PAUL RAZUNGUZWA
(In his capacity as the Executor of the Estate of the
Late Benjamin Razunguzwa)
versus
SANTANA TARUSENGA
and
MASTER OF THE HIGH COURT OF ZIMBABWE

HIGH COURT OF ZIMBABWE
CHITAPI J
HARARE, 20 January 2020

Urgent Chamber Application – Correction of order

CHITAPI J: The above application was placed before me on 24 December, 2019 as an urgent application for a provisional order. After reading through the application l issued an order as follows:

"1. Matter not urgent. No compelling and exceptional circumstances are alleged to merit an urgent hearing and jump the queue of other pending cases.

2. Application is hereby struck off the roll of urgent applications."

The record has again been placed before me, this time under cover of a letter dated 10 January, 2020 addressed to the Registrar for the attention of my clerk who placed the letter and the record for my attention. The letter reads as follows;

> "**RE: Paul Razunguzwa N.O v Santana Tarusenga HC 10353/19**
> The above matter refers. May you kindly bring this letter to the attention of the Honourable Justice Chitapi's Assistant.
> On the 8th of January 2020, we received an order which was issued by the Honourable Judge on the 24th of December 2019. The order suggests that it was issued after the parties appeared before the court and made submissions but the parties were not notified to attend a hearing.
> In the premises, we request audience before the Honorable Judge to make submissions in respect of the matter.
> We look forward to your assistance.
> Yours faithfully
> **Wintertons**"

I have confirmed that the Registrar issued an order which is prefaced as follows above the content of the order:-

WHEREUPON after reading documents filed of record and hearing counsel (own underlining):

IT IS ORDERED THAT:

1……..

2…..

It is the reference to the underlined words, "and hearing counsel," which the applicant's legal practitioner has taken issue with. The applicant legal practitioners' observation that the order purports that parties or counsel appeared before me is noted. The Registrar who issued the order made a mistake. The mistake arises from a perfunctory approach to the issuing of court orders. The use of a template or engaging in a copy and paste exercise has attendant risks in that unless the final product is thoroughly revised, omissions and additions may be inadvertently made to an order with the result that the order issued is not the same as the one that was issued by the judge.

It is standard practice where parties have appeared by counsel, that details of the name of counsel are shown on the order. In this case, the order itself albeit referring to "hearing counsel" did not indicate the names of counsel. It is also evident from the letter that the applicant's legal practitioner did not make his or her own independent investigation by perusing the court record to verify whether the order issued by the Registrar in fact accurately reflected the order issued and signed by the judge.

Where counsel considers an order and notes an anomaly on it, the first point of call should not be to seek audience of the judge. Counsel has a duty to peruse the record to which the order relates and clarify with the Registrar on the accuracy of the order. Where as in this case, the Registrar has made an error, it would be the Registrar who must bring the record to the judge and seek directions on the correction of the Registrar's typing error. It is a weakness in the system that it is the Registrar who signs off the typed judge's order without reference to the judge. Where the order is incorrectly typed and issued, it is the judge whom the public and parties will attribute the wrong order to. I must accept though that it is impractical and inconvenient to require judges to proof read every typed order before they are issued out by the Registrar. To avoid or minimize

the issuing of inaccurate orders, all that is required is for the Registrar to meticulously read through orders before signing and issuing them because situations may arise where an error in an order may result in irreparable harm or prejudice to parties affected thereby and indeed the public at large.

I read the letter from applicant's legal practitioners as requesting my audience for counsel to make submissions in relation to the error which was evidently made by the Registrar. The applicant's legal practitioner seeks to take advantage of the clerical error to have the judge convene a hearing to hear submissions. The hearing is unnecessary. The legal practitioner can take up the issue of the error with the Registrar who in turn can issue a corrected order and have the judge set aside the wrongly worded order. In short, the order issued by the Registrar is incorrect to the extent that it purports that "counsel were heard by the judge." The judge's original order which counsel did not bother to check upon by not perusing the record did not indicate that counsel appeared before the judge. Counsel is referred to peruse the record in this regard.

Resultantly, there is no basis for the judge to set the matter down and grant the audience sought solely for purposes of the applicant's counsel to make submission in "respect of the matter" which matter has been presented as the error in the court order to the extent mentioned. I therefore rule as follows:

1. The basis for requesting the audience of the judge, being to make representations on the inaccuracy of the order issued by the Registrar is not one requiring that such audience be granted as clearly it is a typing error easily ascertainable by counsel from the record.
2. The registrar is ordered to issue an amended order which correctly reflects the order made by the judge, specifically by deleting the words "and hearing counsel" after the words "WHEREUPON after reading documents filed of record," the rest to remain.

Wintertons, applicant's legal practitioners