ALEX PEDZIVA
and
CURRENT SIBANDA
and
TENDAI CHIRIPANYANGA
and
STANLEY SHUMBA
and
GIFT MACHAI
and
LOGAN BETTYNA
and
LEARNMORE MUCHECHENJE
and
NORMAN MAJURU
and
AMON MUKONERI
and
TODDY KUSENA
and
CHIDZA E. KUTURE
and
ITAI MARUME
versus
MINISTER OF HOME AFFAIRS NO.
and
THE COMMISSIONER GENERAL OF THE
ZIMBABWE REPUBLIC POLICE NO.
and
THE OFFICER IN CHARGE
HARARE CENTRAL POLICE STATION NO.
and
THE OFFICER IN CHARGE
CHIKURUBI SUPPORT UNIT NO.
and
THE SHERIFF OF THE HIGH COURT NO.

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 07 & 16 March and 6 April 2016

Urgent Chamber Application

N. Mukandagumbo and *R. Zimudzi*, for the applicants
Mrs *Sibanda*, Mrs *Utsiwembanje* and *F Chigwere*, for the defendants

TAGU J: This matter was placed before me through an urgent chamber book on 7 March 2016. After perusing the papers I was of the *prima facie* view that the matter did not meet the requirements of urgency. I endorsed that the matter was not urgent and struck it off the roll. On 8 March 2016 my clerk advised the applicants of my decision.

On the same day the 8th March 2016 defence counsel for the applicants Mr *R Zimudzi* urgently wrote back to me through my clerk wherein he said:

> "We represent the Applicants in the Urgent Chamber Application in this matter. We noted the Honourable Judge's comments that the matter is not urgent. However, we are of the humble view that the matter is urgent and it is our considered view that if the matter is not heard on an urgent basis the Applicants' claim in case number 2177/16 will be rendered purely academic as the Respondents are continuously charging unlawful storage charges per day, which charges can end up out weighing the value of the vehicles in question as it is unlikely as to when the vehicles will be released. The circumstances under which the vehicles were detained clearly shows that the detention of the vehicles in the first place was unlawful. It is our view that the Applicants acted timeously in filing the present application and there is no any alternative remedy than to approach this Honourable Court. In a similarly related case in an Urgent Chamber Application by SHINGAYI J. MABASO v MINISTER OF HOME AFFAIRS & OTHERS CASE NO. HC 1797/16 (unreported judgment by Honourable Justice Mangota J on 29th February 2016) it was clearly stated that the detention was unlawful and the Respondents were ordered to release the vehicle immediately and also to pay costs of suit on an Attorney and client Scale. We are of the opinion that the Applicants in this matter need urgent relief against the continued suffering/loss as a result of the unlawful detention of their vehicles.
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> We kindly request with your indulgence that the matter be set down for the purpose of arguing or addressing the issue of urgency and thereafter subject to the outcome on the issue of urgency we can proceed in light of your directive."

Upon receipt of the above request I accepted to be addressed solely on the issue of urgency.

Mr *Mukandagumbo* for the applicants submitted that the vehicles were unlawfully detained in the first place. However, he seemed to be contradicting himself in his submissions because he went on to say all the applicants were arrested at different places and on different dates ranging from the 11th to the 22nd of February 2016 on a charge of driving without due care and attention. All the applicants were taken to court and prosecuted for the offences and were each sentenced to pay a fine. The vehicles had been detained. After the payment of fines the vehicles should have been released. He argued that the vehicles were detained without any reason. According to him the applicants had been engaging the respondents with the view of having their vehicles released and that explained why they did not approach the courts immediately after the vehicles were detained and or after payment of fines.

He further referred to the case of *Upgrade Driving School (Pvt) Ltd* v *Commissioner General of Police and Anor* HC 2226/16 where a vehicle had been impounded and the court ordered its release.

In support of Mr *Mukandagumbo*'s submissions, Mr *Zimudzi* cited the cases of *Kuvarega* v *Registrar General and Anor* 1998 (1) ZLR 188 and *Silver's Trucks (Pvt) Ltd* & *Anor* v *Director of Customs and Excise* 1999 (1) ZLR 490 on what constitutes urgency and the issue of irreparable harm respectively. Mr *Zimudzi* reiterated the fact that the vehicles were detained without a court order.

Mrs *Sibanda* submitted on behalf of the respondents. Her explanation was that in terms of s 219 of the Constitution of Zimbabwe the Police Service is responsible for detecting, investigating and preventing crime. It is responsible for preserving the internal security of Zimbabwe, protecting and securing the lives and property of the people as well as maintaining law and order among other duties. She said from time to time the Police releases Operation Orders targeting particular offences which are deemed to be on the increase. Of late the Police in Harare have been experiencing a rise in criminal activities associated with non-registered operators colloquially known as Mushika-shika. These people pick and drop passengers at undesignated points. They disrupt normal flow of traffic in the city centre and cause great risk to other road users in the city. The Police responded to the menace by establishing Order 7/16 Code named "No To Mushika-shika". So once a motorist is caught on the wrong side of the law, they are arrested and taken to court. The vehicle is then impounded in the process for purposes of verification to check if the said vehicle was not used in criminal activities and whether the vehicle is properly registered and licensed. To do this the vehicle details are sent to different organizations such as City of Harare, Zimbabwe Revenue Authority, Vehicle Theft Squad, Central Vehicle Registry, Road Motor Transportation Authority, ZINARA, VID, Support Unit, Dispol Traffic and Traffic sections. Once the vehicle has been cleared and proof is availed, the vehicle is then released to the owner. According to her the process normally takes up to 14 days from the date the vehicle is impounded. However, of late the process has been taking longer than the anticipated period of 14 days due to the over whelming number of cars that were caught on the wrong side of the law. As a result motorists are no longer required to pay any storage fees.

In her view because of the above there is no urgency in releasing the vehicles because they are being cleared and being released to the owners and for those that fail to meet the requirements remedial actions are being taken.

Mr *Zimudzi* however, argued that the respondents had not communicated the fact of non-payment of storage fees to the applicants and further argued that the majority of impounded vehicles are used as commuter omnibuses and the owners are losing economically. He urged this court to declare Operation "Mushika-shika Wapera " illegal as was done in the case cited (*supra*).

Having considered the submissions made by the parties I was still not convinced that this matter is urgent. Each case has to be decided on its own facts. For example in the case of Upgrade Driving School (Pvt) Ltd *supra*, this was clearly a vehicle belonging to a registered Driving School and the driver one Freddy Chaora who was a registered Instructor, was arrested while dropping a learner- driver. Further, in that case the driving school produced all the registration documents as well as the clearance certificates from the relevant authorities. Clearly the police had no reason to keep on holding on to the vehicle. In *casu* none of the applicants have attached any clearance certificates. In the circumstances I decline to hear the matter on an urgent basis.

In the result the matter is not urgent and is struck off the roll of urgent matters.

Zimudzi & Associates, applicants' legal practitioners,
Civil Division of the Attorney- General's Office, respondents' legal practitioners