TEECHERZ FURNISHERS
versus
NAZARIYO NOTICE

HIGH COURT OF ZIMBABWE
MUSITHU J
HARARE: 16 July 2021 & 13 July 2022

Opposed Application – Decree of Perpetual Silence

T Chagudumba, for the applicant
Respondent in person

MUSITHU J:

BACKGROUND

The respondent is a former employee of the applicant. He was employed as a salesman/driver until October 2013 when he was dismissed from employment. The employment relationship was terminated after allegations of misconduct were levelled against the respondent. The dismissal was pursuant to disciplinary proceedings that were conducted in October 2013. The respondent sought to challenge that dismissal, and that decision led to a plethora of litigation proceedings in different forums. Below is a list of completed and pending proceedings instigated by the respondent:

- Following his dismissal in October 2013, the respondent noted an internal appeal which was dismissed.
- He approached the labour offices at the Ministry of Labour where a certificate of no settlement was issued leading to the referral of the matter to arbitration.
- On 30 June 2014 an arbitral award was issued in which the claim for unfair dismissal was dismissed, but the claim for overtime was upheld.
- Applicant herein appealed to the Labour Court and the claim for overtime was set aside.
- 29 July 2014, Respondent appealed to the Labour Court against part of the arbitral award which was against him. The appeal was dismissed through a judgment of the Labour Court of 19 December 2014 under LC/H/824/2014.

- Three years later on 9 April 2018 the respondent filed an application for condonation for late filing of an application for leave to appeal. That application was dismissed on 2 November 2018 through judgment LC/H/483/2018.
- On 7 October 2019, the respondent filed with the Supreme Court a 'chamber application for condonation for late noting of an application for leave to appeal to the Supreme Court'. At the hearing of that application the respondent withdrew the application after it was pointed out to him by the presiding judge that the application was fatally defective.
- On 28 November 2019, the respondent filed with the Labour Court an application for condonation for late noting of leave to appeal to the Supreme Court. That application was dismissed by the Labour Court on 3 July 2020 through judgment LC/H/148/2020.
- On 13 August 2020 respondent filed an application with the Labour Court being an application for leave to appeal against the judgment in LC/H/148/2020. That application was pending as at the time the parties argued the matter before this court.

The applicant felt harassed by the respondent's incessant litigation and decided to approach this court for a decree of perpetual silence. It seeks the following relief:

"IT IS ORDERED THAT:-

1. Respondent be and is hereby barred in perpetuity from instituting any proceedings whatsoever and in whatever form or forum against the Applicant in respect of the terminated employment relationship between Applicant and Respondent; and any judgments issued by the Labour Court or the Supreme Court of Zimbabwe in respect thereof without leave of the Court.
2. Respondent shall pay the costs of suit."

THE APPLICANT'S CASE

The applicant claimed to be tired of defending numerous proceedings from the respondent whom it labelled a serial and vexatious litigator who had no respect for the due process of the law and the courts. It accused the respondent of causing a multiplicity of proceedings since 2014, all in an attempt to have the decision of the arbitrator confirming his dismissal from employment set aside. The applicant reckoned that the respondent had been filing meritless proceedings and would continue to do so unless the court stopped him in his tracks. The applicant alleged that the respondent's conduct had resulted in the applicant incurring substantial legal costs and there was no possibility of recovering the same from the respondent since he had no capacity to pay.

The respondent had shown to be a relentless abuser of court processes as he continued to regurgitate matters and issues that would have already been finalized by the courts. The

respondent was a serial transgressor who constantly flouted the rules of court by seeking indulgence after indulgence.

The Court was urged to put a stop to the continuous harassment of the applicant. The Court was referred to the case of *Mabwe Minerals (Private) Limited* v *Peter Valentine*[1] in support of the applicant's claim herein. The pending case which the respondent insisted on being heard was meritless and had no prospects of success. The applicant contended that there was a high possibility that after the pending case LC/H/148/2020 was dismissed, the respondent would continue to institute further proceedings against the applicant in similar fashion.

RESPONDENT'S CASE

The respondent denied that he was a serial litigator. He was a litigant seeking protection and guidance from the courts. He was not a bitter litigant but rather a man desperately seeking recourse against the unfair treatment he had received from the applicant. If the application was to be granted, it would be depriving him of his constitutionally entrenched right to be heard. In his submissions the respondent argued that the application was *malafide* and exceedingly premature. The applicant still had a case to answer to in the Labour Court.

The respondent maintained that he had been unfairly dismissed and all that he wanted was to get his terminal benefits from the applicant. The respondent argued that the court could only make an order prohibiting the institution of litigation if it was shown that there had been repeated and persistent litigation between the same parties over the same cause of action. His case did not fall into that bracket. The applicant argued that his quest to exhaust available remedies at law could not earn him the title habitual litigant. He was instead a *bonafide* litigant. He submitted that a decree of perpetual silence would 'legally handicap' him and would be too harsh and undeserved in the circumstances.

ANALYSIS

One of the many powers of this Court is to prevent vexatious litigation as it is tantamount to an abuse of its own processes. Authors *Herbstein and van Winsen*[2] had the following to say about vexatious litigation:

> "There are people who enter into litigation with the most upright purposes and a most firm belief in the justice of their cause, and yet those proceedings may be regarded as vexatious when they put the other side to unnecessary trouble and expense with which the side ought not to bear."

[1] HH 793/17
[2] The Civil Practice of the High Courts of South Africa, Fifth Edition, Volume 2 page 1525

This is one such case where the respondent believes that he has a genuine cause and a strong case against the applicant. The respondent is no visitor to the courts. He has been entangled in endless litigation with the applicant since 2014 over the same subject matter. It is unfortunate that the respondent genuinely believes that the applicant herein has a case to answer in the Labour Court. The Labour Court has pronounced itself on the matter, and there is nothing left to be decided. The respondent's genuine belief in the strength of his case is now an abuse of court process. The court is faced with a bitter litigant who will find dissatisfaction with any decision that is made against him.

The Court is cognizant of the fact that the remedy sought herein is so drastic that it is not one that should be granted lightly. It involves a circumvention of the fundamental right to be heard. Section 69 (3)[3] of the Constitution provides as follows:

> "69 Right to a fair hearing
> (1) ……...
> (2) ……
> (3) Every person has the right of access to the courts, or to some other tribunal or forum established by law for the resolution of any dispute."

The right to a fair hearing is jealously guarded by the courts. Albeit being sacrosanct, this right is not absolute. It is subject to limitations under section 86 of the same Constitution. One such way in which the right can be limited is through an application of this nature. In *City of Harare* v *Tendai Susan Masamba*[4], MAFUSIRE J had this to say pertaining to applications of this nature:

> "Courts of justice are open to all. Section 69 (3) of the Constitution says that every person has the right of access to the courts, or to some other tribunal or forum established by law, for the resolution of any dispute. But this right is not absolute. In exceptional cases the courts will draw the line. They will shut their doors. They have an inherent right and power to prevent an abuse of their processes. They have inherent powers to protect their integrity. Frivolous, vexatious or burdensome litigation; incessant lawsuits that churn out pesky bills of costs which remain unpaid; dirty hands; abuse of judicial officers in any manner; contempt of court; non-disclosure of material facts, and so on, are some of the intolerable infractions that may lead the courts to shut their doors. The closure may be temporary. But it can be perpetual. It all depends on the circumstances. The doors may not be re-opened without leave…"

I fully associate myself with this dictum. At some point the court has to say enough is enough to litigants who abuse their rights. It does not only constitute an abuse to the court process, but it is also unnecessary harassment to the other party who has to contend with relentless and unmerited legal suits. This court has inherent jurisdiction to regulate its

[3] Constitution of Zimbabwe Amendment (No.20) Act, 2013
[4] HH 330/16

processes. In so doing, the court is alive to the abuses that its systems and processes can be exposed to by unconscionable litigants who will not accept defeat graciously. It is also the duty of the court to protect victims of serial litigators from further abuses. Litigation has to come to an end at some point. The courts should not be clogged with hopeless litigation by litigants that do not wish to accept defeat. Using litigation as a weapon to harass another party is the kind of conduct that courts will not countenance. This court has made similar pronouncements in the case of *Lincoln Ushamba* v *Zuwa Damson*[5], where it had to say:

> "It is important for the court to examine and establish the fact of whether or not the respondents fall into the category of serial litigators who abuse the applicants, the court(s) and its processes……., the enquiry does not just end with a finding that respondent is a serial litigator. The applicant must go further and show that respondent's conduct amounts to an abuse of the court and its processes".

The applicant has with no doubt proved a pattern of abuses and unfettered litigation by the respondent. From the trend, it appears the respondent will stop at nothing until he gets some kind of relief in his favour. The substance of the respondent's case has already been decided and there is nothing left to litigate for anymore. The Labour Court has also expressed its frustration over this issue in its judgments[6]. It appears the sentiments already expressed have not and will not deter the respondent from approaching the courts over the same issues again. Not even an adverse order of costs has been adequate enough to force the respondent to see reason and capitulate. It is incumbent upon this court to take drastic measures and effectively stop such unreasonable, aggressive and continuous litigation through a decree of perpetual silence. The relief sought is justifiable under the circumstances.

Resultantly it is accordingly ordered that:

1. The respondent be and is hereby barred in perpetuity from instituting any proceedings whatsoever and in whatever form or forum against the applicant in respect of the terminated employment relationship between the applicant and the respondent; and any judgments issued by the Labour Court or the Supreme Court of Zimbabwe in respect thereof without leave of the Court.
2. The respondent shall pay the costs of suit.

Atherstone and Cook, applicant's legal practitioners

[5] HH 314/20
[6] LC/H/80/21 and LC/H/483/18