PELAGIA MAKUMBE MUJAWO
and
ANTONY MUJAWO
versus
RODNEY NHAMOINESU
and
MASTER OF HIGH COURT
and
RUFARO MUTSA NYAMUTOWA

HIGH COURT OF ZIMBABWE
TSANGA J
HARARE, 7 October 2020

Chamber application

(**In her capacity as curator *ad litem* for minor child LTM born 11 November 2004**)

TSANGA J: A chamber application for guardianship for a minor child born 11 November 2004 was placed before me. The applicants are husband and wife residing in the UK. The exact nature of their relationship to the minor child is not expounded. The child's mother died in 2016 and it is said that the minor is being looked after by an uncle who is now unable to care for him due to ill health. The child's father is said to have walked out on the mother of the child sometime in 2007 and since then has never come back. Some *curator ad litem* was appointed by the court and submitted a report.

The report is largely cut and paste in that it simply regurgitates what is contained in the first applicant's affidavit. This is to the effect that they are residents of the United Kingdom with indefinite leave to remain in the United Kingdom. They run a company which enables them to sustain a life there. The applicants aver that they have been assisting with the minor child's school fees, food and groceries when the need arose since that time. The first applicant in particular says when the minor's mother died in 2016, she took over the role of mother by giving him provisions that he required. Notably zero is no evidence attached to support the assertion that the applicants have indeed been playing the financial role they allege in the child's life. The applicants now wish to give him a better home and to advance

his education in the United Kingdom. They purport to have found him a place at the University of Sheffield.

The curator says that she communicated with the applicants via skype but whatever the nature of the conversation it did not yield much more than what has already been averred by the applicants. The curator just like the first applicant, does not care to state how the child is related to the applicants other than to say the child loves his cousins (applicants) who are in the UK. In *In re Moyo* 2013 (1) ZLR 107 (H) the judge categorically stated that an applicant who seeks to be awarded guardianship of a minor child and for approval to remove the minor child must prove the relationship with the minor and some consent from other relatives.

Whilst the curator says she spoke with the child and the uncle no dates are provided as to when and where she met them. There is nothing in her report that captures or details their sentiments as would be expected if indeed such a meeting occurred. The cursory approach knows no bounds. The uncle himself who is said to be looking after the child has not sworn to any supporting affidavit confirming that he is indeed looking after the child and that he is unwell and is unable to do so. In any event, his willingness or otherwise is not a deciding factor as the best interest of the child are always paramount in these matters. Simply put, there is nothing credible about the curator's report just as there is nothing credible about the applicant's own assertions that they have been looking after the minor child.

Notably the minor child born the 11th of November 2004 is still fifteen going on sixteen next month. No evidence was attached that he has indeed completed schooling and that he is indeed due to enter University at that age. No "O" level or "A "level results were attached of the whiz kid performer. The letter attached which is supposed to be from Sheffield University is a joke. It does not even state what this minor child" who has been offered a place is supposed to study.

The Master too seems to have fallen for this ruse and does not appear to have seriously applied his mind to facts in his report by urging that the child be given a chance to study at a better University. This is clearly yet another one of those applications that simply take courts for granted by expecting that they will readily endorse without applying our minds to it. The whole application amounts to no more than a charade of some sought to get the child to the UK. That lawyers are not deterred in placing some of these spurious applications before judges in chambers is concerning. This is despite case authority on the court's strict approach in matters of this sort. See *Saungweme* v *Master of the High Court* 2016 92) ZLR 639; *In re Maposa* 2007 (2) ZLR 333(H); *Musonza* v *The Master* 2007 (2)

ZLR 382. There is zero evidence as stated that the child has been looked after by the applicants; zero evidence attached that the child has completed school; zero evidence attached as to what the fifteen-year child who is supposedly going to University has been offered to study. Yet the lawyer confidently files a chamber application which is not even supported by the facts it alleges and expects it to be granted. This is an abuse of court process. The application lacks merit.

Accordingly, the application is dismissed.

Tawanda Law, applicant's legal practitioners