

IGNATIUS MASAMBA  
versus  
MERCY GORONGOZA

HIGH COURT OF ZIMBABWE  
CHIGUMBA J  
HARARE, 1 September 2016

**Unopposed application**

Applicant in person  
Respondent in default

CHIGUMBA J: The matter came before me on the unopposed roll on 1 September 2016. I dismissed it on the basis that:-

- a) There is no cause of action therefore the relief sought is incompetent.
- b) The papers are defective in that they do not comply with order 32 of the rules of this court.

After having been subjected to a barrage of letters by the applicant, the contents of which are self explanatory and which form part of the record of proceedings, this is a formal setting out of the reasons for the dismissal of the application.

The court application filed of record on 8 July 2016 made reference to five other applications filed before this court. HC 11009-12, HC 9428-14, HC 2826-16, HC 1511-16, HC 2622-16.

The draft order which appears at record p 56 is a prayer for an order that the applicant be granted his wish to be allowed to pay lobola at his own convenience on a date to pay that he will request from the in laws, only if the respondent is a virgin. The court was asked further to order the respondent to stop her part in the "beaming". The court was unable to determine, from the founding affidavit what the cause of action was. The court was unable to accede to an order that the respondent accept the applicant as a prospective husband, an order that the parents allow the applicant to pay lobola for her hand in marriage at his convenience,

an order that she demonstrates that she is still a virgin, or an order that the respondent stops her part of the beaming.

A cause of action is defined as “the facts that entitle a person to sue.”<sup>1</sup> The cause of action may be a wrongful act, such as trespass, or the harm resulting from a wrongful act as in negligence. A reading of the founding affidavit suggests that the applicant’s cause of action purports to be founded in delict. A ‘delict’ is a civil wrong<sup>2</sup>. In a delictual claim, the plaintiff normally seeks damages as compensation from the defendant for infringement of his or her rights.

There is nothing in the applicant’s founding affidavit which shows what civil wrong the respondent committed. There is nothing in the founding affidavit to justify the relief sought by the applicant, in delict, or in any other recognisable cause of action. The court was not furnished with sufficient information or averments to understand what ‘beaming’ is. To order the respondent to stop her part in the ‘beaming’ without sufficient foundation as to what this ‘wrong’ in, would be incompetent. It would be incompetent to order ‘that the respondent’ furnish the applicant with evidence of her virginity or that she agree to be ‘lobolaed’ by him. The second aspect of the court’s dismissal of the application was that the papers are in shambles and do not comply with the order 32 procedure. Order 32 r 227 of the High Court Rules 1921 sets out the nature and form of all written applications. No documents were attached to verify the numerous, jumbled, garbled and insensible averments made by the applicant. The court could not make head or tail of the averments. No useful purpose could be served by repeating the averments as they form part of the record but a few examples will demonstrate and highlight the embarrassing nature of the averments.

Record p 6- clauses 2,3

“2. I am .... To ask Mary Gorongoza if I remember well her surname, to clarify about two things: in delict

3. Mercy must come out clearly officially in court whether or not certain persons have abused her or not. I am mentally suffering or in psychological pain or still in emotional shock or further still mental distress due to her failure to conclusively clarify.”

Paragraph 4 alludes to applicant’s sister, his son and his Excellency the President of the Republic of Zimbabwe. Paragraph 6 alludes to political problems, an independent public enquiry and ‘beaming’. The founding affidavit contains thirty four pages of these garbled averments. Clearly the application is not properly before the court in terms of the rules of this

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<sup>1</sup> Oxford Dictionary of Law- 8<sup>th</sup> ed Southern Law p 92

<sup>2</sup> Principles of Delict Jonathan Burchell p 1

court. The application is fatally defective and ought to be dismissed. The application stands on nothing. It is a nullity. It has no legal or factual basis. The relief sought is incomprehensible. No cause of action was established in the founding affidavit.

The application is an attempt to stand the law on its head. It cannot succeed. For these reasons, even though the application was unopposed, it is dismissed.