

**LOVEMORE SIBANDA**

**Versus**

**SIBONGILE JINAH SIBANDA**

**And**

**THE CLERK OF MAINTENANCE COURT, TREGOLD BUILDING**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 9 AND 15 APRIL 2010

*J Sibanda*, for the applicant  
*N Mathonsi with Ms N Ncube* for 1<sup>st</sup> respondent

Urgent Chamber Application

**NDOU J:** The applicant seeks a provisional order in the following terms:

“Terms of order sought

- (a) The execution of a direction issued against the applicant’s salary by 2<sup>nd</sup> respondent in case number S 20/09 (Maintenance Court) be and is hereby suspended pending the resolution of case number HC 577/10 between the parties hereto.
- (b) That the 1<sup>st</sup> respondent pays the costs of this application.

Interim order sought

Pending the confirmation or the discharge of this order this order shall operate as a temporary order having the effect.

- (a) Suspending the execution and coming into operation of a direction against the applicant’s salary.”

The background facts of this matter are the following. The applicant and 1<sup>st</sup> respondent are husband and wife. They are on separation and there are divorce proceedings pending between them. The separation between them is acrimonious. In October 2009 the 1<sup>st</sup> respondent sued the applicant for maintenance. The matter was set down for hearing on 29 October 2009. On that day there was a preliminary enquiry on the 1<sup>st</sup> respondent’s application.

The matter was postponed to a later date in November 2009 to enable the applicant to produce proof of his earnings. On the latter date the 1<sup>st</sup> respondent was not in attendance resulting in the matter being removed from the roll.

Thereafter in March 2010, 1<sup>st</sup> respondent instituted proceedings against the applicant out of the Juvenile Court under the section 11 of the Domestic Violence Act [Chapter 5:16] ("Domestic Violence"). In this application in the Juvenile Court the 1<sup>st</sup> respondent sought against the applicant a provisional protection order. The interim protection order was granted and the return date was set down for 12 March 2010. On 12 March 2010, the magistrate confirmed the provisional and in addition granted an emergency monetary relief in favour of the 1<sup>st</sup> respondent against the applicant in the sum of US\$2 000 per month. The applicant protested the confirmation of the protection order and the granting of the emergency monetary relief by noting an appeal on 17 March 2010. Notwithstanding the noting of the appeal, the 2<sup>nd</sup> respondent issued a directive against the applicant's salary. This is what this application is all about. Stung by the prospects of US\$2 000 being deducted monthly from his salary, the applicant sought to have directive by the 2<sup>nd</sup> respondent reviewed. He, simultaneously filed this application to stay the directive against his salary under a certificate of urgency. The main protest by the applicant in these two applications is that he was not notified of the directive before it was issued by the 2<sup>nd</sup> respondent. The applicant basis his application for review on such failure to comply with the provisions of section 9 (2) and (3) of the Maintenance Act [Chapter 5:09] ("the Maintenance Act").

Section 9 (1) of the Maintenance Act clearly states that section 9 applies to order made under the Maintenance Act and maintenance orders of other courts registered in terms of section 18 of Maintenance Act. The crux of the matter is whether an emergency monetary relief, i.e. a section 11 (d) of Domestic Violence Act, is an order registered in terms of section 18 of the Maintenance Act. Section 11 (1) *supra*, creates three main kinds of relief orders, namely, a protection order, emergency monetary relief and award of temporary custody. The protection order is final by operation because section 11 (2) provides:

"Subject to subsection (3), a protection order shall remain in force for a minimum period of five years or until revoked or varied by court in terms of section 12."

The emergency monetary relief and award of temporary custody are emergency temporary orders. Section 11 (3), *supra*, provides-

“Any direction to pay emergency monetary and any award of temporary custody of any person which is contained in a protection order shall remain in force for such period not exceed six months as the court may specify unless, prior to the expiry of that period, the direction or award is revoked or extended by court in terms of section 12 or an order or award is made in respect of the same matter by any other competent court:

Provided that no such extension shall exceed a period of three months at a time.”

*In casu*, the applicant did not seek revocation in terms of section 12 of the Domestic Violence Act, but chose to approach this court for review of act the 2<sup>nd</sup> respondent. The purpose of the Domestic Violence Act is to provide relief to victims on an interim basis whilst the other competent courts are still determining the main issues. In cases of divorce, as is the case here, the complainant party must be protected against violence.

Such party and the children must be maintained in the interim period. Children cannot wait for determination of the divorce or maintenance between their parents without provision for their maintenance. The Domestic Violence Act provides instant relief orders to cater for this interim period. To allow suspension of such orders pending the determination of the main matter would defeat the purpose of the Domestic Violence Act. This court should guard against abuse of its process to defeat such protective measures enshrined in the Domestic Violence Act. *In casu*, the applicant approached this court directly without even exhausting the domestic remedies provided for in section 11, supra. The applicant brought this application for the purpose of denying the 1<sup>st</sup> respondent emergency monetary relief granted to her in terms of the Domestic Violence Act. On this point alone I find that the application is without merit and I dismiss it with costs.

*Job Sibanda and Associates*, applicant's legal practitioners  
*Coghlan & Welsh*, 1<sup>st</sup> respondent's legal practitioners