1. **MARTIN JONGWE** **HC 1928/18**

Versus

NATIONAL FOODS LIMITED

And

LABOUR COURT (BULAWAYO) – KABASA J (as Judge)

2. **MARTIN JONGWE** **HC 1929/18**

Versus

NATIONAL FOODS LIMITED

And

LABOUR COURT (BULAWAYO) – KABASA J (as Judge)

IN THE HIGH COURT OF ZIMBABWE
MABHIKWA J
BULAWAYO 15 JULY 2019 & 12 MARCH 2020

Opposed Application

Applicant in person
S. Chamunorwa for the 1st respondent

MABHIKWA J: This is an application for leave to appeal against a judgment by my brother MATHONSI J handed down on 14 June 2018. That judgment HB 147/18 being in respect of case number HC 2606/17. The applicant had sought condonation for the late filing of his notice of appeal against a judgment by KABASA J of the labour court. Apparently, the applicant had earlier in case number HC 2016/16 made the same application before my brother MAKONESE J who struck the matter off the role on 21 September 2017 as it was improperly before the court. It had been filed out of time and no condonation had been sought hence the application before MATHONSI J in 2018.

I wish to state at this point that in his applications, more so in the current one in his half founding affidavit, the applicant attacked all 3 judges right left and centre and in some cases just falling short of insulting them. Such conduct cannot be condoned by this court. The founding affidavit in this application is a very condensed 16 paged document, not 10 in fact as explained by *Mr Chamunorwa* in his submissions. The affidavit contains, to put it in the words of MATHONSI J, "a list of words arranged into long winding sentences, even if they be unrelated, but somehow grouped together merely by their proximity in the hope that something meaningful and valid may emerge of its own from those words.''

Mr Chamonorwa for the 1st respondent on his part complains that the 37 paragraph affidavit contains irrelevant and argumentative matter that serves nothing but to unnecessarily burden the court and harass the respondents. The simple fact of the matter is that MATHONSI J dismissed applicant's application for condonation, in my view on very sound reasoning which is clear and unambiguous. In any event, I cannot, and I do not intend to review that judgment.

There is a plethora of cases to the effect that a court cannot sit and review its own judgment. By extension, which applicant refuses to accept, a judge can not purport to revisit and review a judgement by a fellow judge of the same court. Suffices for purposes of an application for leave to appeal to say that MATHONSI J's judgment was final and definitive in nature. No application for leave to appeal is sought under those circumstances. An application for leave to appeal is made when the judgment sought to be appealed against is interlocutory in nature.

The reasons for dismissing the application for condonation were also clear. The learned judge refused to accept the reasons given by the applicant for filing his application way out of time. The applicant had explained that although he was indeed aware of the 8 week requirement

for the filing of a review application, he decided to first try his luck at seeking leave to appeal. On that fate he had to fall back on a review application. After that, he misunderstood the rules according to him, and MATHONSI J dismissed that explanation and stressed the fact that condonation is not granted, and indeed not available because a party has failed in his or her pursuit of some other remedy, or after trying luck elsewhere. Despite the judgement having been final in nature, applicant has insisted on seeking leave to appeal from this honourable court. There is no legal provision or requirement to seek leave to appeal before appealing such a judgment, both in the High Court Act and in the court rules. In any event it appears that even at the labour court case, applicant lost an opportunity to appeal at the time he should have, as he went on a wild goose chase.

Apparently, history appears to be repeating itself again. "The applicant appears to be repeating the exact same mistake by seeking condonation or seeking leave where it is not necessary. He will only realise, when he again gets stuck in the middle of nowhere. Justice MATHONSI J held, which also is my view, that applicant after all has absolutely no prospects of success on appeal. In the circumstances the application is improperly before the court. In any event, it has no merit at all.

Applicant persisted on the application even allegedly against the advice of counsel for 1st respondent. He however still is an unrepresented litigant although a very litigious one. He better be warned against continuously putting everyone else into unnecessary expense and waste of time. Next time, the court having warned him, he may not escape punitive costs.

Accordingly, the application is dismissed with costs of suit on the ordinary scale.

Having dismissed the application in case number HC 1928/18 above, it follows for the same reasons that the application in case number HC 1929/18, which in any event has been overtaken by events, cannot succeed.

It is also equally dismissed with costs.

Cadlerwood Bryce Hendrie & Partners, 1st respondent's legal practitioners