DISTRIBUTABLE (17)

SITWELL GUMBO
v
PORTICULLIS PRIVATE LIMITED T/A FINANCIAL CLEARING BUREAU

SUPREME COURT OF ZIMBABWE
HARARE, DECEMBER 9, 2013

Before**:** **GWAUNZA JA**, in chambers in terms of r 5 of the Supreme Court Rules.

This is an application filed in terms of r 31(2) of the Supreme Court Rules. On the 9 of December 2013, and upon reading documents filed of record, I dismissed the application with no order as to costs. No opposing papers were filed by the respondent. The applicant has requested that I furnish him with reasons for the judgment, and these are provided herein.

The applicant filed an application in the High Court, on a certificate of urgency. The court *a quo*, on 26 June, 2013 issued the following decision;

> "There is no urgency in this matter warranting this matter to be allowed to jump the queue. The applicant has had all the time in the world to take the initiative to clear his name. I decline to treat this matter as urgent."

Upon a request from the applicant, the court *a quo* provided written reasons for the decision not to hear the matter on an urgent basis. The court *a quo* in this respect relied on the case of *Kuvarega vs Registrar-General and Anor* (1998 (1) ZLR 188(H)) at 193 F-G in which the following principle was set out.

> "What constitutes urgency is not only the imminent arrival of the day of reckoning, a matter is urgent if at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules."

The learned Judge's assessment of the evidence before him indicated that the genesis of the applicant's problems with the respondent dated back to 2003, spilled over to 2007 and then to 2009 and thereafter. The Judge found that the applicant had been fully aware of the conduct of the respondent towards him and that he had always had the opportunity to take the initiative to clear his name. He had chosen not to do so and had only rushed to court on an urgent basis on 24 June 2013. The court concluded that the applicant's conduct in this respect was not what the whole concept of urgent applications contemplated.

The applicant on 16 September 2013 then sought the leave of the court *a quo* to appeal to this court against the decision declining to hear his matter on an urgent basis. The court *a quo* having dismissed that application, the applicant then filed the present application before me. It is essentially an application where the applicant is seeking my leave to appeal to this court, against the decision of the judge *a quo* that his matter before that court was not urgent.

To properly determine this matter, I consider it pertinent to consider two main issues. These are, firstly, the reasoning of the court *a quo*, which led to the decision that it reached, and secondly, the question of whether or not the intended appeal has any prospects of success. It is my view that the requirement for the applicant to file a copy of his Notice and Grounds of appeal together with an application of this nature, is to enable this court to make a proper assessment of the applicant's prospects of success on appeal.

Having considered the papers before me, which included the reasoned judgment of the court *a quo* as well as the applicant's affidavits, I find myself in full agreement with the judge's reasoning and determination. I find, more to the point, that the applicant did not place before the court *a quo*, nor before me, any evidence to show that there was, in his application, the type of urgency that would have merited a hearing on an urgent basis. In other words he failed to show that at the time the need to act arose, the matter could not wait.

I would therefore have dismissed the application to hear the matter on an urgent basis, in the same manner that the court *a quo* did, and for the same reasons. As already indicated, I proceeded to do the same *in casu*.

The applicant properly filed a copy of his notice and grounds of appeal. A synopsis of his grounds of appeal shows that he intends to premise his appeal on two main grounds, both essentially factual. Firstly the applicant seems to argue that the court *a quo* improperly interposed and considered together, two cases that had different HC

numbers and were therefore unrelated. This was in reference to the fact that the urgent chamber application was given the number HC 4997/13 while the chamber application for leave to appeal was given the number 5794/13. A perusal of the latter shows that both numbers are, properly in my view, endorsed on the right hand corner of the document entitled "Chamber application for Leave to Appeal", clearly showing that the two cases were related. Apart from this ground of appeal indicating what seems to me to be a misappreciation by the applicant, of the HC numbering system and its implications in related cases, it is evident that the issue has no bearing on the merits of whether or not the case merited an urgent hearing *a quo.*

I find therefore that there is little, if any, prospect of success on appeal based on this ground.

The applicant alleges in his other main ground of appeal that there was evidence on record to show that, contrary to the finding by the court *a quo*, he had in fact timeously made the effort to clear his name over the period stretching from 2003.

I have already associated myself with the reasoning of the judge *a quo* and his assessment of the evidence that led to the decision that he reached on this point and will therefore not repeat my reasons for doing so. This ground of appeal in my view lacks merit and carries with it no prospects of success on appeal.

It was for these reasons that I dismissed the application, on the papers and with no order as to costs.

It should be noted however, that the dispute between the applicant and the respondent is still pending before the High Court. It will take its place in the "queue" of ordinary court applications, and be set down for hearing when its turn comes. It occurs to me that by pursuing the course of action that he has *in casu*, the applicant might possibly have delayed or may delay, progress in the finalization of the matter.