CHARLES KAZINGIZI
**versus**
REVESAI DZINORUMA

HIGH COURT OF ZIMBABWE
MAKARAU and PATEL JJ
Harare 9 February and 11 October 2006.

**CIVIL APPEAL**

*Mr Mambara,* for the appellant
Respondent in default

MAKARAU J: On 14 February 2005, the appellant and respondent appeared before the magistrates court in an application for the downward variation of a maintenance order against the appellant from $1 000 000-00 (old currency) to $300 000-00 per month for one minor child. The trial court dismissed the application but without reasons. Dissatisfied, the appellant noted an appeal to this court.

In his grounds of appeal, the appellant in the main, attacked the decision of the trial court on the basis that insufficient weight was attached to the appellant's personal circumstances and further, that the trial magistrate accepted as proof of earnings, the inflow of deposits into appellant's business account. In the absence of reasons, one can only surmise that the appellant felt that his version of the application had been rejected and that the respondent's assertions had been accepted. Thus, he has formulated his own basis for the decision and has then set on attacking that perceived ratio *decidendi*.

The absence of reasons for the judgment gave us great cause for concern.

It is trite that every trier of fact has to give reasons for his or her decision. A judicial decision that is not explained easily itself to criticisms of being arbitrary and/or capricious. Where the litigants have presented their competing facts and arguments before the trail court, they have a legitimate expectation to know whether their version of the facts and their argument have been received and if not, why. So fundamental is the legitimate expectation of the litigants in our law that the legislature saw it fit to make it one of the duties of administrative authorities to give reasons for their decisions. (See section 3 (1)( c ) of the Administrative Justice Act [*Chapter 10:28*]).

In *Kashiri v Muvirimi* 1988 (1) ZLR 270 (S ) KOSAH JA was faced with a similar situation as the one that was before us where the trial court did not give reasons for awarding maintenance in respect of the respondent's children. It also made no finding as to credibility in a suit where intimacy between appellant and respondent was denied. At page 273 D-E, the judge expressed his concern at the absence of reasons for the decision as we do in *casu.* His words:

> "This case highlights the need for courts to give reasons for their decisions because as WESSELS JA reminds us in *National Employers Mutual General Insurance Association v Gany* 1931 AD at 189:
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> > 'Where there are two stories mutually destructive, before the onus is discharged, the Court must be satisfied upon adequate grounds that the story of the litigant upon whom the onus rests is true and the other false.'."

From a reading of the judgment, it is clear that the proceedings were saved before the Supreme Court and ultimately resolved in favour of the respondent on the basis of a concession made by the appellant that there had been a finding of sexual intercourse between him and the respondent about a year and a half after the birth of one of the children. Without that concession, the

respondent's case would have been "doomed" as the judged observed at page 273 F.

The giving of reasons for a decision after a court hearing is a compulsive imperative not only to fulfill the legitimate expectations of the litigants but also to inform them on the competing facts and arguments used as the basis of the decision for purposes of appeal or review. Hence, in the absence of reasons, the notice of appeal becomes guesswork and may arguably be held to be an appeal against the order and not the judgment.

As observed by DUMBETCHENA CJ in *Fox & Carney P/L v Sibindi* 1989 (2) 173 at 179 G-H:

> "In a contested matter in which issues, facts and law are disputed, there must be a judicial decision or determination on some question of law or fact in dispute. The merits and demerits of each party's case must be stated, so that the parties understand how the disputed issues or questions were determined. A written judgment is the foundation upon which a litigant builds his hopes for success on appeal or losses hope of succeeding on appeal".

To these remarks, I would respectfully add that a written judgment in an appeal is imperative as it guides the appeal court in determining whether the attack on the whole or part of the judgment is legally sustainable. Without it, and in the absence of concessions made on appeal by the respondent, the appeal cannot in my view be determined and is doomed. One could very well argue that the failure to give reasons for judgment is a gross misdirection on the part of the trial court and one that vitiates the order given at the end of the trial. It is my further view that in trials, as opposed to interlocutory matters and some applications, it is not only the order that matters, the reasons for arriving at that decision are equally important. The integrity of the order lies in the procedure used to reach that order and the reasoning employed to opt for a particular result.

On the basis of the foregoing, I feel constrained to set aside the proceedings in the court a quo.

There is however one other issue that exercised our minds during the hearing of this appeal. Due to the ravages of inflation, the amount of maintenance in dispute between the parties became irrelevant, as the sum of the order sought to be varied by the appellant was barely adequate to maintain one child at the date of the hearing of the matter. The value of the amount of the order has since further depreciated. In setting aside the decision of the trial court we are not suggesting that the amount of the maintenance set at $1 000 0000 was inappropriately high. Thus, in our view, it will make a mockery of the justice delivery system for us to direct at this stage that reasons for the decision be supplied. In this regard, we are guided by the fact that maintenance proceedings are not trials where one side emerges victorious and the other vanquished but are inquiries for the benefit of the minor children or dependants. Thus, where in a trial we would have remitted the matter to the trial court for reasons to be supplied, we are in this matter of the view that both parties should be granted leave to approach the court a quo for a fresh inquiry under section 8 of the Maintenance Act [*Chapter 5:09*] into the appropriate level of maintenance payable.

Although we are allowing the appeal, in view of the fact that the basis of our decision is on a point that we brought up *mero motu*, we shall not award costs in favour of the appellant.

In the result, we make the following order:

1. The appeal is allowed.

2. The order of the trial court dated 14 February 2005 is hereby set aside.

3. The matter is remitted to the trial court for an inquiry at the instance of either party to be held in terms of section 8 of the Maintenance Act.

4. The appellant shall bear his own costs.

*J Mambara & Associates*, appellant's legal practitioners.