

Civil Application No. 243/05

PRIZE MAHACHI v BARCLAYS BANK OF ZIMBABWE

SUPREME COURT OF ZIMBABWE
HARARE, FEBRUARY 1, 2006

B Chidziva, for the applicant

M Pillay, for the respondent

Before: MALABA JA, In Chambers, in terms of r 4 of the Rules of the Supreme Court

The applicant has sought to convince me that the negligence of his legal practitioners in failing to file heads of argument timeously in terms of the Rules of the Supreme Court (“the Rules”), after receipt of the letter of reminder from the registrar, should not in its consequences be visited upon him and the application for reinstatement of the dismissed appeal refused. I do not agree.

The applicant’s erstwhile legal practitioners did not only fail to file heads of argument timeously, but failed to do so after having been reminded to do so by the registrar. When the appeal had been deemed abandoned and dismissed, they made an application for condonation of the late filing of the heads of argument. They must have known at the time that there was no appeal, and no explanation has been given for such a high degree of negligence on the part of the applicant’s legal practitioners. What has simply been done is to transfer agency to a different firm of legal practitioners. That, however, has not solved the problem. There is just no explanation for the high degree of negligence, and without an explanation it cannot be said that the consequences of such a degree of negligence should not be visited upon the applicant.

Such an application is made in terms of r 4 of the Rules of the Supreme Court. It was stated in *S v Marufuh* 1971 (1) RLR 166 (A) that the Court or Judge will not lightly use its or his or her powers to permit a departure from the Rules unless it or he or she is satisfied that a reasonable explanation has been given as to why the Rules were

not complied with in the first instance.

In this case, the reasonable inference is that the applicant's legal practitioners were disdainful of the Rules of this Court. Not only did they fail to comply with the rule requiring them to file heads of argument within the period specified in the registrar's letter of reminder, which they received, they went on to commit two more sins. They applied for condonation of the late filing of heads of argument when there was to appeal pending before the Court. They also failed to apply for reinstatement of the abandoned and dismissed appeal. Worse still, no explanation was given for such conduct, as there was no affidavit from any of the culpable legal practitioners.

In a case of this kind, where no acceptable explanation for non-compliance with the Rules has been given, the applicant must show very good prospects of success on appeal.

In this case, there are no such prospects of success. It is not in dispute that the applicant was properly found guilty of conduct inconsistent with the fulfilment of the express or implied conditions of his contract of employment as a senior bank employee. In *Standard Chartered Bank Ltd v Chapuka S-125-04* it was held that a finding of guilt of an act inconsistent with the fulfilment of the express or implied conditions of a contract of employment *prima facie* entitles an employer to dismiss an employee from employment, unless the employee shows that the conduct was trivial or inadvertent.

In this case the employer adjudged the conduct that the applicant was convicted of as serious in nature and going to the root of the contractual relationship. On the principles enunciated in *Standard Chartered Bank Ltd v Chapuka supra*, and considering the fact the employee in that case was also a senior bank employee, it is highly unlikely that the decision of the Labour Court would be set aside on appeal.

The application is dismissed with costs.

Kantor & Immerman, applicant's legal practitioners
Scanlen & Holderness, respondent's legal practitioners