TARAKINI MAROTO
and
BRINE MUCHANDIPONDA MUGOTA
and
RODRICK TINOTENDA MASHINGAIDZE
versus
UNIVERSITY OF ZIMBABWE
and
DR MUNYARADZI MADAMBI N.O.

HIGH COURT OF ZIMBABWE
MAMBARA J
HARARE 15 and 19 May 2025

Opposed Application

O D Mawadze, for the applicants
T Chagundumba, for the respondents

MAMBARA J: This matter originates from an urgent chamber application that was removed from the urgent roll for want of urgency and, in terms of rule 60(18) of the High Court Rules, 2021, enrolled on the opposed motion roll in terms of rule 60(19). The applicants, all holders of the Bachelor of Substantive Law degree, accepted offers into the Bachelor of Procedural Law programme (BLP) advertised by the first respondent for the August 2024 intake, paid the prescribed tuition, and registered their semester modules. They seek a mandamus compelling their enrolment at the next sitting of the BLP and an interdict restraining the respondents from allocating their places to any other person, together with ancillary relief.

A preliminary skirmish arose after the respondents lodged, without written leave, a supplementary affidavit and indicated at the bar an intention to move orally for its admission. That manoeuvre was opposed. Consequently, this judgment addresses two broad questions: first, whether the respondents' supplementary affidavit may competently be admitted; second, whether on the merits the applicants have established the requisites for final mandatory and prohibitory interdicts.

FACTUAL BACKGROUND

In July 2024 the first respondent published, across electronic and print media, an invitation for applications to its BLP. The advertisement specified that holders of the BLS degree (and certain foreign LLBs) could apply between 07 and 19 July 2024. The applicants applied through the university's "Emhare" portal, were issued electronic offer letters on 27 September 2024, paid forty percent of the semester fees (US$528), and electronically registered first-semester modules. They thereby satisfied every condition of the offer.

Late in September 2024 their names were summarily removed from the registration platform. When queried, the chairperson of undergraduate legal programmes orally advised that commencement of the BLP had been deferred to February 2025 to resolve "administrative issues". Relying on that assurance the applicants took no further action.

In January 2025 the first respondent published a fresh advertisement for a February 2025 intake. The new notice introduced two requirements not contained in the earlier advertisement or in the BLP Regulations: (i) BLS holders had to prove four years' professional utilisation of the BLS, and (ii) they had to submit a "compelling justification" for transitioning into the legal profession. The advertisement was silent on the status of the applicants, who had already contracted, paid, and registered.

On 10 February 2025 the applicants, through their legal practitioners, addressed a demand letter to the registrar seeking confirmation that their August 2024 enrolment stood. The registrar replied on 12 February 2025 in the following terms:

> "The offer referenced pertains to the August 2024 intake. Owing to unforeseen internal administrative challenges the University was unable to mount the programme and therefore withdraws and nullifies the said offer."

Feeling aggrieved, the applicants launched the present proceedings on 24 February 2025. When the matter was called on 28 February the court ruled it not urgent but, exercising its case-management powers under rule 60(19), directed that the matter proceed on the ordinary roll and that argument be confined to the merits. Despite that directive, the respondents on 5 March 2025 filed a supplementary affidavit asserting that no February 2025 BLP intake existed and that the programme "is not on offer this semester". The affidavit annexed (a) an internal memorandum dated 4 March 2025 from a deputy dean, and (b) a letter from the deputy registrar-academic dated 5 March 2025, both repeating the stance that the BLP was presently dormant.

THE RESPONDENTS' APPLICATION TO ADMIT A SUPPLEMENTARY AFFIDAVIT

Rule 59(12) admits of no ambiguity: "Every application … shall be by notice of motion supported by an affidavit…." The Rule expressly contemplates a written process; nothing in the Rules authorises an *ex tempore* bid to regularise a belated affidavit. Our courts have consistently frowned upon attempts to smuggle fresh evidence through the back door.

United Refineries Ltd v *Mining Industry Pension Fund & Ors SC 63/14* catalogues the considerations that must be weighed whenever leave is sought to file a supplementary affidavit. The Supreme Court emphasised:

> "A court is permitted a degree of flexibility in balancing the respective interests of the parties so as to achieve fairness and justice. The overriding question is whether the dispute can be adjudicated upon all the relevant facts. In exercising the discretion, the court will have regard to—
> (a) a proper and satisfactory explanation why the new matter was not placed before the court earlier;
> (b) the absence of mala fides;
> (c) whether the late filing will cause prejudice that cannot be met by an award of costs."

In *Mauladzi* v *Batchelor & Another* HH 35-15, MATHONSI J deplored the practice of "smuggling" belated evidence into the record:

> "The courts have repeatedly sounded the warning that parties who wake up too late and attempt to bolster their case by supplementary affidavits do so at their peril. The indulgence is extraordinary and will never be granted merely for the asking."

The University elected to argue urgency and succeeded in having the matter transferred to the ordinary roll. It cannot now seek a second bite by re-opening pleading lines it chose not to pursue when opportunity beckoned.

Mauladzi v *Batchelor* & Anor HH 35-15 is categorical:

> "A litigant cannot by stealth foist a further affidavit upon the court after realising that the first stance taken is inadequate. Such conduct is unscrupulous and reprehensible."

In *Ndebele* v *Ncube* 1992 (1) ZLR 288 (S) the same principle is affirmed:

> "Once pleadings are closed there must be finality save for cogent written application demonstrating good cause."

Nothing prevented the respondents from filing a timeous written motion. Indeed, the supplementary affidavit merely rehearses averments already traversed in the opposing affidavit—namely that no current intake exists. Admitting duplicative matter serves no forensic purpose and offends the finality principle.

Nothing in the respondents' oral bid satisfied the criteria set out in *United Refineries supra.* The supplementary affidavit is therefore struck out as *pro non scripto.*

APPLICABLE LAW ON MANDATORY INTERDICTS

The classical trilogy first articulated in *Setlogelo* v *Setlogelo* 1914 AD 221 and re-affirmed in *Tribac (Pvt) Ltd* v *Tobacco Marketing Board* 1996 (2) ZLR 52 (S) governs. A party seeking final (mandatory) relief must demonstrate—

- a clear right;
- actual or reasonably apprehended injury; and
- absence of a suitable alternative remedy.

In *Hodza* v *Steward Bank* Ltd HH 50-17 the court, quoting GUBBAY CJ, observed that those same requisites apply *mutatis mutandis* to a mandamus.

The law of contract is equally engaged. Christie (Law of Contract in South Africa 5 ed 366) warns:

> "It is unthinkable that the courts should foist upon parties a contract they never made. Yet it is equally unthinkable that one party, having concluded a contract, may arbitrarily withdraw without attracting the ordinary consequences of breach."

The learned author (Christie) went on to further state that:

> "It is unthinkable that the court should not only tell the parties what they ought to have done but then make them do it by enforcing the court's idea of what the contract ought to have been."

ANALYSIS OF THE CLEAR RIGHT

The undisputed facts establish that each applicant accepted a written offer; paid the stipulated tuition; registered first-semester modules electronically; and was issued a student number. Those acts perfect a bilateral contract, the applicants supplying consideration and the university assuming reciprocal obligations to teach. The registrar's offer letter did reserve a right to "amend, withdraw, or cancel" should either party fail to meet the offer conditions. The applicants met every condition. A University's power to rescind an offer is not unfettered; it is circumscribed by administrative-justice obligations under s 68 of the Constitution of Zimbabwe and by the *lex contractus* once an applicant has accepted, paid fees and registered. See *Telecel Zimbabwe (Pvt) Ltd* v *POTRAZ and Ors* HH446/15, per MATHONSI J (as he was

then), cautioning against public authorities hiding behind technicalities to thwart legitimate expectations. The respondents' present non-performance therefore amounts to unilateral breach, not an exercise of a contractual cancellation clause.

The defence of supervening impossibility operates only where performance has become objectively impossible, not where the promisor unilaterally decides not to perform: Christie, Law of Contract in South Africa (5ed) 366. No evidence shows that running the BLP became impossible; rather, it was administratively inconvenient.

The defence of supervening impossibility is therefore unpersuasive. No objective impossibility—such as legislative prohibition, destruction of facilities, or force majeure—has been pleaded. Administrative inconvenience is not impossibility. A public university cannot hide behind its internal disarray to frustrate vested rights; to do so would offend the constitutional obligation under section 68 to act lawfully, reasonably, and fairly.

INJURY ACTUAL OR APPREHENDED

Statutory Instrument 161/2023 designates possession of both BLS and BLP degrees as a *sine qua non* for registration and admission to legal practice in Zimbabwe. Exclusion from the only local pathway to legal practice is an irreparable handicap; time lost cannot be refunded. The harm is therefore neither remote, speculative nor measurable in damages. Courts have recognised such academic exclusion as irreparable. See *PTC pension Fund* v *Standard Chartered Merchant Bank* 1993(1) ZLR 55(H) 63C-D (per GUBBAY CJ, dealing with employment training).

ADEQUACY OF ALTERNATIVE REMEDY

The respondents suggest the applicants may claim damages. In *SA Liquor Traders Assn & Ors* v *Chairperson Gauteng Liquor Board & Ors* 2006 (8) BCLR 901 (CC) the Constitutional Court held that monetary relief is inadequate where the prejudice is intangible or prospective. Similarly, our courts have repeatedly preferred specific performance over damages where education or professional qualification is at stake.

DISCRETIONARY CONSIDERATIONS

The applicants acted promptly once the contract was repudiated. Conversely, the respondents accepted substantial fees, retained those monies, but sought to retract the bargain without restitution. Equity cannot endorse such behaviour. *Telecel Zimbabwe (Pvt) Ltd* v *POTRAZ & Ors* HH 446-15 reminds public bodies that they must not rely on technicalities to defeat legitimate expectations.

Equity and public-law values converge in this matter. Section 75 of the Constitution of Zimbabwe guarantees the right to further education "through reasonable legislative and other measures." Once the State, through its University, voluntarily extends that right and exacts payment, it cannot withdraw the promise arbitrarily. The applicants' legitimate expectations of commencing the programme is grounded in both contract and constitutional principle.

COSTS

The applicants urged costs *de bonis propriis*. *Seldo Mining (Pvt) Ltd* v *G & W Industrial Minerals (Pvt) Ltd* HH 53 -23 restates that personal-costs orders are for truly exceptional misconduct. While the respondents' stance is unsustainable, it is not mala fide or dishonest. An ordinary order will suffice.

DISPOSITION

Having carefully weighed the pleadings, oral argument and authorities, I make the following order:

1. The respondents' oral application for leave to file the supplementary affidavit is dismissed and the affidavit dated 5 March 2025 is expunged from the record.
2. It is declared that a valid and binding educational contract exists between the applicants and the first respondent arising from the August 2024 intake into the Bachelor of Procedural Law programme.
3. The respondents are ordered to enrol the applicants in the next BLP semester and to recognise all fees already paid as credits toward that enrolment.
4. Pending compliance with paragraph 3, the respondents, their agents or servants are interdicted from allocating the applicants' places to any other person.

5. The respondents shall pay the applicants' costs of suit, jointly and severally, the one paying the other to be absolved.

MAMBARA J:…….

Mawadzw & Mujaya, applicants' legal practitioners
Atherstone & Cook, respondents' legal practitioners