GOODWELL CHIPURIRO
versus
CITY OF HARARE

HIGH COURT OF ZIMBABWE
UCHENA J
HARARE, 2 and 4 February 2015

Urgent Application

S Gahadzikwa, for the applicant.
C Kwaramba, for the respondent

UCHENA J: The applicant filed an urgent application seeking an order to compel the City of Harare to release his motor vehicle it impounded on 12 January 2015. The applicant filed his application on 28 January 2015.

Mr *Kwaramba* for the respondent raised preliminary issues on the certification of urgency by the applicant's law firm and lack of urgency. He submitted that a legal practitioner should not certify a case as urgent if it is being handled by his law firm. He in submitting that the case was not urgent gave details on how the impounding took place on 12 January 2015 and the applicant filed this application on 28 January 2015 two weeks after the impounding. He submitted that the applicant did not himself treat his case with urgency. The respondent disputes the applicant's allegation that his motor vehicle was impounded by Epah Muguti an alleged bogus police officer.

Mr *Gahadzikwa* for the applicant submitted that the issue of certification of certificates of urgency is not settled as there are conflicting judgments of this court on whether or not it is permissible for a legal practitioner to certify a certificate of urgency for a case being handled by his law firm. I am aware of the confusion and would for that reason not hold it against the applicant. The legal position on that issue is not settled and it would be in my view wrong to penalise the applicant for an issue judges of this court hold divergent views. Mr *Gahadzikwa* relying on para 8 of the applicant's founding affidavit, submitted that the case was urgent because the applicant's livelihood depends on the use of that motor

vehicle as a commuter omnibus, and that he has no means from which he can pay for the release of his motor vehicle. The respondent's view, that the allegation of the involvement of a bogus police officer is a ploy to found urgency is supported by Dr Tendai Mahachi who deposed the respondent's opposing affidavit where he said the motor vehicle was impounded by constable Moyo. He further said that the allegation of the involvement of bogus police officers is a ploy by the applicant to avoid paying for his offence through the use of police officers who have been issuing many letters to that effect some of which he attached to his opposing affidavit, when their records reveal that those motor vehicles will have been impounded by genuine identifiable police officers. Dr Mahachi on p 10 para 10.21 of his opposing affidavit pointed out that the applicant has alternative remedies which he should pursue. He said:

> "The vehicle which was impounded on 12 January 2015 would have been released by now if the applicant had approached the respondent with all the relevant papers relating to the vehicle. He probably would have been made to pay the fines for the traffic offences and he wouldn't be talking about losing his source of livelihood."

The existence of an alternative remedy is demonstrated by the applicant's own attachment to his answering affidavit, the state outline which in para 3 says;

> "Circumstances are that on the 19th of January 2015 and at Harare Central Stores the complainant was at Harare Central Stores **intending to pay a fine for his commuter omnibus which had been impounded at Harare Central Stores on the 12th January 2015".**

This statement suggests as is confirmed in the State outline that the applicant then saw Epah Muguti being arrested for impersonation in respect of another motor vehicle after which he claimed that he was the bogus officer who had caused the impounding of his motor vehicle. He then abandoned what he had gone to Central Stores to do and sought to get his motor vehicle released through the alleged impersonation with the assistance of police officers the respondent says are notorious for seeking the release of motor vehicles through allegations of impersonation of police officers. The issue at this stage is whether or not the applicant has alternative remedies. The answer is he has and he is aware of it as demonstrated by the state outline. He in fact previously attempted to pay for the release of his motor vehicle but abandoned it for the cheaper option, according to his own founding affidavit, where he complaints about what he has to pay for the motor vehicle to be released. The state outline

also establishes that the applicant's alleged penury is merely being used to fain inability to pay the fines when he in fact previous went to Central stores to pay fines for his impounded vehicle.

The urgent chamber application procedure is intended to serve litigants whose cases deserve to jump the queue of cases awaiting determination by judges. The jumping of the queue must be justified. Precedents on urgency clearly state that only cases which cannot wait should be allowed to jump the queue. A case cannot wait if the day of reckoning is about to arrive and there is no other way to avoid the impending harm.

In this case I am satisfied that the applicant has alternative remedies through which he can get the release of his motor vehicle. He can therefore not be allowed to jump the queue. His case is not urgent.

In the result I make the following orders;

1. The applicant's application is removed from the role.
2. If the applicant intends to pursue this application he must in view of his having filed his answering affidavit, set it down for hearing on the opposed roll within 30 days of the granting of this order.
3. The applicant shall pay the respondent's costs.

Messers Gahadzikwa & Mupunga, Applicant's Legal Practitioners
Messers Mbizo Muchadehama & Makoni, Respondent's Legal Practitioners.