MARCELINA GEORGINA CHIWESHE
versus
RITA SANSOLE
and
KANYANGU WADDILOVE SANSOLE
and
THE REGISTRAR OF BIRTHS AND DEATHS N.O

HIGH COURT OF ZIMBABWE
MUCHAWA J
HARARE, 25 January & 5 April 2023

Opposed Matter

Mr *A Chimhofu,* for the applicant
Mr *C Mutandwa,* for first and second respondents
No appearance for the third respondent

MUCHAWA J: This is a court application for condonation and extension of time within which to note an appeal to be made in terms of s 75 of the Children's Act, [*Chapter 5:06*] as read with r 95 (9) of the High Court Rules, 2021.

On the 7th of April 2022, the Children's Court granted an adoption order in favour of the first and second respondents for the minor child, NKC, born on 21 July 2010. The applicant is the paternal grandmother to the minor child. The first and second respondents are husband and wife and the first respondent is an aunt to the child by virtue of being a sister to the father of the child as they share a father. Both parents of the child are deceased.

The third respondent is cited in the official capacity as the one responsible for keeping all records of births and deaths in Zimbabwe.

I heard the parties on this matter and reserved my ruling. Due to the nature of this matter and allegations of impropriety in the handling of this matter I requested the record from the Children's Court CCA 151/22, for my perusal. I also had a look at another record before this court in which the applicant was applying for guardianship of the minor child against the first respondent herein which is HC 1296/22.

The Law on Applications for Condonation and Extension of Time Within Which to Appeal

In the case of *Vundla & Anor* v *Innscor Africa Bread Company Zimbabwe (Pvt) Ltd & Anor* SC 14/22, HONOURABLE KUDYA AJA, as he then was stated as follows:

> "However, it is trite that the main requirements for an application of this nature are the extent of the delay, the reasonableness of the explanation for the delay and the prospects of success. See *Ester Mzite* v *Damafalls Investments (Private) Limited* SC 21/18."

The above position has been repeatedly laid out in cases such as *Jensen* v *Acavalos* 1993 (1) ZLR 216 (SC) and *Kombayi* v *Berkout* 1988 (1) ZLR 53 (SC). In *Kodzwa* v *Secretary for Health & Anor* 1999 (1) ZLR 313 the court held that condonation will be granted by a court in the exercise of its discretion judicially, upon a consideration of all the factors listed below, as a matter of fairness to both parties in the interests of justice:

(a) Degree of non-compliance
(b) Explanation for it
(c) Importance of the case
(d) Prospects of success
(e) Respondent's interest in the finality of the judgment
(f) Convenience of the court
(g) Avoidance of unnecessary delay.

Having laid out the legal position I now move on to apply this to the facts before me.

Rule 95 (9) provides that a judge may, if special circumstances are shown, extend the time laid down for the instituting of an appeal. My role is to consider whether any special circumstances have been laid out, particularly taking into account the factors set out in case law.

Degree of non- compliance and explanation for it

The applicant avers that the adoption order was granted on 7 April 2022 and this present application was filed on 24 August 2022, barely 3 months after the period within which the applicant was supposed to note an appeal had lapsed. The appeal should have been lodged by the 3rd of May 2022 in terms of r 95 (8) which prescribes 15 days for the noting of an appeal. Such a delay, it was argued, is not inordinate nor can it be categorized as a flagrant disregard of the rules.

Mr *Chimhou* submitted that the Children's Act has not provided a timeline within which an appeal can be noted and recourse is to be had to r 95 (9). Regarding the explanation for the

delay, the applicant says that she only got to know of the adoption order on 26 June 2022 when the respondents' legal practitioners wrote to her erstwhile legal practitioners advising them of the adoption order. Upon being advised of the same, the applicant says she wanted to challenge that adoption order but mistakenly believed that the matter was pending before the High Court under HC 1296/22 in which she had lodged an application for guardianship of the minor child and in which the same rights were disposed of in the application for adoption. It was argued that the legal import of the two applications was the same and she believed that the adoption issue would still be considered upon set down of the guardianship matter. It is averred that it was only upon getting a second opinion that the applicant was advised that the guardianship matter and the adoption matter were different.

Mr *Mutandwa* submitted that the length of the delay is inordinate and referred to cases where even a 5 day delay was considered inordinate such as in the case of *Tsvangirayi* v *Chairperson of Zimbabwe Election Commission & Ors* SC 6/13. This delay of three months and seven days was said to be grossly inordinate. It was pointed out too that two months had lapsed from the date the applicant got to know of the adoption order.

The applicant's explanation for the delay that she labored under the false impression that the adoption matter would still be considered under the pending guardianship matter is alleged to be unreasonable as the applicant was legally represented and has failed to attach any supporting affidavit from her legal practitioners who still represent her in HC 1296/22. The lack of an explanation for the two months delay is said to be unacceptable. Reference was made to the cases of *Glickmate Enterprises (Pvt) Ltd* v *Alouvine (Pvt) Ltd* HH 127/20 and *Terera* v *Lock & Ors* SC 93/21 in support of this argument.

In assessing whether the applicant has proffered a reasonable explanation for the delay, I have to first assess whether it makes sense for someone who was always legally represented to say that once they became aware of the adoption order on 26 June 2022, they did not act on the mistaken belief that the pending guardianship matter would revisit the adoption issue. Any legal practitioner would know the effect of an adoption order and would not have made it subject to the pending guardianship matter. If indeed it was the legal practitioner who gave faulty advice, then the applicant should have attached the legal practitioner's supporting affidavit in order to bolster

her explanation. This position is trite. See *Lunat* v *Patel & Anor* SC 142/21 where it was stated as follows;

> "It is trite that where a lawyer is blamed for failure to abide by the rules, an affidavit by the lawyer taking responsibility has to be filed in support of the application."

In *Diocesan Trustees, Diocese of Harare* v *Church of the Province of Central Africa* 2010 (1) ZLR 267 MALABA DCJ, as he then was, stated:

> "Although in argument Mr *Zhou* suggested that the failure to comply with the relevant rules was wholly attributable to the respondent's legal practitioners, there was no admission of negligence by the legal practitioner who deposed to the opposing affidavit on behalf of the respondent on 29 September. One cannot consider absolving the respondent from the consequences of lack of diligence committed by its legal practitioners when there is no suggestion in its papers that the "oversight" was that of the legal practitioner. It would have been after the responsible legal practitioner had filed an affidavit admitting fault and explaining in some detail what happened, that the judge would be in a position to decide whether the respondent should not be visited with the sins of its legal practitioners. Where no factual basis for making such a distinction of culpability has been provided, the judge would have no right to draw it. It must follow that without an affidavit from the person responsible for the "oversight" admitting fault and explaining the circumstances under which he or she overlooked the rules, one is at a loss for the reason why it found necessary to state in the opposing affidavit that an "oversight" on the part of the respondent was the cause of the non-compliance."[1]

The explanation given by the applicant relates to a legal opinion she held at the time she was represented by Messrs Saunyama Dondo in the application for guardianship lodged under case HC 1296/22. On p 15 of the record is a letter dated 20 June 2022 addressed to the applicant's legal practitioners of record whose contents were as follows:

> "We write to advise that it has come to our knowledge that there is now an adoption order in respect of the same child who is the subject of the dispute herein. Our view is that this matter has been overtaken by events and your client should consider withdrawing it."

It was necessary to have the applicant's lawyer file a supporting affidavit explaining what advice was given to the applicant and why she formed the impression that the guardianship matter would revisit the adoption order. There is no such affidavit at all and one will be forgiven for concluding that it was the applicant's own lack of diligence which resulted in the further delay from 26 June 2022 to 24 August 2022, which delay has not been explained at all.

In *Rinos Terera* v *Lock & 3 ORS* SC 93/21 it was held as follows:

[1] At p 277F-278B

> "It is trite that where a litigant realises that they have fallen foul of court rules, they ought to apply for condonation without delay. The litigant must give an acceptable explanation for the failure to comply with the particular rule and for the delay in approaching the court seeking condonation. See *Viking Woodwork (Private) Limited* v *Blue Bells Enterprises (Private) Limited* 1998(2) ZLR 249 (S) at 251. One must be candid with the court in their explanation in order to satisfy the court that the explanation is reasonable and deserves the court's empathy and that there are prospects of success on appeal if granted the indulgence."

In casu, it is my view that the applicant was not being candid with court in her explanation for the delay hence she could not account for the periods in question. In the circumstances the extent of the delay in bringing this application is inordinate and the explanation tendered for the delay is also unreasonable.

Prospects of success

In the case of *Kombayi* v *Berkout* 1988 (1) ZLR 53 (SC), it was held that in a case where the court has to determine whether to condone the late noting of an appeal, if the tardiness of the applicant is extreme, condonation will be granted only on his showing good grounds for success of his appeal. I turn to consider this in the matter before me,

The starting point is to look at the proposed grounds of appeal. They are as follows:

"1. The court *a quo* erred and misdirected itself in granting the adoption order for NKC to first and second respondents without my knowledge, involvement and consent to the adoption order when I had not dispensed with my consent which was required in terms of section 61 (b) of the Children's Act [*Chapter 5:06*].
2. The court *a quo* erred and misdirected itself in granting an adoption order for a child in whose respect an application for guardianship and custody was pending before the High Court thus violating the child's right to protection of the court enshrined in the Constitution of Zimbabwe.
3. There having been an application for guardianship and access of NKC pending before the High Court under HC 1296/22 the court *a quo* erred in law in granting the order for the adoption of the same child when;
    a. The adoption order had the effect of interfering with the child's guardianship which same question was pending determination by the High Court.
    b. The High Court is the child's upper guardian in terms of section 81 (3) of the Constitution of Zimbabwe hence was best suited to decide on the issue.
4. The child's parents having been deceased and the High Court being the upper guardian of the child, the court a quo erred and misdirected itself in granting the adoption order without the consent of the High Court which was required in terms of section 59 (3) of the Children's Act [*Chapter 5:06*].
5. A *fortiori*, the court *a quo* erred in granting the adoption order when it had no jurisdiction to do so in that the child in question had no surviving parent to grant consent and no consent had been given by the High Court which is the upper guardian of the child."

The relief sought is that the appeal succeeds and the adoption order be set aside and that the third respondent be ordered to delete from the register kept in his custody, any entry regarding the adoption of the minor child, now entered as NKSCS and cause her to retain her names as NKC as per original entry of 31 August 2010.

Mr *Chimhofu* submitted that there are huge prospects of success upon appeal. In his oral submissions he raised some issues outside the grounds of appeal. The first is that though the notice of the court application for adoption only cites the second respondent as a party, it is surprising that the adoption order is granted to two people without explaining how this happened. Mr *Chimhofu* concludes that the first respondent must have done this so that the relatives of the minor child would not know of the application upon its posting on the court roll and would not have an opportunity to be heard.

The second issue raised is that the applicant made an allegation in her founding affidavit, that the second respondent is not a Zimbabwean citizen and is therefore not qualified to adopt the minor child without the consent of the Minister as per s 59 (7) of the Children's Act. The basis for this averment is that the adoption order omits the two last digits of the second respondent's identity card which could reveal that he is an alien. It was argued that the onus was on the second respondent to place evidence before the court to rebut the applicant's assertion and it was not good enough to refer the applicant to the Children's Court record. In urging the court to scrutinize how the adoption was granted, the applicant referred to the case of *in re Patrick Chauraya* HH 325/20.

In support of the proposed grounds of appeal, Mr *Chimhofu* submitted that the court a quo had no jurisdiction to grant an adoption order for a child without natural surviving parents and no guardian. He questioned how, if both parents are dead and there is no legal guardian appointed, from whom did first and second respondents adopt the child. Reliance was placed on the Wikipedia Online Dictionary for the definition of adoption which states as follows:

> "a process whereby a person assumes the parenting of another, usually a child, from that person's biological or legal parent or parents. Legal adoptions permanently transfer all rights and responsibilities, along with filiation from the biological parents to the adoptive parents."

Mr *Chimhofu* argued that in the current circumstances, the Children's Court did not have jurisdiction to grant an adoption order and the only procedure open to it was to appoint a legal guardian for the child in terms of section 9 of the Guardianship of Minors Act [*Chapter 5:08*]. The

applicant took issue with how the adoption was done "clandestinely" without the knowledge of the child's nearest relatives such as herself who is the paternal grandmother and once played a mother role to the minor child. Her major surprise is the resultant child's change of name from her father's name.

Furthermore, Mr *Chimhofu* submitted that this court is appointed by the Constitution of Zimbabwe as the upper guardian of all minor children in Zimbabwe and he termed this, "in a sense the surviving parent of the child". He insisted that the High Court should be involved in the minor child's issues and the child should not be "stolen" from its jurisdiction. It was contended that the court is not aware whether the best interests of the child were catered for. The court was urged to allow the applicant access to the court in order to allow a relook at the life and welfare of the minor child as he suspects that the irregularities he has pointed at might indicate that something bigger is unfolding.

For instance, Mr *Chimhofu* harped on the fact that the second respondent had said he could not sign an affidavit as he was in Sudan yet the same was signed and commissioned in Harare by the second respondent who was supposedly in Sudan.

Mr *Mutandwa* submitted that the draft grounds of appeal are not sustainable. Ground 1 of appeal is based on s 61 (b) of the Children's Act. It was argued that the applicant's consent was not necessary for the court *a quo* to have before the granting of an adoption order. The persons alleged to be covered by the Children's Act are given as the legal guardian or person liable to contribute to the maintenance of the child and the spouse of an applicant where the spouses are jointly adopting. Mr *Mutandwa* observed that the applicant's heads of argument seem to have abandoned this first ground of appeal as no submissions were advanced in support of it and that this should be taken as a concession of the lack of prospects of success in the ground.

Draft grounds 2 and 3 are said to deal with the question of whether or not the Children's Court was barred from hearing the adoption matter because of a pending High Court access and guardianship matter. Mr *Mutandwa r*eferred to the applicant's founding affidavit in para. 45 wherein the applicant stated that the matter pending before the High Court was entirely different as it was not for adoption and was therefore based on a different cause of action. It was argued that in such a case the *lis pendens* objection would not arise. Reference to the case of *Tarinda* v *Cake Fairy (Pvt) Ltd* HB 38/20 was relied on in support of this argument. Additionally, it was pointed

out that the two matters were not between the same parties as the applicant was not a party to the adoption matter and the second respondent is not a party in the High Court matter.

Furthermore, Mr *Mutandwa* contended that s 57 (1) as read with s 58 (1) of the Children's Act gives the Children's Court jurisdiction and power to authorize adoptions upon application, in terms of the Act. It was argued that the High Court should not simply usurp the statutory powers and functions of the Children's Court simply because it is the upper guardian of minor children. Draft grounds 2 and 3 were said not to carry any prospects of success.

Mr *Mutandwa* submitted that grounds 4 and 5 do not enjoy any prospects of success particularly as they both imply that the adoption order should not have been given without the consent of the High Court. Such a position was contended to be erroneous as it is considering the High Court as the legal guardian of the minor child. It was averred, on the strength of s 59 (3) as read with s 2 of the Children's Act, that the claim that the High Court is the legal guardian of the child is not supported by the relevant Act. Furthermore, Mr *Mutandwa* pointed out that the Act has no provision at all which provides for the need for the consent of the High Court. An observation was made that the applicant, in her heads of argument has abandoned any reference to s 59 (3) of the Act to bolster her argument.

Another aspect related to in grounds of appeal 4 and 5 is the allegation that the Children's Court had no jurisdiction to grant the adoption order. Such an allegation was said to fly in the face of the clear provisions of s 57 (1) and 58 (1) of the Act which give the Children's Court the exclusive jurisdiction to make adoption orders in terms of the Act.

The rest of the issues raised by the applicant were dismissed as irrelevant as they were not raised in the draft notice of appeal. The first issue is that of the alleged omission of the first respondent in the Notice of the Court Application for Adoption (annexure J). Further, this point is said not to be part of the applicant's founding affidavit and as an application stands or falls on its founding affidavit, this technical point was said to be inconsequential. Mr *Mutandwa* also impugned the applicant for being selective and ignoring annexures "I" and "J" which show that both first and second respondents were part of the application for adoption and the first respondent appeared before the Magistrate and gave evidence under oath confirming that she was the second applicant

The allegation that the second respondent is not a Zimbabwean because the adoption order omitted the last two digits of his ID number was said not to be seriously made as the applicant ignored annexure "I" which shows that the second respondent is indeed a Zimbabwean and in terms of s 74 of the Act, the applicant was at liberty to approach the court and inspect the adoption record.

On the allegation that the second respondent's affidavit was commissioned here in Harare yet he had said he was away in Sudan, Mr *Mutandwa* argued that this is of no consequence as the second respondent was indeed in Sudan but signed the affidavit and sent it to Zimbabwe by email and this was explained in annexure "M" to the opposing affidavit which was not disputed by the applicant. The explanation is that the Commissioner of Oaths made a mistake when presented with the bound documents and included the second respondent's affidavit.

It was further submitted that the applicant is erroneously relying on cases dealing with guardianship in support of her arguments yet the matters are distinguishable.

Let me start by looking at the prospects of success of ground 1of appeal. Section 61 (b) of the Children's Act provides as follows:

> "Matters with respect to which court to be satisfied
> The court, before making an adoption order, shall be satisfied—
> (*b*) where the consent of any person other than a parent is necessary in terms of this Act and has not been dispensed with, that such person has consented to and understands the nature and effect of the adoption order for which application is made."

One therefore needs to consider whether the applicant is someone whose consent is necessary before an adoption order is granted. The applicant did not point me to any such provision whilst the respondents directed me to s 59 (3) which provides as follows:

> "(3) An adoption order shall not be made except with the consent of every person or body who is a parent or legal guardian of the minor in respect of whom the application is made or who is liable to contribute to the support of the minor."

In this case the applicant is neither a legal guardian of the minor nor a person liable to contribute to the support of the minor. She does not fall into the category of the spouse of the adopting party as envisaged in s 59 (4). Her consent to the adoption was therefore not necessary. The applicant's counsel correctly abandoned any reliance on s 61 (b) of the Children's Act. There are therefore no prospects of success in the applicant's first ground of appeal.

Grounds of appeal 2 and 3 equally have no prospects of success. In para. 45 of her founding affidavit, the applicant says that she got legal advice and was told to note an appeal against the adoption order as the matter pending before the High Court was based on an entirely different cause of action. It is a matter of guardianship and access. She has in a way disposed of her grounds of appeal 2 and 3. If the cause of action was entirely different, why would the Children's Court refuse to exercise its jurisdiction in an adoption matter for which the Children's Act expressly gives it jurisdiction? In s 57 (1), the Act provides as follows:

> **"Jurisdiction and procedure in relation to adoption order**
> (1) The court having jurisdiction to make adoption orders in terms of this Part shall be the children's court established in terms of subsection (1) of section *three* within the jurisdiction of which either the applicant or the minor resides at the date of the application for the adoption order."

Section 58 (1) provides as follows:

> "**Power to make adoption order**
> (1) Upon application in the prescribed manner by any person desirous of being authorized to adopt a minor who has never been married, the court may, subject to this Act, make an order authorizing the applicant to adopt that minor."

The applicant also relies on s 81 (3) of the Constitution to argue that the High Court as upper guardian of the child is in a sense; "the surviving parent of the child and should be involved in the issues of the minor and should not be stolen from its jurisdiction."

Section 81 (3) of the Constitution simply provides as follows:

> "(3) Children are entitled to adequate protection by the courts, in particular by the High Court as their upper guardian."

In this case, the Legislature gave the Children's Court the jurisdiction to deal with the granting of adoption orders. Could it be said that when the Children's Court is exercising its jurisdiction, it is stealing the children and their issues from the High Court? I think not. The High Court is not entitled to simply usurp the statutory powers and functions of the Children's Court because it is the upper guardian of minor children. The High Court does not exercise jurisdiction as a court of first instance in adoption matters

In grounds 2 and 3 the applicant seems to be raising the *lis pendens* plea. The position of the law on this is settled. Honourable KABASA J in the case of *Tarinda* v *Cake Fairy (Pvt) Ltd* HB 38/20 stated:

> "What is *lis pendens* and when is such a plea available to a defendant?
>
> I can do no better than quote the learned authors Herbstein and Van Winsen in the *Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa, Fifth Editio*n at 605 thereof:-
>
> "*Lis pendens* is a special plea open to a defendant who contends that a suit between the same parties concerning a like thing and founded upon the same cause of action is pending in some other court.' *In casu,* it is clear that the guardianship matter did not include the second respondent herein whilst the applicant was not a party to the adoption matter. The causes of action are also different as admitted by the applicant. The plea of *lis pendens* is therefore not available to the applicant."

I therefore find no merit in grounds of appeal 2 and 3.

In grounds of appeal 4 and 5, the applicant alleges that the Children's Court could not have competently made an adoption order without the consent of the High Court as required in terms of s 59 (3) of the Children's Act. The applicant seems to be considering the High Court as the legal guardian of the minor child. A revisit of s 59 (3) will show that it provides as follows:

> "(3) An adoption order shall not be made except with the consent of every person or body who is a parent or **legal guardian** of the minor in respect of whom the application is made or who is liable to contribute to the support of the minor.
>
> The term "legal guardian" is already defined in s 2 of the Act as "legal guardian" means a tutor testamentary, tutor dative or assumed tutor to whom letters of confirmation have been granted in terms of the law relating to the administration of estates and includes a husband of a girl who is under eighteen years of age."

It is clear that the High Court is not included in this definition. Once again, the applicant's abandonment of this argument in her heads of argument was correctly done. I have already extensively dealt with the question of the Children's Act giving the Children's Court exclusive jurisdiction to make adoption orders in terms of the Act. There are no prospects of success in grounds 4 and 5.

The rest of the issues raised by the applicant which fall outside the notice of appeal should not detain me for a long time. The alleged omission of the first respondent in the Notice of Application for adoption is unfounded given a perusal of the Children's Court record which shows that the first respondent was in fact a party and appeared before the court and gave evidence on oath. In any event, this angle is not covered in the applicant's founding affidavit. It is trite that an application stands or falls on the averments made in the founding affidavit.

The allegation that the first respondent is not a Zimbabwean because the adoption order omitted the last two digits of his ID number can only be explained as an error by the issuing authority as a perusal of the record from the children's Court shows that the order was granted to Kanyangu Waddilove Sansole ID 79-104219W79 and Rita Wadzanayi Sansole ID 63-1361458D80. Those particulars appear throughout the application; in the guardian *ad litem*'s report, the marriage certificate of the parties and the copies of the applicants' IDs on record. This allegation was therefore not seriously made.

The issue of the second respondent's opposing affidavit which was said to have been erroneously commissioned when it was placed before the commissioner of oaths as part of a bundle of documents was adequately explained as a mistake. Nothing turns on it.

Lastly the applicant relies heavily on cases to do with guardianship as authorities in this case. As already stated, the causes of action are different. The Children's Act provides for a guardian *ad litem* to be appointed in order to represent the minor child's interests. *In casu* this was duly done and the report is on the Children's Court record. It shows that investigations were carried out and the recommendations made which were in favour of the granting of the adoption order.

One cannot ignore the pertinent point raised by Mr *Mutandwa* which is that the first and second respondent have custody of the child and that the Children's Act defines "guardian", in relation to a child or young person, means the legal guardian, and includes any person who has the custody, charge or care of the child or young person, either permanently or temporarily." The first and second respondents already had the minor child in their custody and at law were therefore the guardians thereof.

From all possible angles, the applicant's case has no prospects of success.

Importance of the case

It is clear from a look at the applicant's draft notice of appeal that the only issue grieving her is the entry into the register of births of the minor child's names as NKSCS instead of NKC as she was previously known. She wants the child to retain her original identity though her original names are still included in the new names. Given the wide spectrum of factors to be considered in a child's best interests, could this be said to be so important as to stop the court from bringing finality to this matter? The applicant does not seem to want the responsibility of custodianship of the child and catering for her day-to-day interests. This is borne out by her application for guardianship and access which is pending before this court. Therein all she wants is access to the child and to be appointed legal guardian.

My considered view is that the haggling over who has a greater right to the child between the paternal grandmother and the paternal aunt is not in the best interests of the minor child. The former only wants to exercise rights over the child without the corresponding responsibilities which the latter is already shouldering. The Constitution in s 81 makes clear what is important in respect to children's rights. A child's best interests are paramount in every matter and not those of other parties. All a child requires is to be given a name and family name and have a birth certificate. The new name makes the minor child identify and fit with her custodian and now adoptive family and also access all the benefits falling to be enjoyed by the children of the adoptive family. She is already getting family or parental care. As found by the Children's Court, she is protected in this family from any form of abuse and is getting appropriate education, health care services, nutrition and shelter. Due process was followed. In the light of all this, the intended appeal does not raise an important issue which should detain the appeal court. It would be inconvenient to allow the appeal and hinder finality to litigation.

Consequently, I find that the delay is inordinate, there is no reasonable explanation for it, there are no prospects of success and the intended appeal does not raise an important matter. Costs follow the cause.

IT IS ORDERED THAT:

"The application for condonation and extension of time within which to note an appeal be and is hereby dismissed with costs."

Rusinahama-Rabvuka Attorneys, applicant's legal practitioners
Machinga Mutandwa, first and second respondents' legal practitioners