TAKESURE ALANI MUVENGWA
versus
CHIEF SUPERINTENDENT ZULU
and
SUPERINTENDENT CHIRIGA

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 29 AND 31 MARCH 2016

Urgent Chamber Application

Applicant in person
L. Musika for the respondents

MATHONSI J: This is one of several urgent applications being brought to this court at an alarming rate by junior police officers who generally appear to be having serious disciplinary problems at their stations and who, at the stroke of a finger, will now rush to this court with incoherent applications seeking one relief or the other against their superiors. While it is a constitutional imperative for every citizen to approach the courts protesting their rights, it has not escaped notice that police officers are now using the precincts of this court as their favourite playing ground, a clear abuse by any description.

The applicant is a police constable based at Mangwe Police base. While deployed at another rural police base known as Sikhathini by the officer in charge of Plumtree Police Station, he was investigated by Inspector Moyo for a number of infractions including being absent from his base and using an unregistered Toyota Granvia motor vehicle for pirating. A team of officers led by Inspector Moyo caught up with the applicant on 4 February 2016 at Tegu bridge near Sikhathini Clinic while he was driving the offensive vehicle carrying two passengers.

The police officers recorded statements from passengers and interrogated the applicant. After they left, the applicant proceeded to file a report alleging that the good police inspector had stolen his cellphone and a dollar which was underneath it. Later at the police station, he

personally entered the report of the stolen cellphone in the Initial Report Book. It is not clear who later generated CR 99/2/16 in respect of that matter, but the applicant appeared to be the complainant and investigating officer at the same time.

Whatever the case, the report did not find favour with the police and no prosecution came out of it. What did happen though is that the applicant was charged with contravening paragraph 38 of the Schedule to the Police Act [Chapter 11:10] as read with section 29 of the Act for making a frivolous or vexatious complaint. He was found guilty and on 3 March 2016, he was sentenced to seven days detention.

The applicant has appealed against both conviction and sentence. He has also approached this court in HC 708/16 by court application seeking review of those proceedings. Both the appeal and the review application are yet to be determined. That has not stopped the applicant filing this urgent application seeking the following relief:

> "A. <u>TERMS OF THE FINAL ORDER SOUGHT</u>
> That the provisional order granted by this Honourable Court be confirmed in the following manner:
>
> 1. That the respondents stop interfering with witnesses until both the review application on HC 708/16 and the docket on CR 99/2/16 are finalized.
> 2. That the keep on visiting *(sic)* by the team sent by the respondents to force state witnesses to change statements in order to protect a suspect be declared unlawful.
> 3. That the respondents not give any order for the state witnesses to be picked from their homes to any unknown place until the matters on review and on CR 99/2/16 are finalised.
> 4. That there be no order as to costs.
>
> <u>INTERIM RELIEF GRANTED</u>
> The respondents be and are hereby interdicted from interfering with witnesses and the taking of the applicant to any detention barracks until matters on HC 708/16 and CR 99/2/16 are finalized in accordance with the law."

The applicant's founding affidavit is significant more by what it does not say than what it says. It does not say what it is that motivated him to come to this court on an urgent basis seeking the relief that he seeks. He does not allege that there has been a threat to detain him notwithstanding the appeal that he has noted. He only talks of the difficulties he initially experienced in lodging an appeal as he was taunted by the respondents on its lack of merit. The

applicant alleges that his witnesses in the theft of a cellphone case were interrogated by officers which he refused to name only mentioning the name of Seargent Joe Makura as being one of the officers who were asking the witnesses to change their statements. It is not clear why the police would do that when his report was investigated and found to be false. It was allegedly submitted to District Headquarters for closing on 29 February 2016.

Mr *Musika* for the respondent submitted that the matter is not urgent at all because the appeal that the applicant filed is being processed and there has been no threat of executing the penalty suspended by the appeal. He acknowledged that the applicant has also made a review application to this court meaning that nothing will be done to him until the matters have been determined. On the question of protecting witnesses, Mr *Musika* submitted that the applicant will be given the outcome of the report in writing.

It is not clear why the applicant has chosen to come to this court on an urgent basis when there is nothing urgent about the relief that he seeks. He has completely misunderstood the basis of urgent relief. Urgent applications are those where if the court fails to act, the applicants may be entitled to say to the court that it should not bother to act at a later stage because their position would have become irreversible and to their prejudice. See *Document Support Centre (Pvt) Ltd* v *Mapuvire* 2006 (1) ZLR 232 (H) 243 G-244 A –C; *Triple C Pigs and Another* v *Commissioner General, Zimbabwe Revenue Authority* 2007 (1) ZLR 27(H) 30G-31 A-B.

It is sometimes said that a matter is urgent if, when the need to act arises, the matter cannot wait. See *Telecel Zimbabwe (Pvt) Ltd* v *Potraz and Others* HH 446/15. That test for urgency pre-supposes the existence of a need to act, not fanciful excuses to drag superiors to court on flimsy grounds not making a case for the relief that is sought. In my view this application does not pass the test for urgency because there was no need whatsoever to act on the part of the applicant.

He wants to interdict his detention in execution of the penalty imposed by a single officer. There is no attempt whatsoever to detain him. He would also like to interdict the interrogation of witnesses in his dead case of theft of a cellphone, a case which was closed on 29 February 2016, even before he was charged and convicted aforesaid. It has not been shown to

my satisfaction that indeed the police are guilty of such conduct as doing that would be superfluous indeed.

I am not satisfied that this application deserves to jump the queue.

In the result, it is ordered that:

1. The hearing of this application as urgent is hereby refused.
2. The applicant shall bear the costs of the application.