

**PHILLICE STENZEL**

**Versus**

**THE MEDICAL SUPERINTENDENT,  
GWERU PROVINCIAL HOSPITAL (NO)**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 23 & 26 JULY 2018

**Opposed Application**

*A. Mhaka*, for the applicant  
*L. Musika* for the respondent

**MAKONESE J:** In terms of section 62(1) of the Constitution of Zimbabwe (Amendment No. 20), 2013, it is provided as follows:

*“Every Zimbabwean citizen or permanent resident, including juristic persons, and the Zimbabwean media, has the right of access to any information held by the State or by any institution of government at every level, in so far as the information is required in the interests of public accountability.”*

The applicant filed an application seeking the following relief:

- “1. The respondents shall within 7 days of this order deliver to applicant medical records pertaining to the admission, care and treatment administered to the late Manomano Mureverwi on 17<sup>th</sup> November 2017.
2. The respondent shall pay the costs of this application.”

The application was opposed by the respondent. In paragraphs 3 to 5 of the opposing affidavit, the respondent states as follows:

- “3. *The application is baseless and is not justified at all. The applicant has filed this present application seeking an order compelling me to deliver some documents to her.*
4. *However the founding affidavit does not speak to the relief being sought. In other words, the applicant’s founding affidavit does not set out the reason why she sought the involvement of this Honourable Court in this matter.*

5. *The applicant in her affidavit has gone all the way alleging malpractice against the hospital as if she is suing the respondent for negligence. The respondent will, however not burden this Honourable Court by arguing on this point suffice to state that all the allegations of malpractice against Gweru Provincial Hospital re denied.”*

On the 23<sup>rd</sup> July 2018 the respondent’s counsel indicated the order sought was no longer opposed. I indicated that I would hand down a written ruling to express my concerns in matter.

### **Factual background**

On the 17<sup>th</sup> November 2017 around 10:30 hours the late Manomano Mureverwi was knocked down by a motor vehicle whilst crossing a road known as Mkoba *via* Mambo, Gweru. He sustained serious injuries and was conveyed to Gweru Provincial Hospital by ambulance. He was placed in the casualty ward. Applicant is a biological daughter of the late Manomano Mureverwi. At around 12 noon she called the hospital and a nurse advised her that her father was in stable. At around 14:00 hours, applicant arrived at Gweru Hospital and was informed that her father had died. When she sought an explanation of what had happened the nurses indicated that they had no knowledge regarding the cause of death. Applicant requested to see the medical notes and was informed that she would have to see the Medical Superintendent. Applicant requested to see the body of her father. When the body was indicated to her, she removed the blanket that covered his body. She observed an abrasion less than a centimeter on his forehead, some bruises at the back of his hands, and left leg was shorter, indicating that he had sustained a fractured femur. The deceased was fully clothed, with four layers of clothing on the upper body comprising of a vest, a long sleeved shirt buttoned to the top, tracksuit jacket, zipped and a suit jacket. The applicant suspected that her father’s vital signs such as blood pressure, temperature, pulse and breathing had not been checked upon his admission to hospital, as he was fully clothed. The applicant observed a yellow tag that was tied to the deceased’s toe. There was an inscription on the tag written “*blunt chest trauma*”. This gave further suspicion to the applicant there might be a case for medical negligence. What bothered the applicant is how the doctor could have come up with a diagnosis of “*blunt chest trauma*” when it was clear from the dressing that no physical examination had been done. The applicant took a photograph of the

deceased and left. Eventually the applicant was led to the office of the respondent who indicated that her father had died of:

- (a) Severe head injury
- (b) Nose bleeding
- (c) Haemopneumothorax

When applicant pointed out to the respondent that a yellow tag on the deceased's tow signed by Dr Chikwana showed the cause of death as:

- (a) Blunt chest trauma
- (b) Head injury
- (c) Right hip displacement secondary to RTA,

The respondent became irritable. The applicant later observed that a post mortem report prepared by Dr Mazorore indicated that the cause of death was "*severe head injuries*". This was a third and different cause of death. Applicant became even more suspicious that her late father had not received any medical attention if at all upon his admission to the casualty ward.

Applicant's efforts to obtain the medical records were futile and she was later advised that her request for documents was referred to the Health Service Board in terms of section 18(3) of the Health Service Act (Chapter 15:16). It is provided in terms of the cited section that:

"Any legal suit or action to which a Government hospital is a party shall be immediately reported to the Health Service Board by the appropriate hospital."

In his heads of argument, the respondent avers as follows in paragraph 5 and 6:

- “5. *The Health Service Board Legal Department duly notified the applicant to arrange with them to photocopy the required documents. On the 16th of January 2018, Mr Chris Gutu who is the legal advisor to the Health Service Board notified the applicant’s legal representatives through a letter dated 16 January 2018 to specify the documents they wanted and also to arrange to photocopy them. It is so surprising that applicant had filed a court application compelling respondent to produce such document ...*
6. *The applicant is entitled to such records and was never denied.”*

The respondent contends that the applicant is abusing court process since she was not denied the records. This submission by the respondent is somewhat surprising in that although respondent argues that the applicant was never denied the medical records, the fact of the matter is that the documents have still not been given to the applicant. If the medical records requested had been supplied this application would not have been necessary.

The respondent concedes that the applicant is entitled to the medical records, and for that reason the order sought by the applicant is justified. I must just point out that public and private institutions should be more transparent and accountable to the generality of the public. Where documents are sought from persons who hold them, access should not be unduly restricted unless there are ethical or security considerations. In the instant case it is clear that the applicant was not readily assisted by those persons who should have assisted her.

In the result, the following order is made by consent;

1. The respondent shall within 7 days of this order deliver to the applicant medical records pertaining to the admission, care and treatment administered to the late Manomano Mureverwi at Gweru Provincial Hospital on 17<sup>th</sup> November 2017.
2. There shall be no order as to costs.