SERGEANT MANDE B 047375T
and
CONSTABLE NYAKUJARA L.T.070317F
and
CONSTABLE MBIRI. S. 0740884
versus
THE OFFICER IN CHARGE HARARE CBD
and
THE COMMISSIONER GENERAL OF POLICE

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 26 May and 13 July 2016

Urgent Chamber Application

T. Takaendesa, for applicants
S. Chafungamoyo, for the 2nd respondent

TAGU J: The second respondent took two points *in limine* in this application. The first point was that the first respondent who is the trial officer was not served with the application in violation of Order 32 r 242 (1) of the High Court Rules 1971. The second point was that the certificate of urgency was defective in that it failed to bring to light the urgency of the matter.

The applicants brought this urgent chamber application via a chamber book against two respondents. The first respondent cited in the papers is the Trial Officer who happens to be the Officer in Charge Harare CBD. The second respondent's counsel submitted that the officer in charge Harare CBD did not attend the hearing let alone brief her because the said officer who is housed at corner Inez Terez and Charter road was not served with the application. The application was only served on the second respondent who is housed along Chinamano Avenue.

The counsel for the applicants argued that the first and second respondents fall under the same ambit of ZRP and once one of them has been served it automatically follows that the other is also served. I do not agree with that interpretation.

Rule 242 deals with the service of chamber applications. It says:

"242. Service of chamber applications

(1) A chamber application shall be served on all interested parties unless the defendant or respondent, as the case may be, has previously had due notice of the order sought and is in default or unless the applicant reasonably believes one or more of the following-
(a) that the matter is uncontentious in that no person other than the applicant can reasonably be expected to be affected by the order sought or object to it;
(b) ……."(underlining is mine)

While the two defendants are members of the Zimbabwe Republic Police the two defendants are housed some kilometres apart and need to have been served separately. It was not enough to serve only one defendant. There is merit in the point raised by the counsel for the second defendant. As far as these proceedings are concerned the first defendant was not aware of them hence did not attend nor brief counsel since he was not served. The provisions of r 242 (1) were not complied with.

URGENCY

The counsel for the second respondent attacked the legal practitioner who prepared the certificate of urgency saying that the certificate of urgency by the legal practitioner did not bring to light the urgency of the matter. She said the basis of urgency is the same as that of review filed on the same day. She said it failed to meet the standard set out in the *Kuvarega* v *Registrar General & Anor* 1998 (1) ZLL 188.

In *Kuvarega* v *Registrar General and Anor supra* at p 193 F-G it was said:

"What constitutes urgency is not only the imminent arrival of the day of reckoning; a matter is urgent, if at the time the need to act arises, the matter cannot wait. Urgency which stems from deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules. It necessarily follows that the certificate of urgency or the supporting affidavit must always contain an explanation of the non-timeous action if there has been any delay."

In *casu* the legal practitioner simply stated that on 17 May 2016 the first respondent advised the applicants that he wanted to detain them to serve their sentences after the Commissioner General of Police dismissed their appeal. It is not clear when the appeal was dismissed. It is not clear when or whether or not they had been advised of the dismissal of their appeal. They only rushed to file an application for review when they were now told that they were about to be detained. As submitted by the counsel for the second respondent the mere filing of a review does not create urgency.

The counsel for the applicants submitted that para(s) 3 to 7 of the certificate of urgency creates urgency. He argued that it is a matter of semantics. The paragraphs referred to read as follows:

> "3. The Applicants rushed and filed an application for review before this court which application is still pending.
>
> 4. The Applicants have approached this court so that their detention is delayed until the application for review is determined.
>
> 5. It is legally correct and prudent that the detention of the Applicants be stayed pending the finalisation of the Application for review.
>
> 6. If the sentences against the Applicants are executed, the application for review for the applicants will be merely academic if they want to pursue it further.
>
> 7. The Applicants will thus suffer irreparable harm if this court fails to intervene and intervene on an urgent basis."

As I said earlier, it is not clear when the appeal was dismissed by the Commissioner General. It was not stated when the applicants were advised of the dismissal of their appeal. What is stated is the date they were told that they were now going to be detained. We are not told of what action they took before this day of detention. It is not clear why they chose to file the application for review on this day. It is for these reasons that the counsel for the second respondent submitted that the requirements in the *Kuvarega* v *Registrar General and Anor supra* were not complied with.

I am satisfied that this application does not meet the requirements of urgency as contemplated by the rules. I find that the application is not urgent and it is struck off the roll of urgent matters. I therefore make the following order:

IT IS ORDERED THAT

1. The application is not urgent and it is struck off the roll.

Mugiya and Macharaga Law Chambers, applicants' legal practitioners
Civil Division of the Attorney General, second respondent's legal practitioners