

ROSELYNNE MANGOTA
versus
DAVID MANGOTA

HIGH COURT OF ZIMBABWE
CHIRAWU-MUGOMBA J
HARARE, 30 June and 7 July 2021

Opposed Matter – Application For Removal Of Matter From The Roll

S. Njerere, for the applicant
R. Nemaramba-Dodzo, for the respondent

CHIRAWU-MUGOMBA J: On 30 June 2021, the applicant's legal practitioner made an application for removal of this matter from the roll. The basis was that the applicant was ill disposed. The respondent's legal practitioner was not opposed to the application. It is trite that removal of a matter from the roll is at the discretion of the court. I have noted over the years that often times matters are removed from the roll without any clear reasons or no reasons at all being endorsed on the file. It becomes difficult for a different judge upon whom the matter is then placed to make head or tail of the reasons some of which may have an impact on the resumption of the matter. I am of course mindful of Practice Direction Number 3/13 and that it is not necessary in all matters that are removed from the roll to have a written judgment unless the matter is exceptional. I view this matter as falling into the category of the exceptional ones. I am also mindful of the Supreme Court judgment in *Dube v Premier Service Medical Aid Society*, SC-73-19 but nonetheless as observed in that matter, the Practice Direction still has the force of law.

The applicant seeks an order of payment of maintenance *pendete lite* and contribution of costs in terms of the Matrimonial Causes and Order 35 r 274 of the High Court Rules. There is a pending matrimonial matter in HC- 2576-16 in which the respondent seeks a decree of divorce and other ancillary relief. The respondent strenuously opposes the application.

The matter was set down for 25 September 2020. On that date, the court raised *mero motu* as it is entitled to (see *Chikwenengere v Chikwenengere*, 2007(10 ZLR 196(S) where the court raised the issue of jurisdiction) the issue of whether or not R18 on the issuing of

summons or other civil process against a judge of the High Court without leave is applicable. After hearing submissions, the court reserved judgment. A determination was made that R18 was not applicable to this matter and the respective legal practitioners were informed. They both submitted that the court should proceed to determine the matter on the merits on paper without further submissions from them.

The matter was subsequently set down for 16 November 2020, 29 January 2021, 20 April 2021 and finally 30 June 2021. In between there were case management meetings. Whilst the respondent availed himself for all the hearings as set down, the applicant did not. One of the reasons was that applicant's legal practitioner had failed to get hold of her. In particular for the hearing of 20 April 2021, the applicant's legal practitioner indicated that the applicant was ill disposed. The matter was then postponed *sine die*. It was set down again for 30 June 2021 on which date an application for removal from the roll was made and not opposed.

The standard in an application for maintenance *pendete lite* is not as stringent as that applied in post-divorce spousal maintenance, see *Acutt v Acutt*, 1990(2) ZLR 220 (S), *Hodgon v Hodgon*, S-190-92, *Galante v Galante*, 2000(2) ZLR 453 and *Lindsay v Lindsay*, 1993 (1) ZLR 195(S). This is because the relief sought is temporary in nature. Despite this stated position of the law, a maintenance matter remains an inquiry. In *casu*, the parties adopted very different positions and added to the fray many annexures to fortify their respective position. It was difficult for the court to reach a conclusion without oral evidence from the parties. The court therefore invoked the provisions of Order 32 r 229B that permits the calling of any person in applications to give oral evidence in the interests of justice. The legal practitioners were advised by way of a letter of the directive by the court, that oral evidence had to be led. It also became apparent that the applicant was not paying fees to the law firm that was representing her in the matrimonial matter. This is an issue that needs to be clarified with the applicant orally since it has a bearing on the application for contribution towards costs. This is in relation to whether or not a non-fee paying litigant is entitled to a contribution towards legal costs. It being a legal issue, it has to be addressed by the legal practitioners concerned after clarity from the applicant.

The applicant is the *dominus litis*. However, without oral evidence being led from her and the respondent, a determination cannot be made on the application for maintenance *pendete lite* and contribution towards legal costs. On the other hand, the respondent is entitled

to finality in litigation. The removal of the matter from the roll will strike a balance between the interests of the applicant and those of the respondent.

Costs are at the discretion of the court. This is one matter that warrants that there should be no order as to costs.

DISPOSITION

1. The matter be and is hereby removed from the roll
2. There shall be no order as to costs

Honey and Blanckenberg, applicant's legal practitioners
Chihambakwe –Mutizwa and Partners, respondent's legal practitioners