

**NICOLE MPOFU**

**Versus**

**NHLABATHIN.O**

**In his capacity and the Executor dative of the Estate  
late Hedwick Mpofo)**

**and**

**ADMIRE MPOFU**

**and**

**SUSAN MPOFU**

**and**

**CYNTHIA MPOFU**

**And**

**FREEDOM MPOFU**

**And**

**AGREEMENT MPOFU**

**And**

**THE ADDITIONAL ASSISTANT MASTER N.O**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 15 MAY AND 17 JULY 2014

Application for condonation for late filing of review.

**MAKONESE J:** This matter came before me in motion court on the 15<sup>th</sup> of May 2014. I dismissed the application and indicated that my reasons would follow. These are my reasons.

On the 5<sup>th</sup> September 2012 the Applicant who was represented by legal practitioners filed an application for review under case number HC 3004/12. The order sought by the Applicant in the Draft order is in the following terms:-

- “1. The distribution account by 1<sup>st</sup> Respondent and confirmed by the 7<sup>th</sup> Respondent be and is hereby set aside.
2. the 1<sup>st</sup> Respondent be and is hereby ordered to draw a new distribution account within 30 days of service of this court order.
3. The costs of suit on an attorney and client scale shall be borne by any person who opposes this application.”

After the filing of the application there was no activity in this matter, until seven months later when Applicant filed another Application For Condonation For The Late Filing of the Review application. This second application was lodged with this court on the 19<sup>th</sup> April 2013. There was no movement in the matter until October 2013 when the matter was enrolled on the unopposed roll. Certain queries were raised in court and then the matter resurfaced again in motion court on the 15<sup>th</sup> April 2014.

The procedure for application for reviews is governed by the provisions of Order 33 of the High Court Rules. Any proceedings by way of a review shall be instituted within 8 weeks of the action or proceedings in which the irregularity or illegality complained of is alleged to have occurred.

In the instant case the decision sought to be reviewed is a distribution account prepared by the 1<sup>st</sup> Respondent and dated 31<sup>st</sup> October 2007. The distribution account was confirmed by the 7<sup>th</sup> Respondent on the 17<sup>th</sup> January 2008. This is some six years ago. It is apposite to note that some of the assets in the distribution account includes cattle, goats, donkeys, household property and an immovable property in Pumula, Bulawayo. I have no doubt that the goats and other livestock have long been distributed in accordance with the distribution account.

No reasonable explanation has been given to this court for the delay in bringing this application. In any event and further, the applicant who has always been represented by legal practitioners has shown no interest at all in the pursuit of this application. The conduct of the Applicant is a flagrant abuse of court process. These courts are inundated with applications which are filed and never prosecuted. This habit has become common place and some legal practitioners do not even care to check the rules of the court before filing applications. One

cannot understand how an application to review a decision made way back in 2007 can be made without first seeking condonation. It is baffling that after filing the initial Application For Review on the 5<sup>th</sup> September 2012, it took the Applicants several months before filing what purports to be and Application For Condonation For the Late Filing of The Review application. The application itself was only placed on the unopposed roll on 15<sup>th</sup> May 2014. The application itself does not disclose the reasons for the delay in bringing the matter to court.

The matter is clearly not properly before the court and as already indicated amounts to an abuse of court process.

In, the result the application was dismissed.

*Cheda and partners*, applicant's legal practitioners