RITA MARQUE MBATHA
versus
MESSENGER OF COURT

HIGH COURT OF ZIMBABWE
CHATUKUTA J
HARARE, 4 October 2018

Urgent Chamber Application

CHATUKUTA J: On 27 September 2018 I found the urgent chamber application filed by the applicant under HC 8800/18 not to be urgent and removed it from the urgent chamber application roll. The following are my reasons.

The applicant filed the present application seeking the following relief:

"1. The seizure of the applicant's property by the respondent is hereby declared wrongful, unlawful and unjustified.

2. The respondent is hereby directed to return within 48 hours from the issuance of court order the items seized from the applicant, namely:

2.1 Kipor KDE Toot Diesel Generator,

2.2 Capri Upright Refrigerator

2.3 3 Grey Upright LG television

2.4 Hisense Plasma Colour Television

2.5 Hama Black Bag

2.6 Canon EOS Camera with CE 100-400mm lens

2.7 Hardrive Samsung SSD TS 2 TB

2.8 2 USB lightning flash sticks (32g).

2.9 60 annual reports

3. The respondent and the applicant to jointly inspect the respondent's property and test electric gadgets prior to delivery of goods by the respondent.

4. Leave be granted to the applicant to serve this order on the respondent.

5. The respondent shall pay the costs of this application."

The background to the application is that, on 9 August 2018 under case No. HC 7310/18, the applicant obtained a provisional order under case number HC 7310/18. The respondent to the application was one Vincent Ncube and the Messenger of Court (who is the respondent in this matter). The second paragraph of the interim relief ground reads:

> "The second respondent shall restore to the applicant's possession the Kipor KDE Toot Diesel Generator, Capri 2 door refrigerator; 3 Grey LG television and the Hisense plasma colour television that he dispossessed her of on 7 August 2018."

The final order sought which was dully granted on 12 September 2018 was an interdict interdicting the respondents from interfering with the applicant's control and occupation of 126 Edgemore Road, Park Meadowlands, Hatfield, Harare. The order did not allude to the items referred to in the interim relief granted presumably on the assumption that the items would have been released on the date the final relief would be determined.

On 27 August the applicant filed an urgent chamber application under case number HC 7809/18. The applicant was again seeking an order for contempt of court and proceeded on an urgent basis. The application was ruled not to be urgent.

On 30 August 2018 she filed a court application under HC 7984/18 for contempt of court on the basis that the respondent, in defiance of the order under HC7310/18, failed to return the items in that order. It is in that application that the applicant referred to those other items claimed in the draft order which were not the subject of the application under case number HC 7310/18. These are the items, under para 2.6, 2.7 and 2.8 of the draft order to the present application and have been referred to as appendages to the generator under item 2.1. As at the time of filing of this application the court application is still pending.

On 2 September, 2018 the applicant simultaneously filed a further urgent chamber application under HC 7997/18 for an order that the court application under HC 7946/18 be heard on an urgent basis. The application was dismissed on 21 September 2018. Five days later she filed the present application.

Turning to the present application, on 2 and 3 October 2018 the applicant sought audience before having received communication stating the reasons for my decision that the application was not urgent. On 4 October 2018, she wrote another letter wherein she appeared to have agreed with my decision. On 5 October 2018, she wrote yet another letter inquiring on the outcome of the application. I reiterated my earlier decision that the application was not urgent and remained removed from the urgent chamber application roll.

It is trite that a matter is urgent when its determination cannot wait for the ordinary court application roll. Further, an applicant cannot seek a final order on an urgent basis. The applicant sought a declaration that the seizure of her items was "wrongful, unlawful and unjustified". A declaration is a final relief and should be on notice to the other party and by way of court application as opposed to a chamber application. It cannot therefore be granted on an urgent basis.

The applicant's reading of the court's decision in HC 7997/18, (HH 362-18) is that the interim relief granted under HC 7310/18 is not clear and requires clarity hence her reference to R 449. Without going into the merits of her application, proceedings under r 449 are on notice and correction of an order of court is final.

Despite the applicant's request for audience, I declined to hear her. In terms of r 246 (1) it is discretionary on the court to give audience to a litigant. Rule 246 (1) (a) provides that:

> "A judge to whom papers are submitted in terms of r 244 or 245 may—
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> (a) require the applicant on the deponent of any affidavit or any other person who may, in his opinion, be able to assist in the resolution of the matter to appear before him in chambers or in court as may in him seem convenient and provide, an oath or otherwise as the judge may consider necessary, such further information as the judge may require."

It is clear from the above and more particularly by virtue of the phrase, "may, in his opinion" that it is within the discretion of a Judge to give audience to a party who will have filed an urgent chamber application. The court may give audience if it considers it convenient or necessary to do so.

In her letter of 2 October 2018, the applicant referred the court to the case of *Church of the Province of Central Africa* v *Diocesan Trustees, Diocese of Harare* 2010 (1) ZLR 346. It is clear from that case that the court was not required to determine the question whether or not

it could make a decision on the papers and whether or not it was obliged to hear the applicant. The question was whether or not, having decided to hear the parties, it was precluded from doing so on the basis that it was *functus officio*. Further, the court did not consider the import of r 246. The decision in that case cannot in my view be said to be supportive of the applicant's request for audience.

The applicant has filed five applications between 8 August 2018 and 27 September 2018 all related to the attachment of her property by the respondent and her quest to recover same. The present application has been accompanied by five letters in what I perceive to be an attempt to create an impression that the application is urgent. The mere affixing of the word "urgent" before "Chamber Application" and numerous follow up letters does not create urgency.

I accordingly found it not necessary to hear the application on an urgent basis.