MUHAMMAD ZAKIR
versus
CHIEF IMMIGRATION OFFICER
and
MINISTER OF HOME AFFAIRS

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 13 August 2010

BERE J: Issues to do with the liberty of an individual, foreign or a citizen of this country must no doubt be brought to court at the earliest opportunity. Taking into account the circumstances surrounding this particular case, I am satisfied that the application was properly brought to court on an urgent basis.

The format of a chamber application, be it ordinary or urgent is provided for ii terms of Order 32 r 241 (i) of the High Court Rules, 1971. The rules governing chamber applications do not make it mandatory that the applicant be the deponent to the founding affidavit. Any one who can swear positively to the facts prompting the filing of the application can initiate the application on behalf of the applicant. It is therefore not a fatal omission in this case that the founding affidavit was deposed to by one Ghulam Fatima and supported by Muhammad Tufail who witnessed the applicant's arrest and therefore had full knowledge of the basis upon which the complaint was made against the first respondent. I accept that in this case, the applicant's application could have been neater if the applicant had personally deposed to the founding affidavit but I do not consider that technical omission to be fatal to the remedy sought.

The officials entrusted with the administration of our immigration laws which can be very drastic and harsh in their operation are enjoined to use their powers properly otherwise those against whom this legislation is meant to impact would be left to the mercy of these officials.

In this regard I can do no better than re-state the remarks by BLACKWELL J, when he stated:

> "I do not think that I can stress too strongly the duty which lies on officials entrusted with the administration of the immigration laws, often drastic and even harsh in their operation, of observing strictly and punctilliously the safeguards created by the Act"[1]

[1] Kazee v Principal Immigration Officer and Anor 1954(3) SA 759(W) at p 763

GOLDIN J followed this sound reasoning in the later case of Macara[2] where the ratio was stressed.

It is imperative that before an individual is deprived of his liberty pursuant to any enquiry by the immigration officer, that individual must be informed of the reasons surrounding his arrest and detention. An immigration officer cannot adopt a casual or carefree attitude in this regard. It is a wrong and a very dangerous interpretation of the Immigration Act for an immigration officer to think that he/she can just arrest and detain an individual without explaining the reasons upon which such a drastic action is premised.

Coming back to this case, I have no doubt in my mind that following on the strength of the papers filed in this court, and in particular the correspondence that was exchanged between the applicant's counsel and the first respondent's officer, it is abundantly clear that at the time of his arrest and subsequent detention the applicant was never furnished with the reasons for his arrest and detention.

It is clear from the papers filed that Annexure 'A' (the notice of prohibition) purportedly dated 28 July 2010 was given as a direct response to the urgent application served on the respondents. That annexure was conveniently backdated to 28 July 2010 in order to cover up for the inadequacies on the part of the immigration officer in failing to fully comply with his statutory requirements to notify the applicant of the reasons for his arrest and detention. Annexure 'A' was fraudulently crafted to cloud issues, and this explains why there is no indication that the applicant personally inserted the date on which he was made to sign to acknowledge receipt of that document. All indications are that the 28th of July 2010 was inserted by the author of the document.

There is also another dimension to this finding. If the applicant had been furnished with Annexure 'A' on the 28 July 2010, it is inconceivable in my view that this document would not have found itself in the hands of the applicant legal practitioners at the time the urgent chamber application was filed. The applicant's counsel could not have been that naïve to have written a letter on 2 August 2010 enquiring about the reasons for the applicant's arrest. In any event Annexure 'A' does not in any way confirm that when the applicant was arrested on 27 July 2010 he was informed of the reasons for that arrest and detention.

[2] Macara v Minister of Information, Immigration & Tourism & Anor 1977(2) SA 264

If the applicant was deliberately not advised of the reasons for his arrest and detention, it follows that that arrest was unlawful and Annexure 'A' did not have the capacity to legalise that arrest.

In the final analysis, I am satisfied the applicant is on balanced feet in bringing this application. I order that the interim relief sought be granted as amended and in the following terms.

It is ordered:-

That the first respondent be and is hereby ordered to release the applicant from detention forthwith.

*Madzivanzira, Gama & Associates*, applicant's legal practitioners
*Civil Division of Attorney General's Office*, respondent's Counsel