

**REPORTABLE** (02)

*EX TEMPORE*

FLORANCE SIBANDA  
v  
THANDAZANI SIBANDA

**SUPREME COURT OF ZIMBABWE  
HARARE: 28 NOVEMBER 2024**

*J.Ndlovu*, for the applicant

*H. Tererai*, for the respondent

**IN CHAMBERS**

**MATHONSI JA:**

1. This is an application for exemption or waiver of security of costs to be furnished in terms of r 55 (2) of the Supreme Court Rules, 2018.
2. The application is made in terms of r 55 (3) which provides:

“A judge may, on application at the cost of the appellant and for good cause shown, exempt the appellant wholly or in part from the giving of security under subrule (2).”
3. Significantly, in terms of r 55(4) the government, and municipal authorities are completely exempted from furnishing security of costs in the event of them noting an appeal to this Court.
4. Briefly the background is that the applicant and the respondent are divorced a decree having been granted by judgment of the High Court delivered on 27 September 2024 which

judgment also granted ancillary relief on custody and maintenance of one minor child, contribution towards the applicant`s legal costs and division of matrimonial assets.

5. The applicant was aggrieved by part of that judgment and noted an appeal to this Court on 18 October 2024 which appeal is pending before the Court. As such, the applicant was required by r 55(2) to enter into good and sufficient security for the respondent`s costs of appeal.
6. The respondent did not waive his entitlement to security of costs and rejected the applicant`s offer to pay a sum of \$ 400.00 towards such costs insisting on a sum of \$ 10 000.00.
7. As a result, the registrar was invited, in terms of the *provisio* to subrule (2), to determine the amount of security of costs to be furnished. On 4 November 2024, the registrar fixed the amount of \$ 1500.00 as good and sufficient security for the respondent`s costs of appeal payable in Zimbabwean currency at the prevailing exchange rate. She also gave the applicant 30 calendar days from that date to pay that amount.
8. Finding herself unable to comply, the applicant filed the present application on 20 November 2024. I mention in passing that, prior to all that, on 19 September 2023 and in an interlocutory matter (HC 5143/21) between the parties, the respondent was ordered to pay the applicant`s legal costs on a legal practitioner and client scale. The said costs were subsequently taxed and allowed on 23 November 2023 at the sum of \$ 1500.00.
9. In her founding affidavit, the applicant stated that she is incapacitated to pay the security of costs for the following reasons:

- (a) Although the respondent was ordered to pay her owed costs of US \$1500.00, he has refused to do so.
  - (b) Although the respondent was also ordered to make a contribution towards her legal costs in the sum of US \$ 5000.00, he has again refused and neglected to do so.
  - (c) She is unemployed, partially visually impaired and surviving on a retired teacher's pension of only US \$ 70.00 a month.
  - (d) She is hyper tensive and suffers from depression and has breast cancer, all of which render her incapable of furnishing the respondent`s security of costs.
10. The applicant added that, while she is entitled to execute against the respondent`s property to recover what is owed to her, she has been unable to do so because most of the assets awarded to him are tied in the matrimonial dispute which is the subject of the appeal. She then offered to pay \$ 200-00 towards security of costs.
11. In opposing the application, the respondent did not materially dispute the factual conspectus set out by the applicant. While admitting owing the applicant the total sum of \$6 500-00 in terms of two orders of the High Court and not paying it, the respondent stated that she has the remedy of executing against his property which she has not utilized.
12. The respondent asserted that the applicant has income in the form of rentals from tenants at the former matrimonial home. He added that by virtue of her being able to hire legal practitioners, it shows that she has means.

13. On the applicant's medical condition, the respondent did not make any meaningful submissions other than speculating that she may have recovered from hypertension and that there is no documentation regarding the breast cancer.
14. My view is that no meaningful opposition has been mounted against the application for exemption, a remedy which is available to an appellant unable to furnish security. Surely a party that has been ordered to pay money by a court should comply with the orders. He cannot say "I have not defied the court order because you can execute."
15. Rule 55 (3) gives a judge judicial discretion to exempt an appellant wholly or in part from the giving of security on good cause shown. My view is that the mere fact that the High Court ordered the respondent to make a contribution towards the applicant's legal costs was an acknowledgement of her incapacity.
16. In addition, it is clear that being a pensioned sickly person, the applicant makes a case for exemption. I have also considered the grounds of appeal and I am satisfied that there is an arguable case on appeal especially regard being had to the fact that there can be no one word answer to division of matrimonial assets in light of the numerous factors to be taken into account.
17. It occurs to me that the respondent's attitude also exhibits traits of vindictiveness and an attempt to frustrate the prosecution of the appeal.

18. Regarding the type of exemption to be given, I note that the applicant previously offered to pay \$400-00. She has reduced that to \$200-00 without giving a satisfactory explanation. This is a case where partial exemption should be granted.
19. A prayer for punitive costs has been made. Such costs are not justified it being no reason to grant them as punishment for opposing an application. I am however satisfied that ordinary costs should be granted owing to the applicant's success.
20. In the results, it be and is hereby ordered that:
  1. The application for exemption to pay the security of costs of appeal is granted with costs.
  2. The applicant is exempted in part from paying the respondent's security of costs and is directed to pay a sum of US\$ 400-00 payable in Zimbabwean currency at the prevailing exchange rate.
  3. The said amount shall be paid within 14 days of the date of this order.

*Messrs Mtetwa & Nyambirai*, applicant's legal practitioners.

*Messrs Tererai Legal Practice*, respondent's legal practitioners.