MARTIN BOKA
versus
RHODALIEGH SCOTT
and
GOLDRIDGE PRIMARY SCHOOL
and
THE HEADMISTRESS OF GORDRIDGE PRIMARY SCHOOL
and
THE BURSAR OF GOLDRIDGE PRIMARY SCHOOL
and
MINISTRY OF PRIMARY AND SECONDARY EDUCATION
and
THE RESERVE BANK OF ZIMBABWE

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE 14 June 2024 & 11 February 2025

Urgent Chamber Application

P M Sagwete, for the applicant
B Muzenda, for the 1st respondent
A Mutatu, for the second & 4th respondent
No appearance for the 5th respondent
No appearance for the 6th respondent

TAKUVA J: This is an urgent chamber application for a declaratory order and consequential relief in terms of s14 of the High Court Act [*Chapter 7:06*].

BACKGROUND FACTS

Applicant settled an invoice for the first term 2024 tuition fees for his minor child at Goldridge Primary School in full at the prevailing Reserve Bank inter Bank rate on the date of payment. The 1st to 4th respondents have opposed the application on the basis that the application is fatally defective and further that tuition fees for the minor child have not been settled in full based on an alleged contract entered into between 1st and 2nd respondents and as such, application must fail.

The respondents raised a multitude of meritless points *in limine* which I proceed to deal with *seriatum.*

DECLARATORY ORDER DOES NOT REQUIRE AN INTERIM ORDER

The 2nd and 4th respondents have submitted that the draft order is defective for not providing interim relief. It is trite that not every urgent chamber application must be accompanied by a provisional order or interim relief. See *Lifebrand Agriculture and Ngoni Munangagwa* v *Millicent Tendai Mugayi* & *The Sheriff* of the High Court HH 499/18 at 5 of the cyclostyled judgment.

The application *in casu* is for a declaratory order and consequential relief. A declaratory order is normally in the form of a final order- see *Chikwinya & 6 Ors* v *Mudenda No & Ors* HH 48/22. This cocincides with applicant's relief namely that he has sought an order that he has settled the invoice for first term of 2024 school fees in full based on two payments made at the prevailing Reserve Bank interbank rate on the date of payment. It is therefore not a legal requirement that every urgent chamber application must be accompanied by a provisional order or interim relief. I find that the point *in limine* lacks merit. It is accordingly dismissed.

Application Fatally Defective for want of form

I do not consider the present application to be fatally defective for want of form because it is trite that save for instances in which a law specifically provides that defined proceedings must be commenced by way of court application as provided in r 8 in which case the applicant would be obligated to follow that procedure. See r 58(13) which provides that:

> " without derogation from r 8 but subject to any enactment, the fact that applicant has instituted-
> (a) A court application when he or she should have proceeded by way of chamber application; or
> (b) A chamber application when he or she should have proceeded by way of a court application; shall not in itself be a ground for dismissing the application unless the court or judge, as the case my be, considers that-
> (c) Some interested party has or may have been prejudiced by the applicant's failure to institute the application in proper form, and
> (d) Such prejudice can not be remedied by directions for the service of the application on that party with or without an appropriate order of costs."

In the present matter, the 1st -4th respondents did not in the opposing affidavit allege any prejudice suffered by them by virtue of the alleged improper form of the application . I would dismiss the point *in limine* for lack of merit.

3. DRAFT ORDER FATALLY DEFECTIVE

The averment here is that the draft order is fatally defective for its failure to specify which minor child is being mentioned and secondly for its failure to cite which respondents are to bear the costs of suit. Now, it is axiomatic that a draft order is not something that is final. What the court can do is to look at the relief and see if the court can vary the order – see *CRAFT* v *CRAFT* (nee MOSS) HH 241/22 where the court stated that the exact wording of the order is the ultimate responsibility of the court, as long as the substance of what is being claimed does not change and the relief sought is supported.

According to the draft order and the founding affidavit what the applicant is asking this court to declare that first term 2024 school fees have been paid in full. Also applicant already pleaded in his founding affidavit that he is the father of Mathew Boka, it cannot be said it is not known which child is referred to. The point lacks merit.

MERITS

An application for a declaratory order ought to be considered in light of the provisions of s 14 of the High Court Act. The requirements for a declaratory order were aptly considered in the case of *Johnsen* v *Agricultural Finance Corporation* 1995(1) ZLR 65 where the court stated as follows;

> "The condition precedent to the grant of a declaratory order under s 14 of the High Court Act of Zimbabwe, 1981 is that the applicant must be an " interested person" in the sense of having a direct and substantial interest in the subject matter of the suit which could be prejudicially affected by the judgment of the court . The interest must concern an existing, future contingent right. The court will not decide abstract, academic or hypothetical questions unrelated there to. But the presence of an actual dispute or controversy between the parties is not a pre- requisite to the exercise of jurisdiction. See Ex P. Chief Immigration Officer 1993 (1) ZLR 122 (S) at 129 F-G; 1994 (1) SA 370(25) at 376 G-H; Munn *Publishing (Pvt) Ltd* v *ZBC* 1994 (1) ZLR 337 (S) and the cases cited therein"

In *casu*, the existing rights and obligations of the applicant have been fully explained in the founding affidavit. It is common cause that the invoice sent to the applicant is that of Goldridge Primary School for the 1st term of 2024. It is also not disputed that applicant made payments at the prevailing interbank rate on the date of payment.

The dispute centers on the financial changes introduced by the Government of Zimbabwe on 22 February 2019. What happened is that the government introduced a new currency called the Real Time Gross Settlement Electronic dollar (RTGS), through the Presidential Powers (Temporary Measures) Amendment of Reserve Bank of Zimbabwe Act And lesue of Real Time Gross Settlement Electronic Dollars (RTGS DOLLARS) Regulations,2019 hereafter referred to as "S. I.33/19" or the instrument. The instrument was gazetted on 22 February 2019 which date became the first effective date as defined in the Finance Act (No2) Act No . 7 of 2019 (The Finance ACT). The new currency ran parallel with other currencies that were accepted as legal tender under what was known as the multicurrency basket.

Later on 24 June 2019 the government gazetted statutory instrument 142/2019 which abolished the multicurrencies and declared the ZWL to be the sole legal tender in Zimbabwe. The two instruments were later incorporated into the Finance Act gazetted on 21 August 2019. The critical parts are ss22 and 23. Section 22 allowed the Reserve Bank, to with effect from the first effective date issue an electronic currency called the RTGS dollar ;and that such currency shall be legal tender within Zimbabwe. It also provided that ;

(4) For the purposes of this section –

(a) It is declared for the avoid dance of doubt that financial or contractual obligations concluded or incurred before the first effective date, that were valued and expressed in United States dollars (other than assets and liabilities referred to in s 44 C (2) of the principal Act) shall on the first effective date be deemed to be valves in RTGS dollars at a rate of one to one to the United States Dollar:"

Section 23 provides that the Zimbabwe in dollar shall be the sole currency for legal tender purposes from the second effective date. The words " assets and liabilities" are not defined in the Finance Act or in S.I.33/19. However the Supreme Court dealt with the issue in *Zambezi Gas Zimbabwe (Pvt) Ltd* v *N.R. Barber (Pvt) Ltd & Anor.* The

court held *inter – alia* that in interpretating s. 4 (1) (d) regard should be had to assets and liabilities which existed immediately before the effective date of promulgation of S.I 33/19.

The import of this legislation is to permit the payment of liabilities in accordance with the provisions of S I 33/19. It is common cause that the applicant settled the invoice send to him in terms of the laws of Zimbabwe stated above. The 2nd to 4th respondent's argument that fees have not been settled because the 2nd respondent prefers foreign currency only is obviously inconsistent with the laws of the country. Equally untenable is 2nd to 4th respondents' contention that applicant has not settled the invoice in full based on a contract between the school and the first respondent. (the pupil's mother)

It is common cause that applicant is not privy to that contract as he is not a party to it. The first respondent concedes that school fees have been paid in full in RTGS. Indeed, the law is settled on issues such as the one at hand, see Zambezi Gas Zimbabwe (Pvt) Ltd v N.R Barber Supra. The school fees being a liability denominated in United States Dollars is payable in RTGS at the inter – bank transfer rate on the date of payment . Therefore the applicant paid the school fees in full. What is noteworthy is that the first respondent (the child's mother) agrees with this position.

The 2nd to 4th respondents opposition has no merit. It is simply that the invoice should be settled in United States dollars only. They do not want to be paid in RTGS Dollars. Unfortunately, the law of the land is the exact opposite. The contract relied upon does not bind the applicant. In my view this is a proper matter in which a declaratory order should be issued. The applicant is an interested party as the father of the student affected by 2nd to 4th respondents' conduct.

I find the application to be merited. In the result, I make the following order.

IT IS ORDERED THAT:

1. The application be and is here by allowed.
2. It be and is here by declared that the applicant has paid full tuition fees for first term 2024 in respect of Mattew Boka a student at Goldridge Primary School Kwekwe.

3. The 2nd respondent to pay costs of suit on an ordinary scale.

Uasawi and Partners, applicant's legal practitioner
Hore & Partners, 1st respondent's legal practitioner
Wilmot and Bennet, 2nd – 4th respondents