

COLFORTH INVESTMENT (PRIVATE) LIMITED
and
DREIBOND INVESTMENTS (PRIVATE) LIMITED
and
SEAN THOMAS NIELSON DORAN
and
SHABIR AHMED OMAR
and
ANTHEA LESLY EVANS
and
ELIJAH GOREDEMA
and
PRESTON GOREDEMA
and
TAVAZIVA TREVOR NYANDORO
and
CLUMSDALE INVESTMENTS (PRVIATE) LIMITED
and
CHRISPEN MADZIYAUSWA
versus
KINGDOM BANK LIMITED

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J.
HARARE, 23 September and 7, 17 October, 2013

Advocate Girach, for Applicants
F. Siyakurima, for Respondent

MATANDA-MOYO J: This application is an application for rescission of judgment entered against applicants on 18 January 2011. From a reading of the facts of this matter applicants became aware of the judgment in May and June of 2011. Rule 63(1) of the High Court Rules provides;

“Court may set aside judgment given in default

- (i) A party against whom judgment has been given in default, whether under these rules or under any other law, may make a court application not later than one month after he has had knowledge of the judgment to be set aside.”

Applicants counsel conceded that the application for rescission of judgment was filed without condonation from court and that before condonation was granted such application was not properly before the court. Such concession was properly made. It is a settled principle of law that in terms of r 63(1) a defendant against whom default judgment has been granted has a period of one month from date he became aware of the judgment, to apply for rescission. If he does not meet such deadline, he must first make an application for condonation for late noting of an application for such rescission. There must also be an explanation for the delay in seeking condonation see also *Viking Woodworks (Pvt) Ltd v Blue Bells Enterprises Ltd 1998 (2) ZLR 249 (S)* and *Ngwende (Estate) v Masomera HC 1308/10*. Applicants counsel sought to make an oral application for condonation for late noting of an application for rescission. I obliged him.

It is my finding however that the oral application made by applicants counsel was defective in that no evidence was placed before the court orally. The court had no evidence before it to come to any meaningful decision on the application. Without such evidence the court has no option but to dismiss the oral application for condonation for want of evidence.

On the application for rescission of judgment, it is my finding that without condonation having granted such application was not properly before the court see: *John Harries Jones v Kim Graham Strong SC 67/03* where the court held that failure to obtain condonation is fatal to the proceedings.

Accordingly the application for condonation fails and is dismissed.

Consequently the application for rescission of judgment is not properly before the court. Applicants are also ordered to pay costs on an attorney and client scale.

GN Mlotshwa & Company, applicants' legal practitioners
Messrs Sawyer & Mkushi, respondent's legal practitioners