

CLETUS CHUKWUKA ANUEYIANGU  
versus  
CHIEF IMMIGRATION OFFICER  
and  
THE CO-MINISTERS OF HOME AFFAIRS  
and  
THE ATTORNEY GENERAL OF ZIMBABWE

HIGH COURT OF ZIMBABWE  
MAVANGIRA J  
HARARE, 21 FEBRUARY 2012.

### **Urgent Chamber Application**

*G. Nyandoro*, for the applicant  
*I. C. Chihuri*, for the respondents

MAVANGIRA J: The applicant is a Nigerian immigrant who is in Zimbabwe. He was arrested on 6 February 2012 by Immigration officers. On 14 February 2012 he filed this urgent chamber application in which he seeks the following relief by way of Provisional Order:

#### “INTERIM RELIEF

Pending the return day, it is hereby ordered that:

1. First respondent be and is hereby ordered to release applicant forthwith from detention upon the granting of this order.”

The final relief sought by the applicant is in exactly the same terms as for the interim relief.

I dismissed the application with costs on 5 March. My reasons have been requested. These are they.

The applicant’s contention is that he was arrested and detained on undisclosed allegations. He further contends that whereas in terms of s 8(1) of the Immigration Act [*Cap 4:02*] the first respondent is entitled to detain him for fourteen days where he has reasonable suspicion that he might have committed an offence against the laws of Zimbabwe, in *casu no*

reasonable suspicion has been substantiated by the first respondent for the arrest and detention of the applicant. He therefore regards his arrest and detention as unlawful. He therefore contends that the relief that he seeks is justified by these circumstances. The applicant further proffers an explanation for the delay of seven days from the time of his arrest to the time of the filing of this application. He stated that he was during that intervening period trying to engage the first respondent, in vain.

The applicant's case has been aptly summarised in the respondents' heads of argument in the following terms:

1. He is a foreign investor who is in Zimbabwe on the strength of a valid foreign investor licence.
2. He was unlawfully arrested and detained by the first respondent without reasonable suspicion and without being given any explanation or interview.
3. He was under threat from deportation at the instance of the first respondent.
4. He had done nothing wrong to deserve the actions by the first respondent.

The first respondent's case in opposing the application has also been aptly summarised as:

1. The applicant was invited to the respondent's offices for an interview.
2. After the realisation that the applicant was out of status he was informed and immediately arrested and detained for further inquiries in terms of s 8(1) of the Immigration Act.
3. At the time of his arrest the applicant had no valid permit, no valid PRN (Provisional Restriction Notice) and no valid Foreign Investor Licence.
4. After further inquiries the first respondent has found that the applicant is a prohibited person who has a previous deportation record and that the term "foreign investor" does not describe him or is not applicable to him as he is only a director of a company and not a shareholder as alleged.
5. The applicant may have been allowed entry to Zimbabwe and granted a previous permit by error or by oversight; as such, the first respondent has the right to remove and deport the applicant from Zimbabwe in terms of the Act.

#### **Was the arrest and detention of the applicant lawful?**

When the applicant was invited for an interview at the first respondent's offices, justification or reasonable suspicion that the applicant had contravened the Immigration Act was based on the fact that on completing his application form for a residence permit the applicant had lied under oath and stated or written that he had only entered Zimbabwe for the first time in 2006, yet the Immigration Department records show that the applicant was once deported on 15 June 2005. Having been thus deported the applicant became and was a prohibited person. Section 15 (2) of the Immigration Regulations, 1998 provides:

“(2) An applicant for a residence permit shall satisfy the Chief Immigration Officer that he is of good character and is not a prohibited person”.

The applicant has not shown that he was in possession of any legal document allowing him to remain in the country. The applicant has not stated that after the 2005 deportation the Minister has in terms of s 16 of the Act issued an exemption certificate for his readmission. Section 16 of the Act provides as follows:

**16 Exemptions by Minister from section 14**

- (1) Notwithstanding anything to the contrary in this Act, the Minister may, by order in writing, exempt any person described in subs (1) of section *fourteen* from the provisions of that subsection subject to such terms and conditions as he may fix: Provided that, if the Minister exempts any person described in para (e) of subs (1) of section *fourteen*, the exemption shall only apply in respect of such offences as are specified in the order.
- (2) The Minister may at any time, by notice in writing to the person concerned, cancel any order in terms of subs (1) and thereafter the provisions of section *fourteen* to which the order relates shall apply to that person.

Furthermore, in para 6.3 of the first respondent’s heads of argument the following submission is made:

“Even where applicant was allowed in by error or by oversight, to enter into the country and issued with an initial investor permit, the first respondent can still withdraw such and remove the applicant out of Zimbabwe in terms of s 4 of the Immigration Act. Because of the 2005 deportation record applicant is a prohibited person in terms of s 14 (1) (i) of the Act and should not be readmitted into the country without an exemption certificate from the Minister in terms of s 16 of the Immigration Act.”

No submission to the contrary was made by Mr *Nyandoro* in respect of this submission either. Rather Mr *Nyandoro* was at pains urging the court to disregard the first respondent’s supplementary affidavit in opposition of the application. The first respondent’s intention therein was to rectify an earlier statement that the applicant had been deported twice before and to state that the correct position was in fact that he had been deported only once in the past. The effect of acceding to Mr *Nyandoro*’s submission would be for the first respondent’s case to be that the applicant had returned to Zimbabwe after having previously been deported from Zimbabwe on two occasions and not once only. It was not stated what prejudice would be occasioned to the applicant by this correction of facts. It would appear that it could only occasion fairness, if at all, to the applicant, but certainly not prejudice.

Either way, the applicant still faces the hurdle of the statutory onus placed on him to satisfy the first respondent that he is not a prohibited person.

The first respondent's legal practitioner cited MUSAKWA J in *Nasvin Enendu v Chief Immigration Officer & The Co-Ministers of Home Affairs* HC 6996/11 where at p 4 of the judgment he stated:

“It is not a legal requirement that he should have been notified in writing that he is a prohibited person”.

No submission to the contrary was made by Mr *Nyandoro*. The applicant's arrest and detention cannot, in my view, be said to be unlawful in the circumstances. The first respondent's reasonable suspicion has been substantiated.

It appears to me that in the circumstances discussed above the application cannot succeed and that costs must follow the cause. It was for these reasons that I dismissed the application with costs.

*Hamunakwadi, Nyapadi & Nyambuya*, applicant's legal practitioners  
*The Civil Division of The Attorney General's Office*, first respondent's legal practitioners.