AUTOWORLD (PRIVATE) LIMITED
and
ECONET WIRELESS (PRIVATE) LIMITED
versus
ZIMBABWE REVENUE AUTHORITY

HIGH COURT OF ZIMBABWE
MUTEMA J
HARARE, 19 July 2010

W.T. Manase, for the applicants
J. Chakunda, for the respondent

MUTEMA J: This matter came before me via the chamber book on the basis of perceived urgency. The applicants are desirous of a provisional order whose interim relief is couched in this vein:

> "Pending determination of this matter, the first and second applicant is (*sic*) granted the following relief:-
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> 1.
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> That the motor vehicles impounded by the respondent from the second applicant being Isuzu KB 250 double cab, Registration ABG 3091 and Isuzu KB 250 ABI 6481 double cab, be and are hereby ordered to be released to second applicant forthwith or upon service of this Order.
>
> 2.
>
> That the respondent pays costs of suit on a legal practitioner/client scale".

The final order sought is thus worded:

> "The respondent should show cause why a Final Order should not be made in the following terms:
>
> 1.
>
> That the second respondent (*sic*) be and is hereby ordered to sought (*sic*) out its differences with the first applicant, if at all, and not to impound cars from 3rd parties which cars the respondent granted Customs Clearance Certificates upon payment of duty by the first applicant".

The bare bones of the matter are these:

First applicant imported the two motor vehicles mentioned in the provisional order which it later sold to the second applicant. These were some of the many vehicles imported by the first applicant between 2007 and 2009. Upon importation the respondent asked the first applicant to pay duty of 25% in foreign currency. For the two vehicles in question duty was

paid in May, 2008 and customs clearance certificates were issued. The vehicles were registered and subsequently sold to the second applicant. Unbeknown to the respondent's officers duty payable had been hiked to 60% via statutory instrument 58 of 2008 gazetted on 11 April, 2008. When the second applicant wanted to effect change of ownership, the respondent discovered that the duty that had been paid for the vehicles was not enough by 35%. Respondent then impounded the said vehicles pending payment of the difference in duty by the second applicant. This was done in terms of ss 226 and 192 of the Customs and Excise Act, [*Cap 23:22*]. This action did not go down well with the applicants, hence the urgent chamber application on a certificate of urgency.

Before delving into the merits of the application, it behoves me to determine whether or not the matter is urgent.

In *General Transport and Engineering (Pvt) Ltd and Ors v Zimbabwe Banking Corporation* 1992(2) ZLR 301 (HC) litigants were reminded to heed that the preferential treatment of allowing a matter to be dealt with urgently is only extended, if good cause is shown for treating the litigant in question differently from most litigants. Coupled with this is the allied problem stated in *Kuvarega v Registrar-General & Anor* 1998(1) ZLR 188 (HC) that there is a tendency among some legal practitioners to rush to certify that a matter is urgent when it is anything but urgent.

Now, looking at the certificate of urgency by Wilson Tatenda Manase, I have not been able to glean anything akin to urgency at all. All there is are allegations that not only has the respondent's action "affected the operations of the applicant's customers but has caused great financial prejudice, inconvenience and disrepute of the applicant's customers. Irreparable harm continues to be caused to 3rd parties like Econet and NUST. Despite writing a letter to the respondent they never responded to same".

The papers that were filed and even the oral submissions made are deafeningly silent with regard to when exactly the two vehicles were impounded by the respondent. Obviously the date(s) of the impound is known to the applicants but for reasons only known by them this material information was omitted. This might have been designedly overlooked in order to buttress the alleged urgency. The letter alluded to was written on 30 March, 2010. It is not known how long following the impounding of the vehicles was this letter written. Even then, from that time (30 March, 2010) to 15 July, 2010 when this application was lodged is a period of $3^{1/2}$ months. Surely if the matter were urgent the applicants would not have delayed for that

long. If the matter were urgent the applicants would have immediately and diligently pursued it via the chamber book as soon as the vehicles had been impounded.

What is contained in the certificate of urgency are sheer unsubstantiated averments and inconvenience. This *per se* cannot and should not entitle the applicants to preferential treatment over most litigants whose cases are in the queue before this Court. The applicants should accordingly wait to have their turn and their day in court.

Having found that the matter is not urgent, there is no need to deal with the merits of the application.

In the result, the application be and is hereby dismissed with costs.

Manase & Manase, applicants' legal practitioners