

TENDAI CHIGUDU

Versus

COMMISSIONER OF CUSTOMS AND EXCISE

AND

CHIEF IMMIGRATION OFFICER

AND

ZIMBABWE REVENUE AUTHORITY

IN THE HIGH COURT OF ZIMBABWE

NDUNA J

BULAWAYO 3 & 16 JUNE 2025

Mr M Ndlovu for the applicant

Mr E Mukucha for the 1st and 3rd Respondents

NDUNA J: This matter was enrolled as an urgent application. The parties appeared for the hearing of the matter on an urgent basis. The applicant did not address the court on the question of urgency. He went straight to deal with the merits of his application. The known approach is that the court will rule as to the urgent or otherwise of the matter. Upon it being ruled to be urgent, the matter will then be heard on the merits. If it is not ruled to be urgent, the matter will be referred to the ordinary roll and will have its day in court as and when it is appropriate that it be heard.

The applicant however, felt inclined not to argue on urgency and proceeded to address the court on the merits of his application. On the other hand, the respondent insisted that the matter is not urgent and argued on the question of urgency.

The applicant's prayer is as follows:

1. 1st respondent's decision in upholding the decision on the seizure of a motor vehicle known as a Landrover Discovery with registration letters and numbers **OV18DWF** and chassis number **SALRA2ANOJA065929** dated 20th May 2025 which supplanted his earlier decision of the 2nd May 2025 be and is hereby declared irregular and is a nullity and is set aside.

Consequently

- i) 1st and 3rd respondents be and are hereby ordered and directed to immediately release to the applicant the motor vehicle known as a Landrover Discovery with registration letters and numbers **OV18DWF** and chassis number **SALRA2ANOJA065929**.
- ii) The duties and penalties levied on the vehicle known as a Landrover Discovery with registration letters and numbers **OV18DWF** and chassis number **SALRA2ANOJA065929** by 1st respondent are unlawful and are not due the respondent.

2. There shall be no order as to costs

What is clear from the matter is that the applicant was outside the country. He it seems, purchased the motor vehicle which he brought into the country. He did not pay the requisite fees for the importation of the said vehicle. The third respondent exercised its powers and seized the vehicle. It appears the applicant is being invited to pay some fees which has been determined by the 3rd Respondent. The respondents have seized the motor vehicle and are awaiting payment of the amounts they have communicated to applicant. He is against the payment of the said fees. He therefore, has approached the court for an order that effectively sets aside the demand. He has approached the court on an urgent basis to be heard.

In urgent applications an applicant must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course. In *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd 2006 (4) SA 292 (SCA) para 9* the court held that:

“Urgency is a reason that may justify deviation from the times and forms the Rules prescribe. It relates to form, not substance, and is not a prerequisite to a claim for substantive relief.”

Accordingly, an applicant seeking urgent redress from the court must make out a case for urgency in the founding affidavit. This aspect was well articulated in the case of *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 (W) at 137F* where the court held as follows:

“The degree of relaxation should not be greater than the exigency of the case demands... Mere lip service to the requirements of Rule 6(12)(b) will not do

and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down.

And in *Gwarada v Johnson & Ors*, HH 91/09 it was stated,

“Urgency arises when an event occurs which requires contemporaneous resolution, the absence of which would cause extreme prejudice to the applicant. The existence of circumstances which may, in their very nature, be prejudicial to the applicant is not the only factor that a court has to take into account, time being of the essence in the sense that the applicant must exhibit urgency in the manner in which he has reacted to the event or the threats, whatever it may be.”

In *Documents Support Centre (Pvt) Ltd v Mapuvire* 2006 (2) ZLR 240 (H) the court said,

“... urgent applications are those where if the courts fail to act, the applicants may well be within their rights to dismissively suggest to the court that it should not bother to act subsequently as the position would have become irreversible and irreversibly so to the prejudice of the applicant.”

In this case that has not been ‘pleaded’ by applicant that if the court does not act, he will suffer and form of prejudice. He simply argues that he has a case against the respondents. He does not state irreparable injury would befall him if he is not heard soon. In all cases, applicants would be so desirous that they be heard early. It is for this reason that it has been ruled that only cases which meet the criteria set above may be heard soonest.

In *Mushore v Mbanga & 2 Ors* HH 381/16 the court held that there are two paramount considerations in considering the issue of urgency, that of time and consequences. These are considered objectively. The court stated;

“By ‘time’ was meant the need to act promptly where there has been an apprehension of harm. One cannot wait for the day of reckoning to arrive before one takes action... By ‘consequences’ was meant the effect of a failure to act promptly when harm is apprehended. It was also meant the effect of, or the consequences that would be suffered if a court declined to hear the matter on an urgent basis.”

In *Mayor Logistics (Private) Limited v Zimbabwe Revenue Authority CCZ 7/14* the court had this to say;

“A party favoured with an order for a hearing of the case on an urgent basis gains a considerable advantage over persons whose disputes are being set down for hearing in the normal course of events.

A party seeking to be accorded the preferential treatment must set out, in the founding affidavit, facts that distinguish the case from others to justify the granting of the order for urgent hearing without breach of the principle that similarly situated litigants are entitled to be treated alike. The certificate of urgency should show that the legal practitioner carefully examined the founding affidavit and documents filed in support of the urgent application for facts which support the allegation that a delay in having the case heard on an urgent basis would render the eventual relief ineffectual.”

It is clearly unfortunate that the applicant’s case does not call for urgent hearing in terms of the rules of court. It is also clear that the applicant is very aware that his case is not urgent hence, he did not address the court on the issue. It is therefore proper that the applicant’s case follow the queue to be heard.

It is accordingly ordered as follows:

1. The matter is not urgent
2. The applicant pays the costs of this application

Ncube Attorneys, applicant’s legal practitioners
Zimbabwe Revenue Authority, Legal Department, respondent’s legal practitioners