

GWINYAI KAWADZA
versus
TARIRO CHIGARIRO

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 24 March 2021

Urgent Chamber Application

C.N. Mukwena, for the Applicant
C. Ndlovu, for the Respondent

MUZENDA J: On 20 March 2021 the Applicant brought an urgent chamber application seeking the following:

TERMS OF FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms that:-

1. The provisional order be and is hereby confirmed.
2. Respondent be and is hereby interdicted from interfering with Applicant's guardianship rights in respect of Applicant's biological children.

INTERIM RELIEF SOUGHT

Pending the Return Day, the Applicant is granted the following relief:-

- "1. Respondent is interdicted from sending KK born on 3rd April 2008 (the child) to Chemhanza Secondary School."

FACTS

Applicant is the biological father of the minor child. The Respondent is the sister to Applicant's late wife who is the mother of the minor child. When Applicant's wife died Respondent stayed with the child whilst Applicant was working in Botswana. In 2019 Applicant returned to Zimbabwe. When he returned Respondent moved out of the house together with Applicant's children.

The problem started when the Applicant wanted the child to enrol at Mutare Girls High School. The Respondent on the other hand preferred Chemhanza Mission High School. At the time the application was filed both Applicant and Respondent had paid school fees at

the respective schools and the child was attending school at Chemhanza Mission in Murehwa.

POINTS IN LIMINE

The Respondent's counsel raised a preliminary point to the effect that there was no application before the court for the format failed to meet the requirements of Forms 29A or 29B more particularly Form 29B of the High Court Rules, 1971. Further the interim relief sought by the Applicant had been overtaken by events since the child was already attending school, there was no need for an interdict stopping Respondent sending the child to Chemhanza.

The urgent application filed by the Applicant is crafted as follows:

"URGENT CHAMBER APPLICATION FOR AN INTERDICT"

TAKE NOTICE THAT Application is hereby made for an order in terms of the order/ draft order annexed to this application on the grounds that:.....

At the end of the page the following is added.

"The accompanying affidavit(s) and document(s) are tendered in support of the application."

The Interim relief sought is cited herein above in the preamble.

Mr *Mukwena* conceded that the application invariably does not conform with the rules of this court. However when confronted with the problem he requested the court to use and apply Rule 4C, put aside the problem or defect and proceed to hear the matter on merit. On the defective provisional order, no application was made to amend it.

I am satisfied that the points in *limine* are valid and the following order is given.

Matter is struck off the roll with costs.

Chibaya & Associates, Applicant's legal practitioners

Gonese & Ndlovu, Respondent's legal practitioners