

MIRIRO SUSAN CHIKABIDA N.O
versus
BETTY ZUNGUNDE
and
THE MASTER OF THE HIGH COURT
DR 2461/19

HIGH COURT OF ZIMBABWE
MAXWELL J
HARARE, 1 March and 31 March, 2022

Opposed Matter

G Ganda, for the Applicant
1st Respondent in person
No appearance for 2nd Respondent

MAXWELL J: On the 5th of October 2020, TSANGA J dealt with an application referenced HC 3434/20 and ordered that:

- “1. 1st respondent is interdicted from interfering with the administration of the estate of the late **FLAVIAN CHIXZKABIDA (sic) CHARUMBIRA**.
2. Within ten (10) days of the date of this order the 1st respondent shall reimburse to the estate **USD 112** and **RTG\$79 657.41** broken down as follows:
 - (a).....
3. There be no order as to costs.”

On the 2nd of September 2021, Applicant approached this court seeking the committal of the first Respondent to prison for contempt of the above order and costs on a legal practitioner and client scale.

The background of the matter is that Applicant is the executor of the Estate late Flavian Chikabida. First Respondent married the deceased Flavian Chikabida Charumbira (the deceased) in terms of customary law in 1996. At the time of the customary marriage, deceased was still married to one Appolonia Chikabida in terms of the Marriage Act [*Chapter 5:11*]. The second Respondent declared the customary marriage invalid at an edict meeting. By virtue of the customary marriage, first Respondent claims to be the surviving spouse and a beneficiary of deceased’s estate. She is accused of interfering with the administration of the estate. The deceased

left a Will in which he indicated that four listed properties, including a farm, should be transferred into a trust to be registered by Susan Chikabida, his daughter. Deceased had also entered into a lease agreement with Ngoni Kandeya (Kandeya) in terms of which Kandeya was to deliver 15% of his produce as his rental. Applicant stated that in a bid to protect the interests of the estate she filed an application seeking to stop the first Respondent from interfering with the administration of the estate and that she reimburse to the estate the value of the items she had taken from the estate. At the hearing of the matter the order at the beginning of this judgment was issued. The Applicant stated that on 3 June 2021 she had reminded Kandeya that the rental was payable to her and that he should contact her when the rental was ready for collection. She stated that she did not receive any response from Kandeya only to be advised on 5 August 2021 that he had been communicating with the deceased's daughter who, together with the first Respondent had collected 15% of his produce. On 9 August 2021, 1st Respondent confirmed to the Applicant that she was in possession of 7.5 tonnes of maize received from Kandeya as rentals and indicated that she had no intention of surrendering it. She persisted despite being reminded of the court order.

Applicant submitted that first Respondent was fully aware of the court order and even sought to challenge it and that despite such knowledge she willfully disobeyed it. She accused 1st Respondent of continuing to collect rentals from the properties of the estate. She concluded that the first Respondent has always been aware of the terms of the order but continuously makes deliberate decisions to defy the terms of the order. Applicant applied for the committal of the first Respondent to prison for contempt of an extant order. The order sought is couched in the following terms:

“IT AND IS HEREBY ORDERED THAT:

- a) The 1st Respondent is in contempt of court.
- b) The 1st Respondent be committed to prison for a period of six months for contempt.
- c) The 1st Respondent shall remain committed to such prison for an additional five days for each day the 1st Respondent remains in contempt of the court order.
- d) That the 1st Respondent met (sic) the costs of the application on Legal practitioner client scale.”

In response first Respondent agreed that she was interdicted from interfering with the estate. In her view however the farm is not part of the estate. She stated that she was living on the proceeds of the farm and paying fees for the children.

In response Applicant stated that first Respondent should have gone to court to seek maintenance from the estate if there was need instead of resorting to self-help.

The essentials of contempt of court are the following:

1. that the person charged with contempt had knowledge of the court order;
2. that such person was aware of the constraints placed upon him by the court order;
3. that the person disobeyed the court order; and
4. that the disobedience was willful.

See *Wilson v Minister of Defence & Ors* 1999 (1) ZLR 144 (HC....)

Where defiance has been proved, the onus rests on the respondent to show that such defiance was not willful or *mala fide* – see *Lindsay v Lindsay* 1995 (1) ZLR 296 (S); *Macheke v Moyo* 2003 (2) ZLR 49.

In casu, the first two requirements have been satisfied in that the first respondent admitted that she was aware of the court order and the interdict against her. She however stated that receiving maize from Kandeya was not interfering with the administration of the estate. That stance, in view of the fact that the court had ordered her to reimburse the value of the maize she had previously taken amounts to defiance of the court order. Having found that the first respondent acted in defiance of an order of court, the next question is whether or not such defiance was willful. See *Ex parte Mushambi* 1989 (2) ZLR 191 (HC). The onus rests on the first respondent to show that her disobedience of the court order was not wilful. First respondent feels justified in receiving the proceeds from the estate properties. She stated that:

- (a) the lease agreement with Kandeya was unlawfully entered into because it did not involve the relevant Ministry. In her view it is a nullity and should not be used in this matter.
- (b) the maize she took was a result of a separate agreement between herself and Kandeya.
- (c) She had an order from Norton Magistrates' Court which preserved the *status quo*.
- (d) She had been living on the proceeds of the farm.
- (e) the farm does not form part of the inventory of the estate.

Clearly, the first Respondent willfully disobeyed the court order by resorting to self-help. Self-help is frowned upon by the law because it is inimical to the rule of law. An order for the first

Respondent's committal to prison is therefore warranted. However, I am of the view that the period requested by the applicant is not justified. An initial committal of a month should send the message home that court orders are not to be defied willy-nilly.

At the hearing of the matter, costs on a punitive scale were not pursued. Accordingly, the following order is made:

1. The first Respondent be and is hereby held to be in contempt of the court order granted by this Honourable Court in case number HC 3434/20.
2. The first Respondent be and is hereby committed to prison for a period of thirty days, or until such time as she has complied with the order in HC 3434/20 by reimbursing to the estate the value of the 7.5 tonnes of maize.
3. The Sheriff of Zimbabwe or his lawful deputy be and is hereby directed and ordered to take the first Respondent and to deliver her to the keeper of a prison to be safely kept there in terms of paragraph 2 of this order.
4. The first Respondent is to pay costs of suit.

Honey & Blanckenberg, Applicant's Legal Practitioners.