

AARON CHAFANZA

Versus

EDGARS STORES LIMITED

And

DEPUTY SHERIFF, CHINHOYI (N.0)

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 18 MARCH & 28 APRIL 2005

C P Moyo for the applicant

Urgent Chamber Application/Certificate of Urgency

CHEDA J: This is an urgent chamber application filed of the 8th March, 2005, seeking to suspend a judgement obtained by 1st respondent against applicant. It was however, granted on the 14th March 2003.

Nothing turns on this application *per se* except for the certificate of urgency signed by the legal practitioner in terms of rule 242 (2) (b) which states that:-

“242 Service of Chamber Applications

- (2) Where an applicant has not served a chamber application on another party because he reasonably believes one or more of the matters referred to in paragraphs (a) to (e) of subrule (1)-
 - (a) ...
 - (b) unless the applicant is not legally represented, the application shall be accompanied by a certificate from a legal practitioner setting out, with reasons, his belief that the matter is uncontentious, likely to attract perverse conduct or urgent for one or more of the reasons set out in paragraphs (a), (b), (c), (d) or (e) of subrule (1).”

The issue is whether or not it is proper for a legal practitioner from the same

firm as that of applicant to certify the said certificates. The determinant factor in my view is that of interest in the matter at hand. Of late this court has been inundated with urgent chamber application accompanied by certificates signed by legal practitioners and affidavits deposed to by litigants and attested to by legal practitioners in their capacities as Commissioners of Oaths from the same legal firms.

In my view it is improper for a legal practitioner to act in that matter as he has an interest in the matter at hand. The interest in the matter is grounded on two factors. Firstly, in that he has a pecuniary interest in the earning of fees from the said client. Secondly, that he is interested in promoting the goodwill of his company by bringing his client's affairs to a successful conclusion. In other words it means a financial and not a mere social or ethical interest or view. This principle was clearly laid down in *Smith –v- Hancock* 1894 (2) Ch D377. The same principle was also adopted in the case of *Pretoria Bill & Posting Company –v- Hess* 1911 T..P.D. 360

In *S –v- Rolomane* 1971 (4) SA 100 at 101-102 JENNET, J.P. remarked:

“no doubt the courts require for the admissibility of affidavits tendered in evidence that they be attested by a commissioner of oaths who is impartial, unbiased and independent in relation to the subject – matter of those affidavits.”

To my mind it is totally undesirable for a legal practitioner to either attest to an affidavit or sign an urgent certificate for and on behalf of a client who is being represented at his firm as such lawyer clearly has an interest in the matter at hand.

Legal Practitioners are therefore guided accordingly.

Ndou J I agree

Majoko & Majoko, applicant's legal practitioners