

MUNETSI BLESSING MASEDEWE

Versus

MANYARA MASEDEWE

IN THE HIGH COURT OF ZIMBABWE

BERE J

BULAWAYO 2 FEBRUARY & 8 APRIL 2016

Urgent Chamber Application

BERE J: This application was brought on a certificate of urgency and it seeks to stay execution of a certificate of confirmation of arrear maintenance issued in terms of section 23 (b) of the Maintenance Act¹ pending determination of the appeal filed in this court under HCA 117/15 challenging the confirmation of the computation of arrear maintenance.

The facts of this case which are not in dispute are as follows;

Sometime in December 2012 the respondent who is on separation from the applicant got an order for maintenance to the tune of \$150 per month. In January 2014 the respondent sought and obtained a variation of the order of maintenance from \$150 per month to \$280 per month under case number M 809/12. The applicant has been paying the adjusted amount of \$280 per month ever since variation was effected.

Despite the applicant having been religiously paying the maintenance amount, in September 2015 the Maintenance Court went on to issue a certificate of confirmation that the applicant had accumulated arrear maintenance to the tune of \$3 000 based the erroneous assumption that the applicant had defaulted in the payment of \$150 per month.

1. Chapter 5:09

The computation clearly failed to appreciate that there was no separate order for \$150 per month but that this order had been built into the adjusted sum of \$280 per month which the applicant has been paying ever since the variation was effected.

When the applicant sought to have this normally corrected in the lower court the learned magistrate surprisingly felt that correcting the error amounted to him reviewing the lower court's earlier judgment and noted in its own judgment that the simple error could only be corrected by the High Court. Strange reasoning indeed!

It is this accepted clear error by the lower court which has satisfied me that the applicant has established a *prima facie* case warranting the issuance of a provisional order.

The applicant must continue to pay the adjusted maintenance amount of \$280 per month until such time his appeal is heard.

I must note that it is most unusual that the lower court would accede to the prosecution of the applicant for the error that is there for all to see, an error which the lower court itself concedes to.

It was precisely for these reasons that I felt inclined to grant the provisional order of the 2nd of February 2016 without hearing the parties because the error had been conceded to by the court *a quo*.

In granting this provisional order I used my discretion which flows from Order 32 Rule 244, High Court Rules, 1971, which rule does not require the court to always hear the parties before granting what it perceives to be an appropriate order.

Makuku Law Firm, applicant's legal practitioners