WILBERT MUNONYARA
versus
CBZ BANK LIMITED
and
SHERIFF OF ZIMBABWE
and
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 17 June & 14 September 2016

Opposed matter

Applicant in person
C Daitai, for the 1st respondent

TAGU J: The applicant is a highly litigious person. He has filed over 40 cases in respect of the same matter none of which saw the light of the day. This has resulted in an application for perpetual silence being filed against him in this court. The application for perpetual silence is still pending. Currently the applicant has again filed this application for rescission of default judgment made by JUSTICE KARWI on 17 February 2011 in case HC 9134/10. The present application is brought in terms of r 449 of the High Court Rules 1971.

Rule 449 deals with the correction, variation and rescission of judgments and orders made erroneously in the absence of the other party. The rule says-

> **"449. Correction, Variation and rescission of judgments and orders**
> (1) The court or a judge may, in addition to any other power it or he may have, *mero motu* or upon the application of any party affected, correct, rescind, or vary any judgment or order –
> (a) that was erroneously sought or granted in the absence of any party affected thereby , or
> (b) in which there is an ambiguity or a patent error or omission, but only to the extent of such ambiguity, error, or omission; or
> (c) that was granted as a result of a mistake common to the parties."

The first respondent opposed the application and took some points *in limine*. The points *in limine* raised by the first respondent were that-

(i) The application *in casu* is said to be an application for rescission of the default judgment granted in error. However, from several submissions made by the applicant there is no clear indication of the error made by Justice KARWI on 17th of

February 2011. Accordingly, there is no proper application in terms of Rule 449 of the High Court Rules 1971.

(ii) The application for rescission from the papers is an application for rescission of default judgment in terms of Rule 63 of the High Court Rules. Consequently, the application was filed way out of time. The applicant had knowledge of the judgment in 2011 and he filed numerous applications including application for rescission of the same judgment without success.

The applicant who is a self- actor raised several immaterial facts. It was only in para 16 of his founding affidavit that he stated that the summons in case HC 9134/10 was affixed under the door and hence he did not see it timeously. Other than insisting that this is an application in terms of r 449 he did not state precisely what error was made by the judge.

It is clear that his application should have been an application under r 63. Unfortunately, this application has been brought way out of time since it was filed two years later. Before that he filed numerous applications including another application for rescission that was dismissed.

In his answering affidavit the applicant conceded that several applications for rescission were made before including applications before Justice BERE in case of *Wilbert Munonyara* v *CBZ BANK Ors* HH50/14 and another before Justice MATHONSI in case of *Wilbert Munonyara* v *CBZ BANK LIMITED and Ors* HH 91/15 and were dismissed. He however, submitted that since his present application is in terms of r 449, it was timeously brought before the court and must be heard.

Indeed I read some of the cases referred to above and those cases dismissed the applicant's applications. My view is that the applicant having realised that he cannot proceed to make his application in terms of r 63 because he is seriously out of time, decided to bring this application in terms of r 449. Having decided to bring the application in terms of r 449 the applicant spent pages and pages explaining what happened and how he did not see the summons timeously and failed to articulate the error that the judge made. Clearly this is an abuse of court process. The applicant as I stated at the onset is a highly litigious person who will not stop at anything despite having failed in previous attempts.

My view is fortified by what was said by Justice BERE at p 3 of his cyclostyled judgment in case HH 50/14 *supra* where he said of the applicant-

> "Given the easy with which the applicant has found himself in and out of this court on divers occasions on basically the same issue thereby subjecting the first respondent to unnecessary costs it is inevitable that the applicant be ordered to pay costs on a higher scale."

Justice MATHONSI in HH 91/15 *supra* registered his displeasure on the conduct of the applicant when he said at p 1 of his cyclostyled judgment –

> "The applicant, a hyper litigious person who admits having filed in excess of 25 applications in this court over the last 4 years in respect of the same matter… now has an application for a decree of perpetual silence hanging over his head".

Later at p 5 Justice MATHONSI said of the applicant-

> "……A party that regards the precincts of this court as a favourite playing ground the way the applicant has done must know the consequences of that conduct."

The applicant's application is hopelessly without merit. It was filed as a matter of course. This is clearly an abuse of court process and the applicant must be visited with punitive costs on a higher scale.

Consequently, the applicant's application is dismissed with costs on a legal practitioner and client scale.

Magwaliba and Kwirira, 1st respondent's legal practitioners