

SAM MAKONESE

VERSUS

**OFFICER IN CHARGE N.O
LIQUOR LICENSING INSPECTORATE
ZRP DRILL HALL, BULAWAYO**

AND

**COMMISSIONER OF POLICE N.O
POLICE HEADQUARTERS
JOSIAH CHINAMANO/7TH STREET
HARARE**

AND

**MINISTER OF HOME AFFAIRS N.O
POLICE HEADQUARTERS
JOSIAH CHINAMANO/7TH STREET
HARARE**

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 1ST JUNE 2007 AND 7TH JUNE 2007

Mrs Masuku for the applicant
Ms B Wozhele for the respondents

Urgent Chamber Application

CHEDA J: This is an urgent chamber application for an interdict whose relief is
couched as follows: -

“TERMS OF FINAL ORDER SOUGHT

1. That the 1st, 2nd and 3rd Respondents be and are hereby interdicted from selling, disposing and or dealing in any way with Applicant’s liquor forfeited to the state as might prejudice the Applicant, pending the finalization of the Applicant’s application for review.
2. That the 1st, 2nd, 3rd and 4th Respondents pay the costs of this application, jointly and severally, the one paying in full the others to be absolved.

INTERIM RELIEF GRANTED

Pending the return of this order the applicant be and is hereby granted the following relief: -

3. That the 1st, 2nd and 3rd Respondents be and are hereby interdicted from selling, disposing and or dealing in any way with the Applicant's liquor forfeited to the state pending the return date of this order."

Applicant is a businessman who is in the business of selling liquor.

The 1st Respondent is the OFFICER-IN-CHARGE Liquor Licensing Inspectorate, Nominee officio of Drill hall, Bulawayo. 2nd Respondent is the COMMISSIONER OF POLICE nominee officio. 3rd Respondent is the MINISTER OF HOME AFFAIRS nominee officio.

The brief historical background of this matter is that on the 29th day of April 2007 1st respondent confiscated liquor from applicant's Bottle store known as Pazwa Bottle Store. This was after he paid an admission of guilty fine through his employee one James Mudanda.

On the 4th day of May 2007 he made an application at the magistrate court in terms of Section 59(3) of the Criminal Procedure and Evidence Act [Chapter 9:07] after he had been advised that his liquor had been forfeited to the state. On the 6th day of May 2007, he was advised through his legal practitioner that he should make an application for review as he was not happy with the procedure used in the forfeiture. However, the said application has not been filed with this court to date.

The present application is being made to stay the execution of the said order of forfeiture of liquor which was made by the Provincial Magistrate.

In an application of this nature applicant should show that indeed an application for review has been lodged with the court. The said application for review should be attached to the application for stay of Execution. This is essential as the Judge and/or court will

HB 60/07

have to consider the application on the basis of the reasons for review amongst other factors.

The need for this procedure is to demonstrate to the court and/or Judge that indeed an application for review has been made.

It is not enough for an applicant to merely state that he intends to file such application. Infact, the review application, should be filed simultaneously with the urgent chamber application.

Applicant is at liberty to proceed accordingly if he so wishes.

For the above reason this application is dismissed with costs.

Ben Baron and Partners, applicant's legal practitioners
Attorney General's Office, respondents' legal practitioners