

TANYA ANNE SUTHERLAND

APPLICANT

And

THE MINISTER OF PUBLIC SERVICE LABOUR,  
AND SOCIAL WELFARE

1<sup>ST</sup> RESPONDENT

And

THE PROVINCIAL SOCIAL WELFARE OFFICER, BYO

2<sup>ND</sup> RESPONDENT

And

TREVOR MURRAY HARRISON

3<sup>RD</sup> RESPONDENT

IN THE HIGH COURT OF ZIMBABWE

MATHONSI J

BULAWAYO 21 JANUARY 2011 AND 27<sup>TH</sup> JANUARY 2011

*Advocate H. Moyo* for the Applicant

*Mr Makoni* for 2<sup>nd</sup> Respondent

#### JUDGMENT

**MATHONSI J:** The applicant was married to the 3<sup>rd</sup> Respondent and they divorced by order of the 23<sup>rd</sup> June 2005. In terms of the divorce order custody of the minor child of their marriage Eric Henry Harrison, born on 3<sup>rd</sup> February 2001, was awarded to the applicant with the 3<sup>rd</sup> Respondent accorded certain visitation rights set out in that order.

Problems started about May 2010 when the minor child visited his father who stays with his parents Eric Richard Harrison and Barbara Juan Harrison in Avondale West Harare. Certain allegations of sexual abuse of the minor child were levelled against the applicant's current husband one Michael Sutherland. The matter was reported at Highlands Police Station and although the crime docket was later transferred to Bulawayo Central Police Station, the police did not prefer any charges against Michael Sutherland suggesting that the allegations may have been baseless. Police in Harare allowed the applicant and her husband to recover the child and take him to Bulawayo.

This did not stop the child's grandparents from eliciting reports from a psychologist Doctor Jonathan Brakash, a clinical social worker Trish Swift and a traumatised child counsellor, Kerry Lynn Kay who all recommended that the child be removed from the Applicant to "a place of safety" which happens to be the grand parents' home in Avondale Harare where the 3<sup>rd</sup> Respondent also stays.

At the probing of the 3<sup>rd</sup> Respondent and presumably his parents, the grandparents of the minor child, who appear to have taken a very leading role in this dispute, Mr Cowel the 2<sup>nd</sup> Respondent attempted on 2 separate occasions to remove the child from the Applicant. He submitted that he intends to take the child to his grandparents in Harare.

Mr Cowell told the court that the reason he wants to remove the child is because he has received a lot of literature from a number of people complaining about the welfare of the child. The literature in question is the reports made by the individuals I have already alluded to. He also pointed out that he was under pressure from his head-office in Harare to take action. Mr Cowel however admitted that he has not investigated the matter personally to formulating an opinion on the truthfulness or otherwise of the allegations made. Instead he has only spoken to the child, Eric very briefly at his office and has not interviewed the Applicant or her husband Michael Sutherland.

Asked about the implications of the order of this court granting custody of the minor child to the Applicant, Mr Cowel insisted that the best interests of the child override any court order for custody.

Section 14 of the Children's Act, chapter 5:06 provides:

" (1) Any police officer, health officer or probation officer may remove a child or young person from any place to a place of safety -

(a) If he is, in the opinion of that police officer, health officer or probation officer a child in need of care, or

(b) If there are reasonable grounds for believing that an offence specified in the First Schedule is being or has been committed upon or in connection with the child or young person."

The issue which therefore arises is whether there are reasonable grounds for the probation officer, in this case Mr Cowel, to believe that the child was or is being abused so as to entitle him to remove the child to a place of safety. As already stated, the allegations against Applicant's husband surfaced in May 2010 and the police brought him to the police station in Highlands Harare, where they obviously interrogated him and witnesses. At the conclusion of that inquiry they must have formulated the opinion that there was no case against Sutherland otherwise there would have been no reason to let him go without any charges being preferred against him. They also released the minor child to the same person who was being accused of abusing him and his wife. Since then, absolutely nothing has been done and Sutherland has not been prosecuted.

For 2<sup>nd</sup> Respondent to then attempt to remove the child now without even conducting his own independent inquiry as to the allegations is not justifiable at all. The 2<sup>nd</sup> Respondent relies entirely on reports compiled by individuals who were contracted by 3<sup>rd</sup> Respondent and his parents. The evidentiary value of the reports is badly compromised by the fact that not only were they approached by the 3<sup>rd</sup> Respondent and his parents but they are also unbalanced as no attempt was made by any of them to interview the applicant and indeed Michael Sutherland. It is therefore extremely unsafe for anyone to swallow the reports hook, line and sinker as it were.

It is also pertinent to note that in contradistinction there are reports compiled by Doctor Aleksandra Maksimovic, Mrs C S Steyn Eric's class teacher at Petra School and V.N Mhlaba a psychologist/counsellor. Doctor Maksimovic observed a couple of bruises not relevant to the accusations made and concluded that Eric was free of any illness. His class teacher was of the view that Eric's visit to Harare was not good for him as he came back showing signs of having lost self esteem and confidence and looked troubled. The psychologist / counsellor who investigated the matter at Petra School reported that Eric "denied any improper contact with his step-father."

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I therefore came to the conclusion that at the moment the 2<sup>nd</sup> Respondent has no basis for removing the child from the Applicant who, in any event, has the benefit of an order of this Court awarding her custody of the minor child.

Accordingly, I grant the provisional order in terms of the draft order annexed to the application.

*Webb Low & Barry*, Applicant's Legal Practitioners