CLAUDIUS MAPEDZAMOMBE
versus
FARAI CHAUKE
and
EMILY MHINI
and
COMMERCIAL BANK OF ZIMBABWE
and
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 16 February 2016 & 16 March 2016

Opposed matter

Applicant in person
FChauke, in person and for the respondent

MATANDAMOYO J: This is an application to strike out Farai Chauke's notice of opposition in HC 9176/15. The basis for such application is that the second respondent Emily Mhini should have deposed to that affidavit herself.

It is clear that the applicant has not understood r 227 (4) (a) of this court's rules which provide as follows;

> "An affidavit filed with a written application-
> (a) shall be made by the applicant or respondent, as the case may be, or by a person who can swear to the facts or averments set out in therein …"

I see no problem in the first respondent deposing to an affidavit, moreso where he has personal knowledge of the facts of the matter. The applicant has failed to show that the first respondent has no personal knowledge of the depositions in his affidavit. There is therefore no merit in the applicant's challenge. See *Fleetwood Investments (Pvt) Ltd* v *Molopleggisi* 2007 (2) 6LR 119 (HC).

It was also brought to my attention by the first respondent that an order for perpetual silence was granted against the applicant in relation to the property in question HH 130/90 refers.

The respondent submitted that the applicant has neither sought nor been granted leave of court to file the present application and should not be heard.

The applicant admitted to the existence of such an order but submitted that such order was obtained through falsehoods. The applicant referred me to a court abstract showing that Emily Mhini was charged and convicted of perjury and defeating and obstructing the course of justice and fined $2000-00 or 10 days imprisonment on 12 December 2002. No further in formation was supplied.

It is correct that an order for perpetual silence has been granted against the applicant in this matter. The applicant has also admitted to not having sought leave of court before filing this application in breach of the said order against him.

Accordingly the applicant cannot be heard without first obtaining leave of court.

Repeatedly the applicant has been warned by this court especially the judgment of Mathonsi J (HH 124/14 refers) on following incorrect procedure by proceeding without having obtained leave. The applicant has failed to heed the warnings. The applicant should learn to do that which is right in view of the orders that were previously made against him.

In *Naude NO and Another* v *Mabebesi Construction* (*Pvt) Ltd t/a CG Cluris and Another* (5688/2010) [2011] ZAFSC 7 Rampai J on 14 states:

> "The courts are supposed to act as vigilant sentinels of the order they make. The dictates of a civilized system of civil justice demand that the courts must jealously guard the orders they make. It is in the interest of the community at large to do so. Respect for court orders is the hallmark of any civilized system of civil justice.
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> The administration of justice would be brought into disrespect if directors of companies, who deliberately disobey the court orders with impunity, were not severely punished- *Twentieth Century Fox Film Corporation and Others* v *Playboy Films (Pvt) Ltd and Another* 1978 (3) SA 202 (W)."

It is clear this application was issued without the requisite leave of court. It was not even necessary to entertain the merits of this application. The application is dismissed with costs.

Uriri Attorneys – at – law, respondent's legal practitioners