IGNATIUS MASAMBA
versus
ZETDC

HIGH COURT OF ZIMBABWE
MAKONI J
HARARE, 3 August 2016 & 9 November 2016

Unopposed Roll

MAKONI J: The applicant approached this court seeking rescission of default judgment entered against him in Case NO. HC 9544/15 on 8 March 2016.

The background to the matter is that the applicant, as plaintiff, sued the respondent, then the defendant, in the Magistrates Court. The particulars of claim were not clear and concise but they referred to some breach of contract by the respondent a delictual claim based on the mental suffering that the applicant suffered as a result of the breach of contract.

The magistrate granted absolution from the instance at the close of the applicant, then the plaintiff's case. The applicant appealed against the decision in CIV "A" 457/14. On the day of the hearing the appeal was dismissed because the applicant defaulted by not appearing.

The applicant, in Case No. HC 9542/15, applied for rescission of the default judgment. Again, at the hearing of the Case No. HC 9542/15 the applicant was in default and the case was dismissed. The applicant now seeks rescission of the judgment in terms of r 63 of the High Court Rules 1971 (Rules).

In terms of r 63 the court may set aside a judgment is there is good and sufficient cause to do so. Good and sufficient cause has been defined in a number of jurisdictions as:

(i) A reasonable explanation for the default;
(ii) Where there is a *bona fide* defence to the main claim.
(iii) And where the application for rescission is itself *bona fide*.

See *Chivhayi Enterprises (Pvt) Ltd* v *Attish Investments (Pvt) Ltd* 2007 (2) 89 (S)

The applicant avers that the matter was set down in Court "M". On the day of hearing the matters were moved to Court "O". By the time he realised that the matters had been moved, and by the time he managed to get to Court "O", his matter had been dismissed.

The explanation given by the applicant has not been controverted. It sounds probable. I will take that that is what transpired. The detail that he gives regarding the notice that was affixed at the courtroom door has some ring of truth.

The next issue is whether the applicant has a *bona fide* claim in HC 9542/15. He is seeking rescission of the judgment through which his appeal was dismissed. The proper procedure would have been for the applicant to apply for reinstatement of the appeal. The applicant has adopted the wrong procedure. His application thus has no prospects of success and it is likely to be dismissed.

In the result, the applicant has not satisfied the requirement that he show good and sufficient cause to have the default judgment rescinded.

Before concluding the matter I feel compelled to comment on the applicants papers. From the analysis I did above, one can tell that it is a very simple matter. But I had to plough through a 100 paged record with endless repetitions and unnecessary material to come up with the judgement. The bulk of what is contained in the record is irrelevant and incomprehensible.

Pleadings should be concise and clear. In Meikles Limited Zimbabwe Stock Exchange HH 66/16 in dealing with pleadings which were not concise I quoted with approval *Fungai Nhau* v *Memory Kipe & Anor* HH 73/15 where he had this to say:

> "By definition, pleadings must be concise and to the point. They must identify the branch of the law under which the claim or defence to it is made and should not contain evidence. Pleadings which are long winding and argumentative should not find their way to these courts. It is a serious dereliction of duty for legal practitioners to continue, presenting such offensive pleadings when they have the aid of literature guiding the drafting pleadings. I associate myself fully with the sentiments of MAKARAU JP (as she then was) in *Chifamba* v *Mutasa & Ors* HH 16/08 (unreported) that:
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> > 'Legal practitioners are urged to read on the law before putting pen to paper to draft pleadings in any matter is that what they plead is what the law requires their clients to prove to sustain the remedy they see ….. Litigation in the High Court is serious business and the standard of pleadings in the court must reflect such.'"

Although the above matters involved legal practitioners, the same can be said of self-actors.

The question then is whether the court and other litigants should be subjected to the agony of reading through such process and be expected to come up with a sound judgment or a meaningful response to such processes.

The authors Herbstein and Van Winsen. *The Civil Practice of the High Courts in South Africa* 5ed p 1519 state the following:

> "The High Court possess an inherent jurisdiction to prevent vexatious litigation as being an abuse of its own process."

They go on to explain that such power is one which must be exercised with very great caution and only in a clear case as the courts of law are open to all.

In *De Wet and Ors* v *Western Bank Ltd* 1977 (4) SA 770 T at 780 H-781 A the court held:

> "A court obviously has inherent power to control the procedure and proceedings in its court. This is to facilitate the work of the courts and enable litigants to resolve their differences in a speedy and inexpensive manner as possible …."

The proceedings in this matter can safely be described as vexatious. The court must be able to protect and control the procedure and its proceedings to avoid abuse by litigants. It is my view that this is the sort of case where a litigant will in future be required to seek leave before filing and serving other litigants with his or her process. This would be in a bid to prevent abuse of its own process and to protect other litigants from being harassed and being put out of pocket by vexatious litigants. It is fortuitous that the respondent in this matter did not oppose the application.

In the result I will make the following order.

1. The application is dismissed
2. The applicant is required to seek leave of this court before he can issue any process out of this court.
3. No order as to costs.