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Judgment No. SC 27/07  
Civil Appeal No. 172/01

DR MUNETSI STONE MOMBESHORA v (1) BRIGHT NDORO  
(2) THE REGISTRAR OF THE HIGH COURT

SUPREME COURT OF ZIMBABWE  
HARARE, MAY 9, 2007

*G Mhlanga*, for the applicant

*W Muchengeti*, for the first respondent

No appearance for the second respondent

Before CHEDA JA: In Chambers, in terms of r 31.

This is an application for condonation of late noting of appeal and extension of time in which to appeal.

When this application was first placed before me, in Chambers, I observed that it had not been served on the other interested parties and I advised the Registrar accordingly.

The Registrar advised the legal practitioners of the applicant by minute dated 2 April 2007.

On 17 April 2007, the legal practitioners filed certificates of service on the first respondent's legal practitioners and on the Registrar of the High Court. The certificate of service on the Registrar does not state the name of the person served. It merely says service was on the Registrar at the Registrar's Office.

The judgment appealed against was not filed, but only the order made against the applicant was filed. This was not sufficient.

The applicant's affidavit attacked the Registrar's actions in abandoning the appeal because it was not served on him.

The Registrar was entitled to do that in view of the provisions of r 44.

The judgment was on 31 May 2001. The appeal was noted on 20 June 2001, but not copied to the Registrar of the High Court.

Nothing was done by the applicant until five years later when the Registrar advised that the appeal was abandoned, as the legal practitioners of the applicant had not responded to his request to file a copy of the notice of appeal. The Registrar of the High Court had been neither cited nor served.

According to the Registrar there was therefore no valid notice of appeal.

When the parties appeared before me, I pointed out that there was no copy of the judgment appealed against. I was then furnished with the copy. It turned out that the dispute was over property belonging to a trust. The trust was neither served nor cited in the application.

In addition there was nothing said on the merits. It was clear that both the defective application and the appeal had no prospects of success.

The judgment clearly showed that the property belonged to the trust and that the party who sold it had no right to do so.

There was also evidence to show that while the appellant alleged that he had made part payment for the property, the receipts he produced were for rental even after the alleged date of sale.

The above points were made very clear at the hearing, before I dismissed the application.

The applicant has now changed legal practitioners and the legal practitioners who now act for him enquired if there were reasons for my dismissal of the application.

The above are the reasons.

*Scanlen & Holderness*, applicant's legal practitioners

*Chinyama & Partners*, first respondent's legal practitioners