



Dear Reader!

We are in the first quarter of the year 2017 and we welcome you to our first edition of our newsletter. 2016 was a great year with lots of developments in the Zimbabwean law. I hope we shared with you useful articles covering different aspects of the law for your benefit. We hope you will enjoy reading this piece as it has useful insights on aspects that society mainly turns a blind eye on but rather are very useful and aids to your knowledge of the law. I am honoured to present the first issue of our newsletter this year which is part of the communication channel between NN LAW and our priceless readers. Compliments of the new Year from NN LAW.



Sonia Fashi

A brief rundown on some of the Constitutional Court landmark rulings of 2016.

2016 was a great year with quite a number of improvements in the law. Some of the developments we shared with you as the year progressed through our various newsletters.

Here are some of the laws that emerged in 2016:-

- Child marriage was outlawed.
- Criminal defamation was ruled unconstitutional.
- On life imprisonment, the Constitutional Court was of the view that inmates sentenced to life in prison should be considered for presidential pardon.
- On ZBC licences, the Constitutional Court delivered a ruling to the effect that every citizen must pay the broadcaster's licence fees irrespective of the service provider one may select to use in Zimbabwe. This law compels all Zimbabwean citizens owning gadgets capable of receiving radio and television signals to pay a tax for possessing such gadgets.
- The issue on the unconstitutionality of spot fines is still an issue under debate in the courts of law where judgment is currently reserved.
- Corporal punishment also caused a stir in 2016 with some calling that it should be outlawed, the courts are still to make a determination on whether or not corporal punishment is unconstitutional.



Bail for stealing a wet shirt on the washing line (yes/no)?

Crime threatens peace and security in society. The release of people suspected of committing crimes on bail more often than not raises a lot of emotion. The seriousness of a crime often influences the granting of bail, bail can be easily granted if it's a minor offence, however bail is and should not be easily granted on serious crimes like murder.

WHAT IS BAIL?

When a person is arrested, he/she is presumed not guilty until the court finds such person to be guilty. Under such circumstances the law permits that if a person wishes to be released from custody pending the finalization of the trial, he/she may apply to court to be released with/without set conditions. Bail therefore is money deposited with the state by a person who is being charged with committing a crime. By paying the set amount of money, a person will then obtain release from police custody. The bail amount will only be returned back if a person complies with set conditions. As part of that release, a person will promise to appear in court for all proceedings in relation to that particular case.

Under what circumstances can a person be granted bail?

Bail is granted by the court if satisfied that the person applying for it will meet certain set condition. Bail is granted

when the accused is not a flight risk and can easily be found by law enforcement agencies.

The nature of the crime and the penalty it attracts upon conviction influences the granting of bail. The courts also look into the prospects of success of the accused in the said matter that is, the strengths and weaknesses of the case against the accused among other factors taken into account by the courts in deciding whether or not to grant bail.

Bail can also be granted taking into account the following reasons:-

- If accused will attend his court hearings
- If accused is not a flight risk
- If the accused will not interfere with witnesses
- If accused will not commit further crimes or is not a danger to society.

When can a person be released on Bail?

A person can be released on bail at any time after being charged with a crime, before the beginning of the trial or even when trial is already in progress. Bail even extends to the period after a person has been found guilty, hence one will therefore be seeking for bail pending or awaiting his/her appeal.

To some bail is misconceived to mean a fine, but bail is not a fine. This money will be refunded if accused does not breach any of the set bail conditions whether or not accused is found guilty. In breach of set bail conditions the money will be forfeited by the state.

Afraid of death?

One simple fact that everybody should know is "We are not immortal". One day we will pass on and leave everything we worked tirelessly for behind. Have you ever thought about what will happen to your property after you die? It is never too late to write a will especially if you have children or other people you want to be beneficiaries of your legacy.

What is a will?

This is a legal document by which the testator (maker of the will) expresses how his/her property is to be distributed upon death as well as how his/her estate is to be handled at the same.

Who can make a will?

Every person who is of or over the age of 16 years may make a will unless at the time of making the will he/she is mentally incapable of appreciating the nature and effect of his/her act. A will must be in writing with the exception of oral wills

which mainly pose problems on enforcement, it must be signed by the testator or some other person in his presence at his direction and must be attested by witnesses in the presence of the testator.

Why does a person need a Will?

Will writing gives a person discretion over the distribution of his or her assets. It helps a person decide freely how his/her belongings will be distributed.

Issues that a Will can cover:-

- How property is to be distributed
- Name the beneficiaries to the said Will
- Make provision for any children under the age of 18 years if any eg name the person to be their legal guardian or who will look after them and help manage their finances after death of their parent(s)
- Can help children set up a Trust which they can access upon reaching a certain age which age can be stipulated in the will



- The testator can also appoint or name the person to be executor of his will

Will writing is important as it ensures that upon death the testator's intention will be carried out based on the contents of the Will and ensures that only the named beneficiaries are the ones who will only benefit from such a process. Make sure you think about it, grab a pen and record your intentions on paper so that your tomorrow will be organised. In the event you need clarity on will writing, it is advisable that you seek legal advice.

Judicial Management

Companies fall ill too sometimes just like natural persons. Is your company not doing well and might be headed for a crash? Judicial management can be a viable option to rescue your company especially in this ailing economy. However judicial management should not be seen as a way of running away from debts by abusing court process but rather is a way of bringing a crumbling company back on its feet again. It helps companies in financial difficulties to avoid the drastic option of closing down by attempting to rescue it from such closure.

What is Judicial management?

This is a process which aids or rescues companies that are heavily indebted and at the verge of closing by formulating or implementing a reconstruction plan. In short it refers to the administration of a company which is not performing well.

Judicial Management can be final or provisional. A company can make an application to be placed under judicial management through section 299 of the Companies Act [Chapter 24:03] which application is filed with the court.

Where a company makes an application for liquidation (that is to dissolve the company completely), the court has a discretion to grant a provisional judicial management order instead as

a way of trying to rescue a company from crumbling rather than ending it from the word go.

Who can make an application for judicial management?

- Any stakeholders
- Creditors
- Shareholder's

Once an order is granted by the court, the Master of the High Court will then appoint a provisional judicial manager to manage the company. This will shift control of the company to such appointed judicial manager. Judicial Management therefore can be termed an alternative to the winding up of a company. A judicial manager is a person appointed by the court to run the affairs of a company in financial difficulties. He/she will assume control of the company hence all Directors of the company will lose their authority to the newly appointed judicial manager who will have full authority to run the company's affairs.

What can the judicial management order provide for?

It can provide for the staying of all actions, proceedings (legal proceedings included eg issuing of summons and can also hamper on the enforcement of writs of execution against the company's assets. NB Judicial Management

should not be misused as a way of abusing court processes and barring companies to pay off their debts. In short this process freezes legal process by creditors hence creditors will be disabled from suing the company in a bid to recover whatever is owed to them by the company. In terms of section 209 of the Companies Act [Chapter 24:03], a company under judicial management enjoys immunity from prosecution, meaning once an order for judicial management has been granted, it therefore follows that the company cannot be involved in litigation which is costly and detrimental to the efforts being made to resuscitate the company.

In simple terms judicial management is a process done to facilitate the recovery of a company by handling or conducting the affairs of such company which is failing to meet its obligations. It helps companies suffering from temporary setbacks due to mismanagement to become successful ventures again. By remaining in operation a company might be able to gain back its stability and henceforth will be able to pay off its debts. However companies must not use this option to run away from paying off its debts due to the protection afforded to them by the law but should only do so when a company really needs rescuing.

DID YOU KNOW that, An unregistered customary marriage is not recognised as a marriage in Zimbabwe even were lobola has been paid? It is given little weight hence there is no divorce through the courts as in other types of marriages. It is not recognized as a marriage at law except in certain limited circumstances.

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