PRAYER MOYO
versus
MERJURY SAMUPONDA

HIGH COURT OF ZIMBABWE
MATHONSI AND TAKUVA JJ
BULAWAYO 22 JANUARY 2018 AND 25 JANUARY 2018

Civil Appeal

S Siziba for the appellant
Ms V Chikomo for the respondent

MATHONSI J: In respect of an application for a binding over order to keep the peace which is granted in terms of section 388 of the Criminal Procedure and Evidence Act [Chapter 9:07] whose effect is really the same as an application for a protection order made in terms of section 7 of the Domestic Violence Act [Chapter 5:16], I expressed the view in *Monga* v *Moyo* HB 282-17 (unreported) at p. 3 of the cyclostyled judgment that;

> "A binding over order to keep the peace is granted in terms of section 388 of the Criminal Procedure and Evidence Act [Chapter 9:07] following a complaint to a magistrate on oath that a person is conducting themselves violently towards, or is threatening injury to, the person or property of another or has used language or behaviour in a manner towards another which is likely to provoke a breach of the peace. It is granted after the magistrate would have conducted an inquiry and satisfied himself or herself that indeed there has been a breach. It is therefore a protective mechanism meant to prevent future misbehavior by such a person. See *Manamela and Another* v *Zulu and Another* HB 236-17. In that regard I am unable to understand why a party who has been ordered to keep the peace by the resort to a preventive order would appeal against such an order. It is a truism that in any civilized society citizens must forever conduct themselves in a peaceful manner towards one another. On what basis therefore can a citizen be allowed not to be peaceful towards another as to be entitled to overturn a court order merely underscoring what is standard behaviour in a civilized society? Is the appellant suggesting that she should be allowed to breach the peace?"

I stand by that pronouncement and find no reason to depart from it.

The 17 year old customary marriage of the parties has hit turbulent weather as a result of accusations and counter accusations of infidelity.

Accusing the appellant of physical and emotional abuse the respondent approached the court *a quo* for a protection order in terms of section 7 of the Domestic Violence Act [Chapter 516]. She set out a list of incidents of abuse which the appellant did not specifically deny but sought to explain on the basis that the respondent caused them by her unbecoming behaviour.

The court *a quo* issued an order on 27 June 2017 to wit:

> "I hereby confirm it (the protection order) as a final order. Respondent is ordered to desist from;
>
> 1. Physically assaulting the applicant.
> 2. Verbally abusing the applicant.
> 3. Harassing the applicant in any manner.
> 4. Chasing her out of the matrimonial home or matrimonial bedroom.
>
> To be bound for 5 years by this order."

I must say that what the appellant has been ordered to do, or is it not to do, is what is expected of a normal law abiding citizen to conduct himself or herself towards his or her spouse. The protection order merely confirms how spouses should behave towards one another and cannot by any stretch be prejudicial to the appellant except of course if he intends to conduct himself in an unlawful manner towards the respondent. It is therefore surprising that the appellant has seen it fit to appeal such an order.

What is significant is that out of all the incidents of abuse that the respondent complained of, none of them whatsoever was denied by the appellant. Instead he attempted to down play the gravity of the event or to side step the complaint either by attempting to justify it or to explain it in another way. It is because of this that the court *a quo* concluded that the appellant "sought to sugar coat every incident" and that on a balance of probabilities the respondent had proved her case.

Examples abound; to the accusation that upon discovering a record of a telephone call received by the respondent at 0035 hours he proceeded to church where the respondent was worshipping and forced her out before subjecting her to physical and emotional abuse, the appellant admitted the incident but played it down by suggesting that he "simply requested that she (toes) the line."

(p26 of the record). This is unlikely considering that he was an angry man smitten by pangs of jealousy.

To the allegation that he banned the respondent from dressing as she liked, chose her wardrobe and directed her to wear only dresses and skirts, the appellant admitted that but sought to explain it on the basis that it was necessary in the interest of his children (p27 and p 47of the record).

To the accusation that he has given the respondent a book of rules including that she is not allowed to fellowship with others, interact with her friends and family and that she is required to only go to work and back home, the appellant again admitted that. He explained it by saying that he "requested that the applicant informs me when she is going out" (p27 and p47 of the record).

Regarding the allegation that in anger he had held the respondent by the jaws, he sugar coated it by saying – "I grabbed her by the hands and pushed her away." (p48) And later at p52 he said "I just grabbed your shoulder----." When being accused of stalking the respondent's econet line including causing it to be reactivated against her will after she had deactivated it, he could only say; "the truth is that I came to you and asked we go together and activate the line." The question is: why do so when the respondent had deliberately de-activated her cellphone line? What business did the appellant have with that line which did not belong to him unless if he wanted to continue extracting private information from the line for use against the appellant?

There was abundant evidence of abuse being perpetrated against the respondent. In fact the appellant is shown to have been a shameless male chauvinist living in the primitive feudalistic rhythm who had no qualms whatsoever with demanding of his wife that once dressed for work every morning she should parade in front of him for inspection to check if her dressing met his own standards. A man who has come all the way to this court to defend a warped entitlement to determine how his wife dresses, who she interacts with and to vet all the people that communicate with her on her cellphone and at what time. It is just unthinkable that such things still happen in a civilized modern society.

Therefore I am unable to detect any misdirection on the part of the findings of the court *a quo*. The appeal is completely without merit.

In the result the appeal is hereby dismissed with costs.

Takuva J agrees………………………………………….

Phulu & Ncube, appellant's legal practitioners
Dube-Tachiona & Tsvangirai, respondent's legal practitioners