MAVIS VUSO
(In her capacity as legal guardian of STUDENT)
versus
CASIA RAYO (N.O.)
and
QUEEN ELIZABETH HIGH SCHOOL

HIGH COURT OF ZIMBABWE
PHIRI J
HARARE, 28 October 2015 & 13 January 2016

Urgent chamber application

S Hofisi, for the applicant
L Matapura, for the respondent

PHIRI J: In this matter the applicant brought an urgent application on the basis that the respondents acted in violation of s 3 of the Administrative Justice Act [*Chapter 10:28*] and s 68 of the Constitution of Zimbabwe.

Section 3 of the Administrative Justice Act, [*Chapter 10:28*] states; the following;

> "3. Duty of administrative authority
> (1) An administrative authority which has the responsibility of power to take any administrative action which may affect the rights, interests or legitimate expectations of any person shall-
> (a) Act lawfully, reasonably and in a fair manner: and
> (b) Act within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to take the action by the person concerned; and
> (c) Where it has taken the action, supply written reasons these for within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to supply reasons by the person concerned"

Section 68 of the Constitution of Zimbabwe states that;

> "Right to administrative justice
> (1) Every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair.
> (2) Any person whose right, freedom, interest or legitimate expectation has been adversely affected by administrative conduct has the right to be given promptly and in writing the reason for the conduct…."

The applicant was seeking interim relief that pending the final resolution of this matter the first respondent, that is, the Headmistress of the school be compelled to re-admit one STUDENT, herein after referred to as the student, into the second respondents, that is Queen Elizabeth School boarding facilities.

The applicant also sought an interdict that the respondents be interdicted from in anyway negatively "interfere with STUDENT's boarding, more particularly in that the respondent be and are hereby barred from depriving STUDENT from using second respondents hostels where she was residing prior to her dismissal."

The applicant also sought costs of suit against the respondents in the event that the interdict was granted.

The applicant was also seeking a final order that;

"(i) The dismissal of STUDENT by the respondent without following the due process be and is hereby declared illegal.
(ii) the respondents shall pay the costs on a legal practitioner and client scale."

After hearing arguments from both parties I have come to the conclusion that this matter is not urgent and that the applicant is not entitled to the interim relief sought. This judgement outlines the reason why I have come to that conclusion.
The facts of this matter are in dispute.

THE APPLICANT'S CASE

In her founding affidavit, Mavis Vuso, the applicant, who is the legal guardian of the student, submitted that sometime in May, 2015 she communicated with the first respondent, through the student, that she be allowed to withdraw her daughter from the second respondent's boarding facilities. This is because she could not raise boarding fees for the second term. The child became a day scholar during the second term.

The applicant also alleged that she then spoke with the first respondent to the effect that she was supposed to "top up" the student's fees so that the student would be readmitted to boarding school.

Come third term, at the beginning of September, the applicant alleged that she paid US$108.00 as fees for the day school. In para 7 of her founding affidavit she states, "I had not however told them that I had not paid the day school fees. The applicant appears to be contradicting herself. Be that, as it may, the applicant stated that she proceeded to pay $USD 510 on the same day.

The student was admitted to boarding school on the second term 2015 but was advised, by the matron, that the first respondent would communicate with her as regards fees for the second term.

In para 8, of her founding affidavit, the applicant avers that;

"I queried this since I had not been in boarding."[1]

She then sought audience which the first respondent who insisted that she was going to dismiss the student.

The applicant engaged the services of the Zimbabwe Lawyers for Human Rights who addressed a letter dated 15 October, 2015 to the first respondent. Essentially the letter repeats the applicant's averments.

In the fourth paragraph of that letter the Zimbabwe Lawyers for Human Rights state;

> "The withdrawal under your permission, and the readmission, upon payment of the boarding fees for the third terms in 2015, created a legitimate expectation that she cannot be taken down the garden path, only to be dismissed summarily from boarding school."

The applicant's case was further supported by a supporting affidavit titled "Supporting Affidavit Of Applicant's Step Father (the applicant is Mavis Vuso and this title gives the misleading impression that the deponent is the applicant's step father").

The step father avers that the student was a day scholar for the term beginning 8 September, 2015. He avers that the student was admitted to boarding school when he paid the full amount for boarding fees. He does not state the date of payment. Annexures B1 and B2 being, bank deposit slips, dated 2 being October, 2015 are annexed proof of this payment.

Note, also, the fact that, the applicant alleged that she also paid school fees for and on behalf of the student? It is therefore confusing as to who exactly the school, that is, the second respondent, was directly dealing with?

The step father averred that he requested the school to deduct the amount equivalent to the days that the student had been attending day school as a day scholar. The first respondent allegedly refused.

He further alleged that on the 5 October, 2015 he left the student at boarding facilities "after producing receipts showing proof of payment of the fees."

[1] N.B this was one of many errors showing lack of proof reading of the applicant's papers. Applicant's paper were greatly marred by many mistakes due to lack of revision of papers conduct which is not condoned.

He was subsequently called to a meeting, by the first respondent, who queried non-payment of boarding fees for the second term. Two options were presented to him and he accepted neither.

He further avers, in his founding affidavit, that,

> "The fact that the respondent had not objected to me paying day scholar fees did nothing to dissuade my assumption there was a policy in place allowing students to switch from boarding to day schooling and paying for the fees based on whether child was attending in accordance with the fees paid and especially where an indication is also made to the matron she is not a boarder for that term and in fact attends as a day scholar for that term."

He then concludes;

> "I have been advised this policy of the school can be construed in a manner highlighting substantial rights of STUDENT that emanate from a legitimate expectation fostered by the policy of the school."

He then avers there was no response to the letter of demand drafted by the Zimbabwe Lawyers for Human Rights.

RESPONDENT'S CASE

The respondents filed a notice of opposition and first respondent deposed to an opposing affidavit on behalf of the respondents.

The respondents contended that there was no automatic entitlement to the applicant's daughter to a boarding place. The suggestion is also made that the applicant unilaterally withdrew her daughter from boarding at the beginning of the second term, without communicating with the school either through the Headmistress of the Deputy Head.

The respondents also maintained that the applicant neither paid tuition or boarding fees for the second or third term. The respondents maintained that the applicant has not had a receipt issued by the school after submitting proof of payment in respect of fees.

The first respondent maintained that the Annexures 'A", "B", B1 and B2 were irrelevant documents in as far as proof of payment of fees was concerned observed that:

> "Applicant is well aware of the procedure to be followed before her daughter can get admission to the school and she has not done so by annexing the Annexures B1 and B2 to the chamber application"

The first respondent observed that the applicant's daughter misrepresented to the school matron that she had allowed her to be readmitted to boarding when she knew very well that that was not the case:

> "I was away from the school at the time and when I got appraised of the position I made certain findings which demonstrated that applicant's daughter was not entitled to be in boarding as applicant's guardian had not complied with the requirements necessary for applicant's daughter to be in boarding and hence an administrative decision was taken to ensure applicant's daughter would not remain in boarding unlawfully. A letter was addressed to applicant's legal practitioners on 21 October 2015 explaining the position and same was served upon the said legal practitioners on 22 October and it is strange that this letter is not even referred to in the present application."

A copy of that letter was annexed to the respondents opposing affidavit.

The respondents also contended that it was explained to the applicant, during a meeting, why applicant's daughter would not be readmitted to boarding school and despite clear explanation the applicant has not bothered to do what she was advised to do by the school.

The first respondent denied that the applicant ever communicated with her or any of the school authorities concerning her difficulties. She also maintained that;

> "After a thorough and comprehensive explanation to the applicant, her daughter was removed from boarding as she had unlawfully and deceitfully regained entrance in boarding school as explained above."

The respondent also pointed out that

> "Applicant is still attending lessons despite that she has not paid fees and proved to the school that fees had been paid for her continued attendance at the school." (the underlining is mine)

At the hearing of the Application the respondent produced a document entitled **Queen Elizabeth School rules and fees payment procedure**. And among other things it states;

> **"Procedure for school fees and levies payments**
>
> 1. At the end of end of each term, students are issued with the next term's invoices with the correct amounts to be paid during the holidays or within two days of opening school.
> 2. The parents or guardian should pay at the bank the amounts raised on each invoice.
> 3. The bank deposit slips are submitted to the school bursar for receipting.
> 4. The school receipts given by the bursar are taken to Form Teachers for recording. If the child is a border the same receipts should be given to the Hostel Matron for admission into boarding.
> 5. After the above process, all school receipts are given back to the parents/guardians for their own records.
>
> Summary of fees
>
> a) All day scholars pay US$20 Tuition fees and $180 for levies.
> b) All boarding students pay US$490 covering boarding and tuition fees and US$180 for levies.
>
> NB i) All levies are paid at ZB Bank and all tuition and boarding fees are payable at CBZ Bank.
>
> ii) All parents for boarding students should communicate in writing if they intend to withdraw their children from boarding."

I hold, after considering submissions by both parties, that the applicant did not follow the procedures outlined in paragraphs 2 to 5 of the Queen Elizabeth school rules and payment procedure.

It does not appear that the applicant communicated, in writing, her intention to withdraw her child from boarding school. The applicant also failed to demonstrate that she had exhibited her bank deposits to the School's Bursar for receipting.

Similarly having made the decision to withdraw her child from boarding school, the applicant did not have the automatic right to have the student readmitted to Boarding school without the express authority of the School authorities, I agree that readmission into boarding school was not an automatic right of the student but a privilege to be exercised with proper consensus with the school authorities.

In this context the argument, that a legitimate expectation had been created by the readmission into boarding school, by the matron, and, in the circumstances of the present case is clearly misplaced. I do not find fault in the action taken by the respondents to remove the student from boarding school was in violation of both the Constitution and the Administrative Justice Act. The applicant did not have any clear right to compel the school to readmit the student into its boarding facilities.

In addition the letter addressed to the applicant's legal practitioners, by the respondent's legal practitioners, on 21 October, 2015, emphasised the fact that the applicant's daughter "has not been expelled from school and "therefore her right to education has not been infringed in my manner whatsoever."

This letter also emphasised that, "a boarding place for any pupil attending school at Queen Elizabeth High School is not a right but a "privilege which must be paid for".

The letter further emphasized that the applicant failed to demonstrate that tuition and boarding fees for the second and third terms had been paid to entitle her to be in boarding.

On balance of probabilities I find that the facts, as outlined by the respondent, sound probable. The child was not summarily dismissed from school. She continued with her studies in the Lower Sixth form despite the applicant not complying with the "Fees and payment procedures."

I was referred to the case of *Zuwa* v *Lincoln Tafadzwa Ushamba* HH 335/14 in which Tsanga J observed at p 4 of the cyclostyled judgement that:

> "While cognisant of the High Court's role as upper guardian of all minor children and whilst alive to the principles of the best interest of the child as vital tenants of our constitution, these are not principles to be applied in a knee jerk manner. They certainly

> cannot be read to mean that every order asked for in the name of urgency and the "best interests" of the child should be granted."

I share the same sentiments in the present case because whilst having had made the decision to hear the parties on the basis that this court is the upper guardian of all minor children and that the interests of a minor child were at stake, it became obvious, after hearing the parties, that the urgency in this case may have been self-created.

Clearly the minor child in dispute continued to attend school and did not suffer any prejudice as alleged.

All that the applicant had to do was to follow the fees payment procedures stipulated by the school rather than trying to directly engage the Matron, the Bursar or the Headmaster. It was also not proper for the applicant to try to engage the school authorities through the student. The applicant was simply required to be up to date with her payments then properly apply for the student to be admitted into boarding school.

In the circumstances I make the following order;

(a) That this application is not urgent

(b) That the interim order sought by the applicant be and is hereby dismissed.

(c) That the applicant is to pay costs of suit on a party and party scale.

Zimbabwe Lawyers for Human Rights, applicant's legal practitioners
Dondo & Partners, respondents' legal practitioners