

HC 10196/03

CHRISTINE JAJI  
versus  
AGRICULTURAL BANK OF ZIMBABWE

HIGH COURT OF ZIMBABWE  
HUNGWE J  
HARARE 21 November and 17 December 2003

Urgent Chamber Application

***G C Chikumbirike for the applicant***  
***S Makonyere for respondent***

HUNGWE J: Applicant seeks an order against her former employer the respondent bank ("the Bank") authorising her to make full use of her account with it. The background to the present application is as follows -

Applicant was employed by the bank as its branch manager at its Nelson Mandela Avenue Branch, Harare. During her terms of office applicant operated an account with the Bank. She obtained staff loans advanced by the bank under certain terms and conditions. She used these loans to purchase a house and a motor vehicle. As security against these loans, she had deposited the title deeds to the house and the motor vehicle registration book with the bank.

The bank now believes applicant had a hand in a fraud perpetrated upon it by a group of individuals. This led to the dismissal of applicant from the bank's service. Further as the bank believed the account was operated to its prejudice, it froze her account and withheld all funds in the account. It dishonoured her cheques.

The bank, in Case No HC 8842/03 sought a provisional order against nineteen respondents. Applicant had her minor child are one of those respondents.

The prejudice suffered runs into millions of dollars. The bank sought in that order the release to it of several light

trucks, a lorry and cash. That matter was placed before MAKONI J under a certificate of urgency.

She did not entertain the matter. Instead, according to the applicant, she endorsed -

"The matter is not urgent. Applicant has not established basis to attach the respondent's property before either a conviction or a civil judgment".

In this application, which was also brought under a certificate of urgency, applicant argues that the respondent's actions in refusing her the right to operate the account, in withholding the deeds and registration book of her motor vehicle, are unlawful in that the bank is exercising the right which the court refused to grant it. She says that as the relationship between the bank and an account holder is that of debtor and creditor, the bank has no legal basis in dishonouring her cheques as she is entitled to the sums of money held by the bank.

The argument is based on the order by MAKONI J which order I have repeated above. That order, to my mind, is an indication that the honourable judge refused to entertain the matter on an urgent basis. She did not therefore go into the merits of the bank's application. She did not deny the bank the right to withhold the securities it held against applicant nor did she determine the applicant's right.

The order to refuse to deal with the matter on an urgent basis would have been more elegant had it ended with the first sentence. The rest was superfluous as she never applied her mind to the issues which she had to deal with in that application.

I am satisfied that on the papers before me the bank has demonstrated that it is entitled to act in the manner it did. The bank says it was exposed to the risk of prejudice by its employee. It held on to the securities it had. That security

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includes the money it held in her account.

In the premises this application is dismissed with costs.

***Chikumbirike & Associates, applicant's legal practitioners***

***Robinson and Makonyere, respondent's legal practitioners***