

STEVEN SCOTT KENNEDY
and
ADRIENNE SIMONE KEY
versus
CHIEF IMMIGRATION OFFICER N.O.
and
MINISTER OF HOME AFFAIRS N.O.

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 29 February, and 1 April, 2016

Urgent chamber application

Applicants in person
S. Chihuri, for the respondents

MANGOTA J: In the urgent chamber application which they filed with the court, the applicants prayed for the following order(s):

“TERMS OF FINAL ORDER SOUGHT

That the respondents should show cause to this Honourable Court why the applicant should not be issued with legal documents to legalise his marriage:-

- a) The 1st respondent is hereby ordered to process and issue 1st applicants (*sic*) with legal documents within 48 hours of this order to enable him to legalise his marriage with his family.
- b) 1st and 2nd respondents shall pay cost (*sic*) of suit in the event that they opposes (*sic*) this application.

INTERIM RELIEF GRANTED

Pending the final determination of this matter the applicant is granted the following relief:-

- a) Pending whatever investigations by the respondents, legal documents be and is (*sic*) hereby issued.”

The affidavits did not show what the applicants were moving the court to grant to them. The first applicant said he was a British citizen who was staying in Zimbabwe by virtue of his marriage to the second applicant who was a citizen of Zimbabwe by birth. He did not produce any documents which supported his claim to the effect that, as an alien, Government

allowed him to stay in Zimbabwe as a resident or in some other status. He attached to the application Annexure D. The annexure is a document which the Department of Immigration of Zimbabwe issued to him on 9 February, 2016. The document reads, in part, as follows:

“ ZIMBABWE
DEPARTMENT OF IMMIGRATION
NOTICE TO VISITOR

TO KENNEDY STEVEN SCOTT
Address in Zimbabwe 5 Baywater, Highlands

PERIOD OF VISIT : FROM 09/02/16 to 24/2/16

EXTENSIONS

TAKE NOTICE that, in terms of section 10 of the Immigration Regulations 1979, you are:

(1) to report to an immigration officer at Harare Airport, or Plumtree on EXIT

OR

(2)

AND

(3) To surrender this notice to an immigration officer at the place of your departure from Zimbabwe

WARNING: It is an offence for any person entering Zimbabwe as a visitor employment unless he/she has been granted a resident permit for temporary employment.”

It is clear from the contents of the annexure that the first applicant was in Zimbabwe as a visitor. His visiting period was from 9 to 24 February, 2016. He was, therefore, not being candid when he stated that he was staying in Zimbabwe. He stayed as a visitor for fifteen (15) days which the Immigration Office allowed him. He could not go beyond 24 February, 2016 unless he applied to the Immigration Office for an extension of his stay. There is no evidence that he filed an application for his continued stay in Zimbabwe.

The first applicant’s claim which was to the effect that he was married to the second applicant did not hold. He did not produce any evidence in support of his claim. Annexure E which he attached to the application showed that he was/is not married to the second applicant or to anyone else for that matter. The annexure reads, in part, as follows:

“07 December, 2015

TO WHOM IT MAY CONCERN

RE: STEVEN SCOTT= KENNEDY= BORN CHELTENHAM ON 31 MAY 1969.

This letter serves to confirm that as far as the British Embassy is aware the above-named, holder of British passport No. 519898206 is not married and there is no legal impediment to his intended marriage in Zimbabwe”[emphasis added]

The annexure which emanated from the Consular Section of the British Embassy in Harare showed that, as of 7 December 2015, the first applicant was a bachelor. Its contents do not resonate with para 7 of the founding affidavit. The paragraph reads:

“Applicant got married in 2004 and were blessed with one minor child namely Josh Kieran Kennedy (male) born 23rd February 2005, a copy of Birth Entry Registration Certificate is attached to this application and marked Annexure C”[emphasis added]

The first applicant employed the abovementioned false statements with a view to moving the court to compel the respondents to, in his own words, “legalise his marriage”. The court could not understand what he meant by the phrase “legalize his marriage”.

Quite apart from the above false statements which persuaded the court not to grant the application, the applicants, it was observed, did not comply with r 244 of the rules of this court. The first applicant prepared the certificate of urgency. He called it an affidavit, and not a certificate, of urgency. Whatever that meant remained a matter of conjecture.

It was on the basis of the foregoing that the court dismissed the application which had been placed before it without hearing the respondents’ counsel who was in attendance to argue the case for, and on behalf of, her clients. The case of *Rosa Mudyanduni v Owen Mukombero, Chief Immigration Officer and Others*, judgement No. SC 63/03 which the applicants relied upon was distinguishable from the circumstances of the present application. In the *Rosa Mudyanduna* case, the parties had solemnised their marriage according to civil rights. The parties *in casu* had not. They might have intermittently lived together when the first applicant visited Zimbabwe. They were, and are however, not married to each other as they claimed.

The above constituted the court’s reasons for dismissing the urgent chamber application.

Civil Division of Attorney General’s Office, respondents’ legal practitioners