MOSSWOOD INVESTMENTS (PRIVATE) LIMITED
versus
MOSES NHACHI

HIGH COURT OF ZIMBABWE
CHINAMORA J
HARARE, 11 June 2024

Application for leave to appeal

Adv S M Hashiti, for the applicant.
Ms G E Hoyi, for the respondent.

CHINAMORA J: The present application is for leave to appeal against the judgment of this court. The relief sought by the applicant is couched in the following way:

> "WHEREUPON after reading documents filed of record and hearing counsel:
>
> IT IS ORDERED THAT:
>
> 1. The application for leave to appeal be and is hereby granted.
> 2. The Respondents shall pay costs on the higher scale if they oppose this application."

The respondent opposed the application and raised some points in *limine*. Firstly, it was submitted that the application is invalid since the form used does not exist. The applicant argues that since the application was to be served on interested parties Form 23 should have been used as required by r 60 (1) of the High Court Rules 2021. I have considered whether any prejudice accrued to the respondent as a result of the failure to use Form 23, and there was none in my view. In fact, I am satisfied from a reading of *Zimbabwe Open University* v *Mazombe* 2009 (1) ZLR 101 (H), that the rationale for using Form 23 is to notify interested parties of their right to file any opposition if they so wish. This is clear from the judgment, which I quote:

> "Now, the format adopted by the applicant does not contain the plethora of procedural rights that the respondent is alerted to in Form 29, nor is the summary of the grounds of the application required in Form 29B".

As I have already observed, there was no prejudice to the respondent as it was able to file its opposition despite the absence of Form 23. There is therefore no merit in the objection and I dismiss the preliminary point.

The second point in *limine* was that the applicant had failed to plead the law in terms of which the application was brought, i.e. whether it was the common law or in terms of the rules of this court. The case of *Minister of Mines & Mining Development* v *Fidelity Printers & Refineries (Pvt) Ltd* CCZ 9-22 was relied upon, where the court opined that it was good practice for an astute legal practitioner to indicate the rule or statutory provision that he/she relies on. I do not read this judgment to be saying that a failure to name the rule concerned is fatal to the application before the court. In fact, the Constitutional Court judgment cited by the respondent makes it clear that mention of the rule *"is what informs the respondent and the court as to the nature of the application and the relief sought"*. From this it is evident that the court was emphasizing the prudence of indicating the rule, and convenience to the court and the other party of doing so. Again, I dismiss this point for lack of merit.

Thirdly, it was contended that the application was out of time as there was non-compliance with r 94 (8). The argument was that neither an oral application was made at the time of judgment, nor a written application within 12 days of the judgment. Further, the respondent submitted that a written application should have been made on 7 April 2023, but was filed on 11 April 2023 instead. It appears to me that the delay complained of is not an inordinate one by any standards, and I am prepared to condone it.

Finally, the respondent argued that the notice of appeal is defective in that it alleges that the appeal was against a judgment granted in two cases, namely, HC 4345/22 and HC 8161/22, yet Ground 6 alleges that no judgment was granted in HC 8161/22. Thus, the respondent's argument is that the appeal court cannot make an order in a matter in which the High Court did not make an order. My view is that, to the extent that no order was made in HC 8161/22, the notice and grounds of appeal remain valid in respect of HC 4345/22. At any rate, the validity or otherwise of an appeal pending before the Supreme Court is something which that court itself can determine. There is also no merit in this preliminary point, and I dismiss it.

Turning to the merits of the application, my view is that it is desirable for the appeal court to be allowed to consider the correctness or otherwise of my decision. In the result, I make the following order:

1. The points in *limine* raised by the respondent are dismissed.
2. The application for leave to appeal be and is hereby granted.
3. There shall be no order as to costs.

Chasi-Maguwudze Legal Practice, applicant's legal practitioners
Nyahuma Law, respondent's legal practitioners