

INVERANGUS (PVT) LTD
versus
ALICE SUNGA AND 34 OTHERS

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 18 July 2017

Opposed Matter

D. Halimani, for the applicant
T. E Mudambanuki, for the respondents

ZHOU J: This is an application for dismissal for want of prosecution of the application for rescission of judgment filed by the first to 33rd respondents on 8 June 2016. The main application was filed under case no. HC 5801/16, seeking the setting aside of the order of this court granted in case no. HC 7797/15 on 6 April 2016. After the respondents had served the application for rescission of judgment the applicant filed its notice of opposition and opposing affidavit on 23 June 2016. The respondents took about five months to file an answering affidavit to the opposing papers. After that they took another 3 weeks to file an answering affidavit to the Minister's opposing affidavit in December 2016.

The applicant, as it was entitled to do, instituted the instant application on 19 January 2017. In opposing the instant application the respondents state that they took time to respond to the Minister's affidavit because they were looking for information relating to Government policy. That is not a sound explanation given that the dispute had been ongoing for some time prior to that.

The provisions of r 236 (3) (b) are meant to bring finality to a dispute where the *dominus litus* exhibits a lackadaisical attitude towards proceedings instituted by him. The rule gives the respondent the right to expedite the finalization of the application by applying for dismissal for

want of prosecution. While this court has a discretion as to the order to grant where such an application is made, that discretion must be exercised judicially upon a consideration of all the relevant circumstances of the case.

In the present case, the respondents who are the applicants in the application for rescission of judgment are seeking the indulgence of the court to rescind a judgment which was granted following their default. They would therefore be expected to act diligently this time around. Their conduct points to the contrary. As shown above, they took almost five months to file the answering affidavit. They do not give a reasonable explanation as to why after filing the answering affidavit it took them more than 30 days to file heads of argument. The court is not persuaded that they have reasonable grounds to justify their laxity in this matter. In the interest of finality in litigation, this court must therefore dismiss the application for rescission in order to bring a closure to the dispute between the parties.

In the result, it is ordered that:

1. The application in case no. HC 5801/16 be and is hereby dismissed for want of prosecution.
2. The costs of this application and case no. HC 5801/16 shall be paid by the first to thirty-third (33rd) respondents jointly and severally the one paying the others to be absolved.