYO
(3) THE DEPUTY SHERIFF OF THE HIGH COURT

SUPREME COURT OF ZIMBABWE
HARARE, JUNE 9, 2005

Before: CHEDA JA, In Chambers, in terms of Rule 30 of the Supreme Court Civil Rules

The applicant and the first respondent are brother and sister. On 18 May 2001 the applicant (“Violet”) obtained an order against the first respondent (Richard”) for his ejection from a house which each party claimed to own. It was ordered that Richard be ejected from the house, together with any persons who occupied through him the house on stand no. 5972 Thorngrove, Bulawayo, and that he pay rental of \$4 000 per month calculated from 1 February 2001 to date of eviction and costs of suit on an attorney and client scale.

This was a default judgment which was subsequently rescinded at the instance of Richard. The matter was brought to trial on 4 and 12 September 2003 and finalised on 25 November 2004. The court awarded the house to Richard.

Violet says she did not get to know about the judgment. She was represented at the trial. She says her legal practitioner advised her to withdraw her

file as the legal practitioner was moving to another law firm. She says judgment was passed in her absence on 25 November 2004. She was told by her legal practitioner, who was then Mr Marondedze of Sibusiso, Ndlovu & Partners, that the judgment was not in her favour. She went to consult the registrar of the High Court some time in December 2004. She was advised to provide the registrar with bond paper so as to have the judgment printed for her. She provided the registrar with bond paper and the judgment was printed for her in December 2004.

Violet took the judgment to her representative, who advised her he would assist her in noting an appeal but to no avail. She sought the services of another legal practitioner, who said he was unable to deal with the case. She was advised to approach the Zimbabwe Federation of Trade Unions in Bulawayo, which assisted her in noting this application.

Rule 30 of the Supreme Court Rules required Violet to note the appeal within fifteen days of the judgment. She says she believes that she received the judgment when the period for the noting of the appeal had already lapsed and the notice of appeal was already out of time.

The applicant does not give any actual dates, but says she got to know about the judgment when her legal practitioner told her that the judgment was not in her favour. She does not say when this was. She says she went to consult the registrar of the High Court in December 2004. Again she does not give the date.

I am not persuaded that the registrar would ask Violet to supply bond paper in order to print a judgment for her. This cannot be true.

Further to that, having known about the judgment in December 2004, Violet only filed this application on 23 March 2005, that is, three months after the judgment was delivered. I am not satisfied with her explanation for this long delay and on that ground the application should fail.

On the merits, the matter went to trial and each party led evidence. The trial court listened to the evidence, assessed the credibility of the witnesses and found that the first respondent and his witnesses were more credible than the applicant was. I cannot interfere with that finding.

The applicant has not shown that if the appeal were heard she would have any better evidence or argument than that at the trial. She did not even file grounds for the appeal.

The requirements for leave to note an appeal out of time have been stated in several cases. See *De Kuszaba-Dabrowski et Uxor v Steel N.O.* 1966 RLR 60 (A); *Kombayi v Berkhout* 1988 (1) ZLR 53 (S); and *Kilian v Geregsboge, Uitenhage* 1980 (1) SA 808 (A). This application does not meet the above requirements.

A further point raised by the first respondent is that the property has since been transferred into his name.

The application cannot succeed and it is dismissed with costs on an attorney and client scale.

Dube & Partners, first respondent's legal practitioners