

McDOWELLS INTERNATIONAL (PVT) LTD  
versus  
RAY MAVHUSA  
and  
SARUDZAI MAVHUSA

HIGH COURT OF ZIMBABWE  
MTSHIYA J  
HARARE, 30 OCTOBER 2014

**OPPOSED MATTER**

*B. Furidzo*, for the applicant  
*B.T. Mudhara*, for the respondent

MTSHIYA J: On 19 November 2012, this court granted default judgment in favour of the respondents. The applicant had entered an appearance to defend out of time and was therefore barred.

On 1 December 2012 the applicant filed this application seeking to have the default Judgment of 19 November 2012 set aside.

It is common cause that on 22 November 2013 the applicant was placed under Judicial Management and therefore it is the Judicial Manager who now has authority to bring proceedings before the court. All parties have ignored that legal aspect. Member Chifamba, the deponent to the founding affidavit, is not the Judicial Manager of the applicant. He cannot therefore legally bring these proceedings before the court. Legally and unless ratified by the Judicial Manager, there is therefore no application before the court. The procedural irregularity is fatal. The application ought to be dismissed.

Assuming I am wrong, I would still dismiss the application on the basis that the court did not erroneously grant the default judgment. The court exercised its mind on the appearance to defend that was filed out of time.

On 22 October 2012, the Judge, before whom the application for default judgment was placed, noted that an appearance to defend had been filed on 10 October 2012. He made that observation known to the respondents. In response to that observation by the Judge, on 2 November 2012 the respondents herein wrote to the Judge's clerk explaining that the appearance to defend was filed out of time and stating that the applicant *in casu* was therefore barred. On 19 November 2012, the Judge then set the matter for hearing in his chambers. That hearing resulted in the default judgment that the applicant now seeks to set aside. That cannot be because I believe the Judge agreed that the appearance to defend was indeed a nullity (See *Beitbridge Rural District Council v Russell Construction Co. (PVT) Ltd* 1998(2) ZLR 190 (SC)). Accordingly r 449 relied upon by the applicant does not apply *in casu*.

The application is dismissed with costs.

*Kanokanga and Partners*, applicant's legal practitioners  
*Mundia & Mudhara*, respondents' legal practitioners