

**SAMSON TAFADZWA GAMBIZA**

**Versus**

**EUSTINA NYATHI**

**And**

**VEHICLE INSPECTION DEPARTMENT**

**And**

**OFFICER IN CHARGE KWEKWE TRAFFIC**

**And**

**COMMISSIONER GENERAL OF POLICE NO**

**And**

**PROSECUTOR IN CHARGE MIDLANDS PROVINCE**

**And**

**ACTING DIRECTOR OF PUBLIC PROSECUTION**

**And**

**MINISTER OF TRANSPORT**

**IN THE HIGH COURT OF ZIMBABWE**

**MAKONESE J**

**BULAWAYO 8 DECEMBER 2016 & 26 JANUARY 2017**

**Unopposed Application**

**MAKONESE J:** This matter came before me in motion court on 8 December 2016. The applicant filed an application with this court on the 15<sup>th</sup> September 2016. The applicant cites seven respondents in this matter. In reality most of the respondents have been improperly cited as they have no substantial interest in the matter.

The relief sought by the applicant is couched in the following terms:

1. The 1<sup>st</sup> and 7<sup>th</sup> respondents release a Toyota Dyna motor vehicle registration number ACD 0229 to the applicant.
2. 1<sup>st</sup> and 7<sup>th</sup> respondents reverse the purported storage charges.
3. The application against 3<sup>rd</sup> to 6<sup>th</sup> respondents is hereby withdrawn.
4. 1<sup>st</sup> and 7<sup>th</sup> respondents pay costs of suit.

On the 23<sup>rd</sup> September 2016 the 3<sup>rd</sup> and 4<sup>th</sup> respondents, represented by the Civil Division of the Attorney General's office filed a notice indicating that they would not oppose the application and would abide by the court's decision. In my view, given the background of the matter and the various allegations levelled against the respondents, it was prudent for the Civil Division to assist the court by addressing the court on the legality of the application before the court. The 5<sup>th</sup> respondent appeared to be dealing with the merits of the matter by pointing out that the dispute in this matter is not of a criminal nature but rather a civil one. In that respect the applicant's complaints regarding criminal abuse of office against 1<sup>st</sup> respondent were not being pursued.

The background facts of this matter are summarised in a letter addressed to applicant's legal practitioners by the Minister of Transport and Infrastructural Development (7<sup>th</sup> respondent) dated 15<sup>th</sup> June 2016.

The letter is in the following terms:

**“Re: Complaint by Tafadzwa Gambiza owner of a Toyota Dyna pick-up truck registration number ACD 0229 of Kwekwe”**

*Mr Gambiza's vehicle was impounded for defects by VID Kwekwe in August 2015. The vehicle was inspected and found to have fineable defects and that it was continuously being used under a notice prohibiting its use therefore attracting ZRP fines and statutory fees. He alleges unfair treatment by VID Kwekwe Deport Manager and filed papers with the High Court of Zimbabwe citing Mrs Nyathi as the respondent in the alleged unfair impoundment, the fines by ZRP as well as the statutory fees.*

*In this context, Mr Gambiza refused to pay the statutory fees for his vehicle found operating under notice prohibiting its use (R.T.16) inspection fees and Police Fines therefore, abandoned his vehicle at VID to pursue the High Court route. In so doing, the vehicle has accumulated storage fees in excess of \$6000,00. The vehicle can be released when the accrued storage fees has been paid. It is noted that Mr Gambiza further approached the High Court on the mater he has since withdrawn. Hon Dr Mc D. Gumbo (MP)”*

The dispute clearly pertains to the refusal by the applicant to pay police fines and certain fines levied by the VID department. The applicant has made several allegations against the VID department. These allegations have been investigated by the police and the Attorney General's office has not found any substance in the allegations. The applicant essentially approaches this court with a view to avoid paying the fines levied by the VID department. This court cannot be sucked into such a dispute for the sole purpose of aiding and abetting violation of the law. The applicant does not approach this court with clean heads. His application amounts to abuse of court abuse and the court frowns upon such conduct. Applicant's legal practitioners, ought to properly advise the applicant, in particular that he must observe the law. At the heart of this application is a refusal by an applicant, who is a former police officer, to comply with the law. The applicant seems ready and willing to fight anyone who does not seem to agree with him. This court cannot therefore allow itself to be abused.

Litigants who approach the courts with unclean hands, ordinarily do not get assistance from the court. I must hasten to indicate that legal practitioners who prosecute such matters risk being ordered to pay costs *de bonis propriis* for the simple reason that legal practitioners must not be seen to abuse judicial process. Legal practitioners have a legal duty to give proper counsel to their clients. It is a basic principle of our law that litigants are not permitted to come to our courts seeking assistance if they are guilty of lack of probity or honesty in respect of circumstances which cause them to seek relief from the courts. The basis of this application is that applicant refuses to pay fines and levies imposed by the Vehicle Inspection Department. He has raised various complaints against officers employed by that department. He has caused the criminal investigation of its officers. The allegations have been found to be false. The Minister responsible for the Ministry of Transport has even had to explain in writing the circumstances leading to the impounding of applicant's vehicle. The applicant believes that this court should

intervene on his behalf for the sole purpose of circumventing the law. That, in my view cannot be tolerated by this court. Citizens are expected to respect the law if they are to obtain protection from the courts. See the cases of *Deputy Sheriff, Hre v Mahheza & Anor* 1997 (2) ZLR 426, and *Underlay v Underlay* 1977 (4) SA 23 (W).

The application is not properly before the court, the order sought is not competent as it seeks to perpetrate an illegality. Further, I note with concern that applicant as levelled spurious allegations of criminal abuse of office against 1<sup>st</sup> respondent in order to force her hand to give in to applicant's demands. This is improper.

For these reasons, the application is hereby dismissed.

*Mhaka Attorneys*, applicant's legal practitioners