GEORGE MPUKUTA

Versus

MOTOR INSURANCE POOL

And

ZIMBABWE REVENUE AUTHORITY

And

INSURANCE AND PENSION COMMISSION

And

MINISTER OF FINANCE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 3 & 9 FEBRUARY 2012

Miss C. Mudenda for applicant
D. Ochieng for respondents

Judgment

NDOU J: The applicant seeks an order in the following terms:

"It is ordered:

(a) That the 1st respondent not an insurer in terms of the Insurance Act but an association of insurers with no capacity to issue statutory policies in terms of the Road Traffic [Chapter 13:11] or any other law.
(b) That the insurance being issued by the 2nd respondent for and on behalf of 1st respondent is a nullity and therefore void *ab initio*.
(c) That alternatively to paragraph (a) and (b) above if the insurance being issued by the 2nd respondent on behalf of the 1st respondent be valid, the 1st and 2nd respondents be and are hereby ordered to issue cover notes and discs in terms of section 27(2) of the Road Traffic Act [Chapter 13:11].
(d) That the 1st, 2nd and 3rd respondents to pay costs of suit jointly and severally, the one paying the other to be absolved."

Put in another way, the applicant seeks a declaration in terms of section 14 of the High Court Act [Chapter 7:06] ("section 14)" primarily on the fact that the 1st respondent is not an insurer. The salient facts are the following. The applicant is a Zimbabwean citizen who is permanently resident in Botswana. His family is ordinarily resident in Zimbabwe. As a result he regularly drives to Zimbabwe to visit his family. Upon entry into Zimbabwe he applies for a temporary import permit for his foreign registered motor vehicle. He is also required by the law to obtain insurance in respect of motor vehicle. That insurance, at the port of entry, is only obtainable from the 2nd respondent who grants it on behalf of and in the name of the 1st respondent. The 2nd respondent endorses a stamp in the name of the 1st respondent on the temporary import permit as proof that the applicant has obtained statutory insurance. The applicant alleges that upon renewal of a temporary import permit, the 2nd respondent merely extends the date on the permit without extending the statutory insurance. The applicant alleges that as a director in Botswana he is entitled to a re-imbursement of the expenses which he incurs when he travels. However, his company is refusing to refund him the money which he pays for insurance upon entry into Zimbabwe on the grounds that his purported entry into Zimbabwe is not insured "by a registered and licenced insurer."

The applicant further cites a single incident when a Zimbabwe Republic Police officer asked for a disc as defined by the Road traffic Act at a police road block. The applicant states that "it is this incident which stimulated" him to seek a legal opinion on the matters at hand. This culminated in the current application. At the time of the filing of the application the applicant was not an insurance policy holder and he is non-resident. The applicant seeks, in essence, a declaratory relief regarding the validity of insurance policies issued in the name of the 1st respondent, and, alternatively, mandatory relief as regards the issuance of vehicle discs and cover notes by the 1st respondent. The 1st respondent is a Motor Insurance Pool formed by Temporary Risk Pool agreement between insurers and the Government of Zimbabwe represented by the responsible Minister of Road and Road Traffic. The rights and duties of the Pool are clearly defined by the said agreement. This agreement has been in existence since January 1965. The relationship between the 1st and 2nd respondents is governed by an Agency Agreement agreed and signed by the two parties in February 2010. The respondents raised points *in limine* which I propose to deal with them in turn.

<u>Is the application incompetent for raising a purely moot cause:</u>

It is trite law that it is not the business of the courts to dispense legal advice or express opinions on abstract points. As stated by INNES CJ in *Geldenhuys and Neethling* v *Beuthin* 1918 AD 426 at 441:-

> [The courts] "exist for the settlement of concrete controversies and actual infringements of rights, not to pronounce upon abstract questions, or to advise upon differing contentions, however important."

It is therefore a pre-requisite to the grant of declaratory relief that the applicant must have some "existing, future or contingent right" that would be affected by the order of the court – *Munn Publishing (Pvt) Ltd* v *ZBC* 1994 (1) ZLR 337 (S) at 343E to 344E. In other words, "the condition precedent to the grant of a declaratory order is that the applicant must be an interested person, in the sense of having a direct and substantial interest in the subject-matter of the suit which could be prejudicially affected by the judgment of the court" – *Milani & Anor* v *South African Medical & Dental Council & Anor* 1990(1) SA 899 (T) at 902G-H. The interest must relate to an existing, future or contingent right. The court will not decide abstract, academic or hypothetical questions unrelated to such interest. This is the first stage in the determination by the court. At the second stage of the enquiry, it is incumbent upon the court to decide whether or not the case in question is a proper one for the exercise of its discretion under section 14. In this regard "some tangible and justifiable advantage in relation to the applicant's position with reference to an existing, future or contingent legal right or obligation must appear to flow from the grant of the declaratory order." – *Adbro Investment Co. Ltd* v *Minister of the Interior & Ors* 1961 (3) SA 283 (T) at 285B-C. A matter that does not present a live controversy having practical consequences is not justiciable – *Radio Pretoria* v *Chairman, Independent Communications Authority of SA & Anor* 2005(1) SA 47 (SCA) *and Mnondo Residents' Association* v *Moyo & Ors* HH-66-07. In this case the applicant is not an insured of 1st respondent, because he admits having allowed his policy to lapse three months before making this application. He is not being prosecuted for any real or imagined offence and in any event he has not joined the authorities who might prosecute him. His papers disclose only a minor misunderstanding at a police road block, which was in any event resolved in his favor. He only professes to have a "right" against his Botswana employer, who is not party to these proceedings anyway. He has not proved that he is entitled to reimbursement of money expended on his vehicle insurance whilst visiting Zimbabwe. There is no policy document produced evincing such entitlement or rights. In the final analysis, applicant's case against the respondents relates to no more than a burning curiosity as to purely theoretical propositions. The applicant himself states that he simply found himself 'wondering' about certain issues 'that came to mind' and that he sought legal advice in relation to them. It shows that the applicant has really come to court just to test the correctness of the advice he received. There is no live dispute having any practical consequences as between the applicant and the respondents. This application presents the court with a moot cause. The applicant has not alleged that he made a claim or that there is any other reason to test the validity of the bygone policy. He simply has not relationship with any of the respondents now. Assuming in his favour that he may buy

further policies, the applicant's own papers show that any actual dispute that might arise in future in relation to the issues he "wonders" about would actually be between the applicant and some parties other than the respondents (i.e. the police or his employer in Botswana) anyway. There is, therefore, no proper dispute between him and the respondents and any judgment the court gives would be no more than its opinion as to the correctness or otherwise of the applicant's views on the issues about which he professes to be "worried". It would not be a determination of any concrete controversy or any infringement of rights.

On this point alone I dismiss the application with costs on the ordinary scale.

Mudenda Attorneys, applicant's legal practitioners
Atherstone Cook Legal Practitioners c/o Calderwood, Bryce Hendrie and Partners, respondents' legal practitioners