MARY MUBAIWA

versus

JOCELELYN MAUCHAZA CHIWENGA

HIGH COURT OF ZIMBABWE

BHUNU J

HARARE, 4 April 2012 & 2 May 2012

**Opposed Chamber Application**

Mrs *N.P.* *Manongwa–Munangati*, for the applicant

*T.* *Mpofu*, for the respondent

BHUNU J: This is an opposed urgent chamber application that had been filed *exparte*. I however directed that the application be served on the respondent who has now opposed the application.

The respondent is the estranged wife of the Commander of the Zimbabwe Defence Forces General Constantine Chiwenga. The Couple is engaged in bitter acrimonious divorce proceedings which have sucked in the applicant under case HC 1561/12 wherein the respondent is suing her for payment of US$40 000 000.00 being adultery damages and loss of consortium. The action is contested.

The General being a public figure, both actions have generated intense unwelcome media publication to both the applicant and the man at the centre of the legal contests. The general has since obtained an interim provisional order dated 13 September 2011 against the respondent under case Number HC 8833/2011 protecting him against publicity of the legal proceedings in the divorce matter.

The order reads:

“In terms of the Courts and Adjudicating Authorities Act [*Cap 7:04*] it is ordered that:

1. **All persons including members of the press and any media shall be excluded from the proceedings to be instituted between the parties and their legal representatives.**
2. **Any oral, written, transcribed or electronically stored record of the proceedings including this chamber application, pleadings, pre-trial conference, trial, proceedings and any ancillary or interlocutory proceedings shall not be accessible or made available to any persons save for the parties and their legal practitioners.**
3. **The name address or other information likely to reveal the identity of any person concerned or mentioned in the proceedings shall not be publicly disclosed.**
4. **None of the proceedings referred to in para 2 above shall be disseminated or reported on or in any media, whether public or private, manual or electronic or by electronic mail or by internet.**
5. **None of the proceedings referred to in para 2 above shall be disseminated or reported onto any media outside Zimbabwe.**
6. **Costs to be costs in the cause.”**

The applicant seeks similar protection on the basis that the man who is central to the proceedings has already obtained protection against publicity of legal proceedings which have to do with his divorce action. The adultery proceedings are directly linked and related to the divorce. Any publicity of the adultery proceedings will expose the General to the adverse publicity against which he has already obtained protection from this Court.

There is some force in that argument. There can be no denying that the General is the man at the centre of all these legal proceedings. It is also common cause that he has already obtained provisional protection against publicity of any legal proceedings that have to do with his divorce proceedings concerning the respondent.

Since the Adultery proceedings are related to the General’s marriage to the respondent, it follows that any publicity of the adultery proceedings will expose the General to the adverse publicity against which he has already obtained temporary protection of this Court. Thus failure to protect the applicant in these proceedings will defeat the whole purpose for which the temporary interdict was issued in favour of the General.

On her own behalf the applicant has averred that she is a private individual who lives a private life and has no desire to be dragged into the public domain yet the respondent has a tendency of seeking publicity of the whole matter. She accused her of approaching the media seeking publicity of the adultery proceedings. She produced copies of newspaper articles concerning the proceedings. I have had sight of the newspaper articles which tend to cast the applicant in bad light and to drag the General’s name into the conflict.

I also accept the applicant’s averment that the adverse publicity has had an adverse disconcerting effect on her children at school. This is a natural consequence of children being exposed to adverse publicity concerning one or other of their parents. It is only fair and in the best interest of the children that they be protected from adverse nasty social conflicts involving their mother.

The respondent denied being the source of the adverse publicity. She pointed out that whatever publicity the applicant is complaining of she invited it upon herself by being seen and associating in public with the General in a romantic manner. She also denied that the applicant is a private individual because as a former beauty pageant she is a public figure.

The impression I got from the respondent’s submission in this respect is that she is not the source of the adverse publicity complained of and she has no desire to publicise her legal battles with the applicant. If that is the case I can perceive no prejudice to the respondent if the applicant is accorded the protection that she seeks.

Our law recognises the right of privacy to both public and private citizens and seeks to protect them against inversion of privacy in legal proceedings where necessary under s 3 of the Courts and Adjudicating Authorities Act [*Cap 7:04*] which provides that:

**“3 Orders excluding persons from and restricting disclosure of proceedings**

1. Subject to this section and to any other enactment, if at any stage before or during any proceedings a court or adjudicating authority considers it necessary or expedient to do so, the court or adjudicating authority may make any one or more of the following orders, either *mero motu* or on the application of a party to the proceedings—
2. that all persons or such class of persons as the court or adjudicating authority may specify shall be excluded from the proceedings:

Provided that such an order shall not prevent—

1. the parties to the proceedings and their legal representatives from being present at any stage of the proceedings; or
2. any person from being present when the decision of the court or adjudicating authority is announced;
3. that the name, address or other information likely to reveal the identity of any person concerned or mentioned in the proceedings shall not be publicly disclosed;
4. that information revealing or likely to reveal any place or locality concerned or mentioned in the proceedings shall not be publicly disclosed;
5. that the whole or any specified part of the proceedings shall not be publicly disclosed.
6. Subject to subs (3)—
7. a court shall not make an order in terms of subs (1) in any proceedings;
8. an adjudicating authority shall not make an order in terms of para (*a*) of subs (1) in any proceedings for the determination of the existence or extent of any civil right or obligation; unless the court or adjudicating authority, as the case may be, considers it necessary or expedient to do so—
9. in circumstances where publicity would prejudice the interests of justice, in particular where the court or adjudicating authority is satisfied that a witness who is about to give evidence or who has given evidence has reasonable cause to fear that he or any other person is likely to suffer unlawful injury to his person or property as a result of giving such evidence; or
10. in interlocutory proceedings; or
11. in the interests of public morality; or
12. in the interests of the welfare of persons under the age of eighteen years; or
13. to protect the private lives of persons concerned in the proceedings; or
14. in the case of an order in terms of para (*b*), (*c*) or (*d*) of subs (1), to protect the safety or private lives of persons related to or connected with any person concerned in the proceedings.
15. A court or adjudicating authority shall make an order in terms of subs (1) whenever the court or adjudicating authority is satisfied that it is necessary or expedient to do so in the interests of defence, public safety, public order or the economic interests of the State.”

The legal disputes between the parties belong to the branch of law called Private law which deals with the rights and obligations of private individuals. These being essentially private legal disputes between individuals, there is no compelling reason advanced requiring the washing of dirty linen in the public glare.

Public figures such as Army Generals and beauty pageants such as General Chiwenga and the applicant also have private lives that must be respected and protected by law against inversion. In the absence of any suggestion that such an order will prejudice anyone I cannot conceive any reason why she cannot be accorded that protection available at law. In the result the applicant’s application can only succeed. A provisional interim order is accordingly issued in the following terms:

**INTERIM ORDER GRANTED**

That pending the determination of this matter, the applicant is granted the following relief:

Pending the return day and pending confirmation or discharge of this provisional order, it is hereby ordered that;

In the adultery proceedings between the parties the following order shall pertain up to the return day and confirmation or discharge of the Provisional Order and including any associated interlocutory proceedings.

In terms of s 3 (1) of the Courts and Adjudicating Authorities Act [*Cap.7:04*] it is ordered that:

1. All persons including members of the press and any media shall be excluded from the proceedings except for the parties’ witnesses and their legal representatives.
2. Any oral, written, transcribed or electronically stored record of proceedings including this Chamber Application, pleadings, Pre-trial-Conference, trial proceedings and any ancillary or interlocutory proceedings shall not be accessible or made available to any persons save the parties and their legal practitioners.
3. None of the proceedings referred to in para 2 above shall be disseminate or reported on or in any media, whether public or private manual or electronic or by electronic mail or by internet.
4. None of the proceedings referred to in para 2 above shall be disseminated to any media in Zimbabwe.
5. Costs to be costs in the cause.

**SERVICE OF THE PROVISIONAL ORDER.**

This Order shall be served on the applicant by the Deputy Sheriff.

*Munangati & Associates*, applicant’s legal practitioners

*Gill Godlonton & Gerrans*, respondent’s legal practitioners