**TINOFARA KUDAKWASHE HOVE** **APPLICANT**

**Versus**

**THE COMMISSIONER-GENERAL**
**ZIMRA** **RESPONDENT**

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 15 FEBRUARY 2011 AND 24 February 2011

*Ms Ncube*, for the applicant
*P. Ncube* for the respondent

**MATHONSI J:** This is an urgent application in which the applicant seeks a provisional order in the following terms:

''TERMS OF THE FINAL ORDER SOUGHT
That you show cause to this Honourable Court why a final order should not be made in the following terms:
1. Applicant be and is hereby declared a returning resident and is accordingly entitled to a rebate on the goods that he is importing as a returning resident.

2. Respondent is not entitled to charge customs duty on Applicant's goods that Applicant will import as a returning resident.

3. Applicant's motor vehicle, being VW24 X-Polo, Engine Number BAH362835 chassis Number AAVZZZ9NZ 8U004935 South African Registration Number CA 689-274 is entitled to a rebate and should be accordantly (sic) registered in Zimbabwe without any encumbrances.

4. Respondent pays the costs of suit on an attorney client scale.

TERMS OF THE INTERIM RELIEF GRANTED
5. Respondent be and is hereby ordered, directed and compelled to forth with release the Applicant's motor vehicle being VW 24X –Polo, Engine Number BAH 362835, chassis Number AAVZZZ9NZ8U 004935, South African Registration Number CA 689-274 to Applicant.

6. Respondent should issue Applicant with the Customs Clearance Certificate and customs documents necessary to enable applicant to register the motor vehicle in Zimbabwe.

7. Applicant should not sale (sic), dispose and or change the ownership of the said vehicle to a third party or permanently remove the said motor vehicle from the court's jurisdiction pending the finalisation of this matter.

8. The storage costs and any ancillary costs be costs in the cause and it is ordered that Applicant should not pay any storage costs or any costs associated with the release of the vehicle.''

The applicant is a registered legal practitioner practicing in this country under the style T.K. Hove & Partners and is a senior partner of that firm which is based in Harare. He is a citizen of this country. From the papers it would appear that on 20 January 2009, he was granted a study permit to pursue a masters degree in Environmental Management at University of Cape Town in South Africa. Whilst in that country he purchased a VW motor vehicle which is the subject of this application.

On 8 January 2011 he was returning home from South Africa bringing with him some goods he intended to import into the country including the motor vehicle in question when he was intercepted at the Beitbridge Boarder Post by the Zimbabwe Revenue Authority officers who impounded his vehicle. He had not paid import duty for the vehicle as he claims that, as a returning resident who has been out of the country for 2 years, he is entitled to an immigrant rebate in terms of section 105 of the Customs and Excise (General) Regulations 2001 which was published as Statutory Instrument 154/2001.

The motor vehicle has remained in the custody of Zimra as applicant seeks to enforce what he regards as his entitlement to that rebate. There are storage charges associated with the continued detention of the vehicle in Beitbridge. On 17 January 2010, the applicant made written representations to Zimra arguing that he should be accorded the rebate. What he did not disclose in his application is that Zimra responded to those representations by letter dated 23 January 2011. That letter reads in part as follows:

> ''IMPORTATION OF GOODS
> GENERAL: APPEAL AGAINST DENIAL OF THE IMMIGRANT'S REBATE: HOVE TAFARA KUDAKWASHE
> I refer to your letter to this office. Your letter and attachments have been read, well understood and fully considered, I however would like to inform you that the office still sustains its initial decision to deny your rebate application, for lack of proof of successful completion of studies. Refer to Customs and Excise Act, Chapter 23:02 section 102, subparagraph --- (10)
>
> > '(a) Any immigrant claiming a rebate of duty in respect of effects or other goods in terms of this section shall give to the proper officer –
> > (b) In the case of a person who has been on –
> > (i) a course of study, proof that he has completed such course of study?
> > Also refer to section 102 definition of 'time of arrival'
> > (c)In relation to an immigrant who has previously resided in Zimbabwe and who has
> > (i) Has been on a course of study, the first occasion on which he returns to Zimbabwe after successfully completing such course of study.
> > The transcript will suffice for proof of successful completion.''

As proof of his successful completion of the course of study the Applicant submitted a document which is neither a degree transcript nor any conclusive proof of completion of the course. It is not even on the University of Cape Town letterhead but has a list of names including that of the applicant. It shows some results for 5 subjects he must have studied. It is not proof of a successful completion of the course. He says the university withheld the transcript because he has not paid school fees.

At the hearing of the application Mr Ncube for the Respondent took 2 points *in limine* namely that the matter is not urgent and that the interim relief sought is incompetent. I propose to deal first with the issue of urgency. Mr Ncube strongly argued that the applicant does not state in his founding affidavit why he considers the matter urgent, that the certificate of urgency itself is not helpful at all and

that it has not been shown that the applicant will suffer irreparable harm or prejudice if the matter proceeds by ordinary court application.

Looking at the certificate of urgency the only relevant parts are paragraph 2(b) and 3 as they are the only ones which attempt to address the issue of urgency. The rest are irrelevant narrations which do not impact on urgency at all. Paragraph 2(b) reads:

> ''Respondent is currently holding the Applicant's car in their yard charging him rentals of $10-00 per day, since 8 January 2011, when as a returning resident he should be allowed to get a rebate.''

Paragraph 3 reads:

> ''Irreparable harm will be occasioned on applicant if the matter is not heard urgently and an order granted in terms of the Draft''

It has been submitted on behalf of the Respondent that the rental of $10-00 being charged for the detained vehicle is merely a paper tray as the applicant is not paying that money. Whether he will have to pay that money will depend on the success or otherwise of his claim. The court is still entitled to order the release of the vehicle without payment of storage charges and the Respondent may still waive the charges if applicant's claim for a rebate has merit. For those reasons it cannot be a vehicle for urgency.

The averment relating to irreparable harm is a bald one not supported by any fact and why the certifying legal practitioner thinks irreparable harm will be suffered is not stated. The applicant cannot expect the court to exercise its discretion to accord him audience on an urgent basis without useful information to sustain such claim. That there is a close relationship between urgency and irreparable harm is obvious. *Triangle Limited v Zimbabwe Revenue Authority* HB 12/11 at p4.

I did state in *Gapare & Another v Mushipe & Another* HB17/11 at p4 that the hearing of a matter as urgent is entirely the discretion of the court and that the court exercises its discretion in favour of the applicant to jump the queue on the strength of a certificate issued by a legal practitioner. Where there is nothing to suggest that the legal practitioner applied his mind before certifying the matter as urgent, a conclusion may be drawn that he acted dishonestly. See also *General Transport & Engineering (Pvt) Ltd v Zimbank Corp (Pvt) Ltd* 1998(2) ZLR 301 at 302 E.

There is nothing in the founding affidavit or indeed the certificate of urgency to suggest how the Applicant will suffer irreparable harm as would attract the hearing of the matter on an urgent basis. Ms Ncube for the applicant did not dispute that even the storage charge of $10-00 per day in not being paid at all and may be waived after all. All she submitted is that the Applicant is being discriminated against without elaborating.

I agree with Mr Ncube for the Respondent that the fact that a party is suffering some form of prejudice does not, standing on its own, amount to urgency. As stated in *Madzivanzira & Others v Dexprint Investments (Pvt) Ltd & Another* 2002 (2) ZLR 316(H) at 318E:

> ''Matters that come before the courts are without doubt dealing with prejudice or potential prejudice to the plaintiff or applicant in one way or another. In asking that a matter be dealt with on an urgent basis one does not over emphasis the aspect of prejudice. What is most

important to me is whether the matter can or cannot wait. If the matter can wait there is no justification in hearing the matter as urgent. To do so will result in that matter unfairly jumping the queque of other matters that are waiting to be heard by the court. I would add that if the application is one that cannot wait, then that opinion must be brought home to the court, not as an opinion but as a matter of fact. The affidavit must establish that the applicant will suffer some form of prejudice or harm, and probably irreparable at that, if relief is not afforded him instanter. --- the element of harm should not be confused with urgency.''

I find myself in total agreement with that pronouncement and *in casu* there is nothing, other than the fact that the applicant is being deprived of the use of his VW Polo, to suggest irreparable harm or even an iota of urgency. I therefore conclude that urgency has not been proved.

Having come to that conclusion it is unnecessary for me to consider the second point *in limine* taken by Mr Ncube relating to the incompetence of the interim relief sought. The matter fails on the first hurdle.

Accordingly the application is dismissed with costs for want of urgency.

*T.K Hove and Partners*, Applicant's Legal Practitioners
*Coghlan & Welsh*, Respondent's Legal Practitioners