1 HH 36-2013

(1)THE PRINCIPAL CHIEF IMMIGRATION OFFICER	HC 10894/2012
and	
THE ASSISTANT REGIONAL IMMIGRATION OFFICER	MC 9100/2012
versus	
PRECIOUS CHINYERE OKEKE	

(2) PRECIOUS CHINYERE OKEKE HC 11000/12 versus THE PRINCIPAL CHIEF IMMIGRATION OFFICER and THE ASSISTANT REGIONAL IMMIGRATION OFFICER

HIGH COURT OF ZIMBABWE HUNGWE J HARARE, 26 September 2012

C. M Dube, for the applicants (respondents) *E* . *Samukange*, for the respondent (applicant)

Urgent Chamber Application

Hungwe J: These two matters involve related issues between the same parties. It is convenient that they be dealt with together. The applicants in the first matter are the respondents in the second matter. They seek the provisional order under the certificate of urgency, suspending the order granted in favour of the respondent in a magistrate's court in case number 9100/12 pending the determination of an appeal against that order filed with the Supreme Court. The back ground to these cases is that Precious Chinyere Okeke is married to Chief Jerome Okeke, a Nigerian businessman resident in Zimbabwe. At some point during their residence in Zimbabwe the wife left Zimbabwe in order to obtain medical attention overseas. She was at that time pregnant. She gave birth overseas. Upon her return to rejoin her husband and other children and resume residence in Zimbabwe, the applicants denied her entry. She appealed to the magistrate in terms of the Immigration Act, *[Cap 4:02]*. The magistrate gave an order setting

aside the decision of the applicant denying her entry. The magistrate permitted her entry together with her child.

The applicants noted an appeal against this decision by the magistrate in the Supreme Court. The respondent sought and was granted leave to execute that judgment pending appeal. Notwithstanding the order of the magistrate, the appellants deported the respondent forthwith. The respondent filed her application, HC 11000/12, from the holding cells at O R Tambo International Airport in Johannesburg, South Africa. In it she set out the background which I have summarised above. She then took the preliminary point that since her deportation by the Immigration officials was in clear disregard of a valid court order, the applicants have come to court with dirty hands and therefore should not be heard in their application.

People are not allowed to come to court seeking the court's assistance if they are guilty of a lack of probity or honesty in respect of the circumstances which cause them to seek relief from the court. It is called, in time-honoured legal parlance, the need to have clean hands. It is a basic principle that litigants should come to court without dirty hands. If a litigant with unclean hands is allowed to seek a court's assistance, then the court risks compromising its integrity and becoming a party to underhand transactions. As stated by DAVIDSON J in *Underhay v Underhay* 1977 (4) SA 23 (W) at 24E -F:

"It is fundamental to court procedures in this country and in all civilised countries that standards of truthfulness and honesty be observed by parties who seek relief."

After a discussion with counsel for the parties it was agreed that the Principal Chief Immigration Officer has not approached the court with clean hands in HC 10894/12. I therefore make the following order:

- 1. That the two matters HC 10894/12 and HC 11000/12 be and are hereby postponed *sine die*.
- 2. That the respondent in HC 10894/12, upon her arrival at Harare International Airport, be and is hereby granted leave to file her application for leave to resume her residence in Zimbabwe in terms of the Immigration Act, *[Chapter 4:02]*.

- 3. That the applicants in HC 10894/12 be and are hereby directed to consider an application by respondent in HC 10894/12 (applicant in HC 11 000/12) in terms of the Immigration Act, [*Cap* 4:02].
- 4. The applicants in HC 10894/12 are to pay respondent's costs in both HC 10 894/12 and HC 11000/12.

Civil Division of the Attorney-General's Office, applicants' legal practitioners

Venturas & Samukange, respondent's legal practitioners