KUDZAI MUKWASANGOMBE
and
PETRONELLA CHIWAWA
versus
VICE CHANCELLOR, UNIVERSIRTY OF ZIMBABWE N.O.
and
UNIVERSITY OF ZIMBABWE

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 25 & 30 SEPTEMBER 2015

**Urgent Chamber Application**

*D Halimani,* for the applicants
*T B Ndoro,* for the respondents

**TAGU J**: The applicants approached this court on an urgent basis seeking the following relief:

**"TERMS OF FINAL ORDER SOUGHT:**

1. That the respondents show cause to this Honourable Court why a final order should not be made in the following terms:

1.1 That pending the finalization of the review of the matter filed under HC 8423/15 the Applicants be and are hereby permitted to continue with their academic studies for the semester commencing 24 August 2015;

1.2 That the costs of this application shall be in the cause.

**INTERIM RELIEF:**

Pending finalization of this matter, the applicants are granted the following relief:

1.3 That the court application for review filed under HC 8423/15 be and is hereby urgently reviewed;

**Alternatively,**

1.4 That the respondents be and are hereby directed to forthwith register and reinstate the applicants to the second respondent and allow them to resume their academic studies for the semester commencing on 24 August 2015 pending the finalization of the court application for review filed under HC 8423/15;

1.5 That this order be served upon the respondents by the applicants' legal Practitioners."

The undisputed facts are that the applicants are Bachelors of Arts students at the University of Zimbabwe. On or about 22 February 2015 at around 23:50 hours the second applicant was found in the first applicant's room B2 at Manfred Hodson Hall of Residence after visiting hours in violation of the Rules of Halls of Residence. On 23 February 2015 both the applicants received notifications to the effect that their residences were being forthwith withdrawn and were asked to surrender their keys to the respective wardens. They duly complied. On 21 April 2015 both the applicants were called to appear before a Student Disciplinary Committee for a hearing. During the hearing the Committee advised both the applicants that the Committee would uphold the Warden/Senior Proctor's decision to forthwith evict the applicants from the Halls of Residence. The Student Disciplinary Committee also went on to specifically advise the applicants that it would proceed to recommend to the first respondent that the applicants should remain evicted and/barred from the Halls of residence for the remainder of the semester and that they would only be eligible for readmission only after the end of the semester during which the offence was committed.

However, on 7 May 2015 both the applicants received letters to the effect that the first respondent was to suspend them from the University of Zimbabwe for the whole semester with effect from 24 August 2015. Immediately, on receipt of the letter dated 7 May 2015 the applicants appealed to the first respondent to reverse his decision, but instead on 4 June 2015 the applicants received another letter from the University Registrar to the effect that the first respondent had turned down their appeals. The applicants, on 9 June 2015, further appealed to the first respondent to reconsider his decision. By letter dated 18 June 2015 which the applicants received on 5 August 2015, the first respondent refused to reconsider his decision. This prompted the applicants to file a court application for review of the first respondent's decision on 4 September 2015.

Upon receipt of the court application for review the respondents filed their notice of opposition on 18 September 2015. The filing of the notice of opposition jolted the applicants into filing this current urgent chamber application. The applicants now want this court to give an order to the effect that the court application for review filed under HC 8423/15 be reviewed urgently. Their argument being that when they filed the court application for review they thought that the respondents were not going to oppose it as they had done in the earlier and similar case of *Brian Tafadzwa Rice and Tinevimbo Dube* v *Vice Chancellor and University of Zimbabwe* HC 5655/15.

At the hearing of the matter Mr *T.B. Ndoro* for the respondents took two points *in limine*. The first point being that this matter is pending before this Honourable Court and has not been withdrawn. The second point being that this application is not urgent. I directed the parties to address me on the points *in limine* as well as on the merits.

In respect of the first point *in limine* Mr *T B Ndoro* correctly argued that where a matter is already pending before the court a fresh matter cannot be brought on the same issue unless it is withdrawn or disposed of in some way. To that extent it would be procedurally wrong for this court to deal with a court application for review in an urgent chamber application without hearing heads of arguments and then proceed to grant the alternative relief sought by the applicants. In my view the final order being sought and the alternative relieve can only be granted after hearing the court application for review in the normal way. I therefore uphold the first point *in limine*.

On the second point *in limine* Mr *T B Ndoro* argued that this matter is not urgent. If ever there is any urgency it was self- created.

Mr *D Halimani* insisted that the matter is urgent. His ground being that the applicants by filing a court application for review assumed that the respondents may not oppose it because the respondents did not oppose the other matter involving the other students who were readmitted after committing a similar offence. He assumed these applicants would be accorded the same treatment. To him urgency in this matter was triggered by the filing of notice of opposition by the respondents.

Mr *Halimani* referred the court to the case of *Kuvarega* v *Registrar-General and Another 1998* (1) ZLR 188 (H) at 193 where Chatikobo J (as he then was) stated as to what constitutes urgency by saying:

> "What constitutes urgency is not only the imminent arrival of the day of reckoning; a matter is urgent, if at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules."

After considering the submissions by Mr *Ndoro* and the History of this case I am convinced that this matter is indeed not urgent. I say so because the applicants have known about the penalty imposed on them since 7 May 2015 when they were served with letters advising them of the outcome of the disciplinary proceedings. As of 18 June 2015 they had been advised that their appeals had failed. They did not take any action to challenge this decision until 4 September 2015 when they filed an application for review, knowing fully

well that the next semester had commenced in August 2015. If the applicants thought the matter was urgent, though they were now a month late, they could have filed their urgent chamber application simultaneously with their court application on 4 September 2015. By 4 September they had already lost over 10 days of study. In any case the semester started on 24 August 2015 and others are already a month into it.

The question to be asked is whether the filing of a notice of opposition should be construed to be the basis for treating a matter as urgent? To my mind this cannot be so. It surely should be the expectation of any party who brings an action against another that the affected party may well choose to oppose such action. The explanation by the applicants that they did not expect their application to be opposed by the respondents is rather presumptuous. At p 24 of the record the applicants actually gave the respondents an option to oppose or not the application for review in the following manner-

> "If you intend to oppose this application you will have to file a Notice of Opposition in Form NO. 29A, together with one or more opposing affidavits, with the Registrar of the High Court at Harare within ten (10) business days after the date on which this notice was served upon you. You will also have to serve a copy of the Notice of Opposition and affidavits/s on the Applicants at the address for service specified below. Your affidavits may have annexed to the documents verifying the facts set out in the affidavits.
>
> If you do not file an opposing affidavit within the period specified above, this application will be set down for hearing in the High Court at Harare without further notice to you and will be dealt with as an unopposed application."

The applicants cannot express surprise why the respondents opted to oppose. Surely the respondents are accorded the right to look at every matter brought against them on an individual basis and deal with it accordingly since each matter is treated on its own facts.

In my view, the fact that the applicants chose to proceed in the ordinary course is testimony to the fact that there is no urgency on their party. Accordingly I uphold the second point *in limine* that this matter is not urgent. I will not deal with the arguments on the merits.

In the result, it is ordered that the application is dismissed.

*Wintertons*, applicants' legal practitioners
*Ziumbe & Partners, C/O V. Nyemba & Associates,* respondents' legal practitioners