

JONATHAN CHIKUKWA

versus

BEAUTY

And

GAME DOLLAR

HIGH COURT OF ZIMBABWE
MAWADZE J,
MASVINGO, 6 FEBRUARY 2018

Urgent Chamber Application

MAWADZE J: Our job or call as judicial officers is definitely not short of its comic moments.

I never did foresee that the establishment of a third High Court in Zimbabwe at Masvingo under the good intentions of decentralisation and bringing justice to people would at times achieve the unintended. Indeed, it has opened flood gates to all manner of court processes especially by self-actors who nonetheless have the right of audience before this court.

After this matter landed on my desk in the afternoon of 5 February 2018 when I was pressed for time due to other pressing commitments, I did the expected by abandoning all other duties to attend to this “Urgent Chamber Application”. I dutifully ploughed through the “application.” By the time I finished reading the papers I was unable to control a bout of laughter which seized me in the privacy of my chambers. I could not resist the temptation to share this light moment with my brother MAFUSIRE J. who was equally busy in his chambers. The interruption in my view was worth his while. After my brother perused the papers he was so mesmerised that he laughed uncontrollably and was unable to proceed with his work load for that day. He simply packed his bags and left his chambers!

I have decided to dispose of this matter in a rather unusual way without hearing oral submissions from the parties. One of the reasons informing this decision is that I am not sure if I would be able to maintain the decorum expected of me if I was to call the parties to my chambers. I am still seized with the bout of laughter and amazement. I therefore decided to dispose of the matter on the papers and give my brief reasons in the privacy of my chambers.

I turn to the matter;

This urgent chamber application has the following heading;

“URGENT CHAMBER APPLICATION FOR AN APOLOGY”

The relevant papers are drafted by the applicant who is a self-actor. What is evident is that the applicant should have sufficiently bothered some other person or law firm for precedents in urgent chamber applications which he then used to suit his own application with astounding disastrous consequences.

The papers include *inter alia* what is called “an affidavit of urgency” duly commissioned. This should be in lieu of a certificate of urgency not required for a self-actor.

The nature of the relief sought is couched as follows;

“TERMS OF INTERIM ORDER

1. *That the respondents be and are hereby ordered to publicly apologise to the applicant.*
2. *The respondents be and are hereby ordered to place the public apology in the local and national paper for 4 consecutive weeks from date of this order at respondents’ expense.*
3. *Respondents to pay costs of suit the one paying the other to absolved payment.*

Service of order

Service of this order shall be made on

- a) ***Beauty and Game Dollar Restaurant***
Respondents at
GAME DOLLAR
JERERA” (sic)

The terms of the final order are drafted as follows;

“TERMS OF FINAL ORDER SOUGHT

1. *The respondents be and are hereby ordered to publicly apologize to the applicant*
2. *The respondents be and are hereby ordered to place the public apology in the local and national paper for 4 consecutive weeks from the date of this order at the respondents' expense.*
3. *Respondents to pay costs of suit the one paying the other to be absolved payment.”*
(sic)

All I can say is that the nature of the relief sought is simply astounding. One should not even bother to state that both the so called interim relief and final order sought are the same, never mind the propriety of the relief sought being a public apology and on an urgent basis.

It is in the founding affidavit which steals the thunder as it were and forms the basis of this so called urgent application. I cannot do no more than to quote it in its entirety lest I do an injustice to what the applicant perceives to be his case. It is as follows;

“APPLICANT'S FOUNDING AFFIDAVIT

I, JONATHAN CHIKUKWA, hereby make oath and state the following in support of my application.

1. *I am the applicant in this case and my address of service is as stated in the Notice of Application.*
2. *The 1st respondent is female only known to me as **BEAUTY**, a waiter employed by Game Dollar Restaurant situated in Jerera.*
3. *The 2nd respondent is Game Dollar Restaurant a restaurant whose principle place of business is Game Dollar Restaurant, Jerera, which I believe is registered in terms of the company laws of this land.*
4. *On Sunday 4th of February 2018 around 3 pm I entered the respondents' place of business and ordered sadza and chicken.*
5. *I was served by the 1st respondent along with about 8 or so other customers. It was a little dark in the respondents' place of business as Jerera was experiencing a power cut and it was not easy to see clearly.*
6. *I secured a table and sat by myself. As I was having my meal I noticed that there was something in my relish that I did not clearly understand what it was.*

7. *In an effort not to cause displeasure among other customers I politely summoned the 1st respondent who was having a conversation at another table where she was seated. The 1st respondent did not oblige. I asked her more than three times she did not heed my plea.*
8. *Instead of approaching my table 1st respondent to my amazement started to be rude and disrespectful towards me. She said in Shona '**Tino sevha macustomers akawanda pano handina nguva yekuuya ipapo kana kuita zvaunoda taura zvaunoda ndo zvihwa Mukagodii kuroora kana muchida attention yemukadzi? Ndozva unoregera kuroora uchida kuzotinyangadzira chikafu chedhora, iye ungada kugara nemunhu ane mop yemusoro ndiani? Dzosa sadza redu ndikupe chidhora chako**'. Meaning: we serve many customers here. I don't have time to attend to you specifically. Why don't you marry so that your wife will attend to you specifically? Is it the reason why you are not married so that you come here for attention? Who would be married to someone with a mop hairstyle? Bring back our food and get your refund'. The 1st respondent said the above words to amuse the other customers by injuring my feelings and indeed the other customers were amused as they cracked their ribs with laughter at the words of the 1st respondent. My marital status and hair style is a question of my privacy and has no bearing on the 1st respondent at all. The 1st respondent's intention was malicious and injurious.*
9. *The 1st respondent's words were injurious; they were said with the intention to injure my feelings in front of the other customers and indeed I was injured.*
10. *Angry and embarrassed I walked to the counter with the hope that the 1st respondent would come to the counter and address my issue. She remained seated. She said she was not going to tolerate complaints over food which costs a dollar. Thus I did not get a refund.*
11. *I left the respondents place of business and as I walked from the respondents' restaurant 1st respondent said something I did not grasp and she busted into laughter in concert with other unknown people. I later texted a message on the 2nd respondent's number which I used for making payments through Ecocash and demanded an apology minutes later I received a call me back message and I complied. To my outer amazement I was again verbally insulted by someone who refused to identify herself.*
12. *The respondents are in the hospitality industry which industry demands that service providers should be polite and courteous. The conduct of the 1st respondent should not be left without restraint. As a customer I had a right to complain if I was not satisfied, to be treated with dignity and respect and to be listened to. 1st respondent should have heard my issue and apologised. 1st respondent had no right to be rude towards me or to utter the words she did and insult me. I verily believe that the 1st respondent owes me a public apology and by virtue of her employment with the 2nd respondent the 2nd respondent is also vicariously liable for such an apology.*
13. *The apology should be made in the local and national paper for 4 consecutive weeks from the date of this order at the respondents' expense.*

14. This matter is urgent in that if time lapses the issue will lose its worth. I have no ordinary remedy at law other than for and order in terms of the draft hereto annexed.”

The District Administrator for Masvingo suffered the agony and clearly the indignity of commissioning this founding affidavit.

The 1st respondent in the matter is cited just as “BEAUTY” and described as a waiter employed by the 2nd respondent. The 2nd respondent is cited as “GAME DOLLAR” or “GAME DOLLAR RESTAURANT”. The applicant believes the 2nd respondent is a body corporate described as a registered company.

Without much ado all I can say is that there is absolutely nothing urgent about this “application” if I can even call it an application. The so called urgent chamber application is clearly bogus. There is absolutely nothing in the papers showing what constitutes urgency in this matter. What is the impending harm to the applicant or his interests? What is the irreparable harm the applicant would suffer if this matter is not allowed to jump the queue?

The long and short of it all is that the papers filed by the applicant do not even disclose a cause of action. They even do not make sense at all. All what the applicant is saying is that he felt insulted while he was enjoying his meal (sadza and meat) at Jerera Growth point in Zaka. For that inconvenience he believes he can rush to this court and seek an incomprehensible remedy on an urgent basis. The applicant should be a very litigious person to say the least. This is clearly taking the High Court for granted.

In conclusion therefore these papers do not make a case at all and it is trite that an application falls on the founding affidavit. The application does not even begin to be an application without a cause of action. Clearly it has no merit.

All the applicant has managed to do is to attract the precious attention of this court’s time. Maybe his only reward or consolation is this judgment which he can always flout to show that he instituted some proceedings in the High Court.

Accordingly, the application be and is hereby dismissed with no order as to costs.