

CHARLOTTE CHIVAVARIRWA
versus
ZIMBABWE ANTI –CORRUPTION COMMISSION
and
M. TAHUWONA
and
M. MANYUKE
and
E. CHIMUSORO

HIGH COURT OF ZIMBABWE
WAMAMBO J
HARARE, 27 June 2022, 1 July 2022 and 30 January 2023

Urgent Chamber Applicant

G R J Sithole with *A Masango*, for the applicant
N B Munyuru, for the respondents

WAMAMBO J: Applicant sought relief through an urgent chamber application for the release into her control of four motor vehicles namely a Mercedes Benz E 320 AF1 5420 Mercedes Benz E 250 AFS 1338 Mercedes Benz C 220 D AFU 0067 and a Toyota Hulux Club Cab GD 6 AFN 7886.

The said motor vehicles were seized through a warrant of search and seizure issued in terms of sections 49 (1) (b) and 50 (1) (a) of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. The vehicles are believed on reasonable grounds to afford evidence of the commission or suspected commission of an offence.

To issue such warrant of search and seizure a Magistrate has to be satisfied from information on oath of reasonable grounds for believing such property to be under the control or in possession of any person or in any premises within its jurisdiction. I found the matter not to be urgent and gave reasons thereof. I have now been requested for full reasons which follow here under:

The background of the matter is that there are allegations against Daniel Kalira a Net One employee of fraud and money laundering per section 136 of the Criminal Law Codification and Reform Act [*Chapter 9:23*] and section 8(3) of the Money Laundering and

Proceeds of Crime Act [*Chapter 9:24*]. The annexure to form 242 alleges the period of alleged infraction as June 2020- 23 May 2022. Further that preliminary investigations reflect prejudice of \$ 7 990 000.00 ZW \$2 250.000, 00 and ZWL 150 000.00.

The further allegations are that Daniel Kalira and applicant are lovers who both reside at 1 Goshawk Avenue, Vainona, Harare.

Respondents are opposed to the application. They raised a number of points *in limine* one of which is lack of urgency. I will relate to urgency first. Respondent avers as follows on urgency.

The certificate of urgency does not sufficiently set out the grounds of urgency. The legal practitioner who drafted the certificate of urgency merely rubber stamped the same.

Applicant does not say how and where she urgently intends to use all four motor vehicles and the relevance of the relief she seeks. That applicant does not state what irreparable harm would be visited upon her if the relief she seeks is not granted. It was further argued that the urgency is self-created.

Applicant insists that the matter is urgent. She states among other reasons that she needs the said motor vehicles to ferry herself and her children. That her business has suffered and that she is now a pedestrian. That her finances are being depleted by hiring taxis to ferry her children to school.

I carefully considered the arguments raised by both counsel. I revisited the classic cases such as *Kuvarega v Registrar General* 1998(1) ZLR 188 (H). *Econet Wireless (Private) Limited v Trustco Mobile SC 43/13* among others I considered and applied the principles enunciated in the above cases

It should also be noted that applicant previously filed an urgent chamber application before MHURI J under HC 3635/22 which application was struck off the roll.

KUDYA AJA in *Equity Properties Pvt Ltd v Alshams Global BVI Ltd and Registrar of Deeds* SC 101/21 at p 11 said the following on urgency:

“The law on what constitutes urgency is settled. Urgency is manifested by either a time or consequence dimension. See *Kuvarega v Registrar – General and Anor* 1998 (1) 188 (H) at 193E *Document Support Centre (Pvt) Ltd v Mapuvire* 2006 (2) ZLR 240 (H) *Gwarada v Johnson* 8 Ors 2009 (2) ZLR 159 (H) and *Sitwell Gumbo v Porticullis (Pvt) Ltd t/a Financial Clearing Bureau* SC 28/14 at p 3.”

At p 12 the Leaned Judge of Appeal continued as follows:

“It is apparent that the consequence dimension presupposes that the harm sought, to be protected in an impending matter would be amorphously, irremediable without the interim indulgence”.

As for time dimension I note that the said motor vehicles were seized on 25 to 27 May 2022. This application was lodged on 20 June 2022. There is no reasonable explanation for the delay which in any case I find unduly long. I find that the application was also not treated with urgency as regards the time dimension.

In this case the next question to be answered is what harm would be irremediable without the interim indulgence sought. The harm feared is reflected in para 11 of the certificate of urgency as follows:

- Applicant is now a pedestrian and her business has been affected
- The cars in issue may be damaged or parts stolen
- Compensation of any harm visited upon the said motor vehicles would be hard to come by as respondent is a government entity.

I find that applicant being rendered a pedestrian is not irredeemable harm. She can seek alternative transport in the meanwhile. Damage to the said motor vehicles whilst in the custody of a government entity is improbable. I am mindful that there are rules, regulations and procedures aimed at preserving property lawfully seized. The same would apply to the issue of compensation in any case if so advised nothing can stop applicant from suing the relevant government entity if damage is visited upon the vehicles if the need arises and the vehicles are returned to her.

I find that there are remedies and relief available to applicant when the matter is heard on the ordinary roll.

In *Eastview Investment (Private) Limited, Bishop Jeche v Hoseah Mujaya N.O and The state* SC 82/19 P 5 it was said:

“Secondly and more importantly in my view if the application is not heard urgently the applicant’s legal position will not be adversely affected. The applicant still have available to them remedies and relief in Criminal Law procedure that will ensure they have a fair trial

As it were the motor vehicles were seized under a warrant of search and seizure issued by a Magistrate lawfully Applicant’s stance is basically that she is inconvenienced by the effects of the warrant of search and seizure.

The issues for determination can be more fully determined on the ordinary roll in the circumstances pursuant to r 61(19) of the High Court Rules. The motor vehicles in question are under the control and custody of first respondent a government entity. I do not foresee any illegal or unlawful disposal of same. In the circumstances I found no urgency to the matter and ordered as follows:

1. The matter is not urgent and is removed from the roll of urgent matters.
2. Applicant to pay respondents' costs.

Muronda Malinga Masango Legal Practice, applicant's legal practitioners
Muvingi and Mugadza, respondents' legal practitioners