

TRIANGLE LIMITED

and

HIPPO VALLEY ESTATES LIMITED

vs

ZIMBABWE SUGAR MILLING INDUSTRY WORKERS UNION (ZSMIWU)

GODFREY KATERERE

BRAWL CHIKANDIWA

TAVONGA VANDIRAI

LUCIA CHIRILELE

NOKHUTULA DUBE

FASTER SOPPER GONO

BERRINGTON ZVANYANYA

SAMUEL JINJIKA

P. CHIKAMI

Z. MANARA

A. SIBANDA

J. GWANYANYA

ADMORE HWARARE

ZIMBABWE FEDERATION OF TRADE UNIONS

MINISTER OF PUBLIC SERVICE, LABOUR & SOCIAL WELFARE

HIGH COURT OF ZIMBABWE  
WAMAMBO J  
MASVINGO, 3<sup>RD</sup> & 16<sup>th</sup> October 2019

## **URGENT CHAMBER APPLICATION**

**A. Rutanhira for the applicants**

**G. Dzitiro with S.I. Matumbwa for the 1<sup>st</sup> to 7<sup>th</sup> respondents**

**C. Ndlovu for the 8<sup>th</sup> to 14<sup>th</sup> respondents**

WAMAMBO J: The applicants filed an Urgent Chamber Application on 26<sup>th</sup> September, 2019. The first to seventh respondents filed opposing papers on the date of the hearing. The 8<sup>th</sup> to 14<sup>th</sup> respondents did not file any papers and their position is that they do not oppose the application, if the terms thereof are broadened to encapsulate their interests. *Mr K. Shamuyarira* a trade unionist representing the 15<sup>th</sup> respondent is opposed to the application. He also did not file opposing papers.

The relief sought was amended at the eleventh hour. The 1<sup>st</sup> to 7<sup>th</sup> respondents' opposing papers were predicated upon the original relief sought. The relief that is now sought reads as follows;

“1. INTERIM RELIEF SOUGHT

1.1. It is ordered that pending the final resolution of this matter either in the court of first instance or an appeal,

(a) The applicants are to deposit the “Trade Union Dues” for the Zimbabwe Sugar Milling Industry Workers Union into the Master of the High Court Trust Account until the final resolution of SC 518/19.

2. FINAL TERMS OF THE PROVISIONAL ORDER

2.1. The interim order is confirmed.

2.1. The 1<sup>st</sup> to 14<sup>th</sup> respondents shall pay costs of suit on an Attorney and client scale.”

The background of the matter can be traced back to a matter adjudicated upon by MAFUSIRE J in HMA 38/19 referred to as *Zvanyanya and Others v ZISMIWU and Others*. This matter was heard on 23 May 2019 and 27 June 2019 and the date of written reasons is 28 August, 2019. In HMA 38/19 the applicants therein who are members of a faction of a trade union sought to have three respondents (namely 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents) to be disqualified from membership of the trade union and flowing therefrom to be disqualified from holding positions in the trade unions' national executive committee. The applicants in HMA 38/19 also sought an order to hold elections to choose members of the national executive committee and to hold annual general meetings in terms of its Constitution.

MAFUSIRE J. resolved the issues by way of an order which reads as follows;-

- i. The second, third and fourth respondents ceased being members of the first respondent upon the termination of their contracts of employment with the seventh respondent.
- ii. By reason of paragraph (i) above the second, third and fourth respondents are hereby disqualified from holding any positions in the first respondents' national executive committee.
- iii. The first respondent shall hold elections to choose members of the national executive committee within sixty (60) days of the date of this order, or within such other time frame as may be agreed upon.
- iv. The first respondent shall hold an annual general meeting in terms of its Constitution by no later than the 31<sup>st</sup> December, 2019.
- v. The costs of this application shall be borne by the first, second, third and fourth respondents, jointly and severally.

The first to sixth respondents have since appealed against the whole, final and definitive judgment under HMA 38/19 to the Supreme Court. The appeal appears under cover of SC 518/19.

It would appear that specifically because of the order under HMA 38/19 and the developments thereafter the acrimony between the parties intensified.

It may be necessary to identify the parties at this stage.

The 1<sup>st</sup> and second applicants are the employers. The 1<sup>st</sup> respondent is a registered trade union in terms of the laws of Zimbabwe.

The 2<sup>nd</sup> to 7<sup>th</sup> respondents are members of a faction of 1<sup>st</sup> respondent while the 8<sup>th</sup> to 14<sup>th</sup> respondents are members of the second faction. The two factions are involved in a fierce battle to control the 1<sup>st</sup> respondent.

The 15<sup>th</sup> respondent is ostensibly the mother body of 1<sup>st</sup> respondent while the 14<sup>th</sup> respondent is cited in her official capacity.

The employer is by virtue of the law enjoined to transmit union dues to the 1<sup>st</sup> respondent. The situation has been complicated by the fights and disagreements between the two factions set on wrestling and winning control over the 1<sup>st</sup> respondent. The applicant is of the view that in order to safeguard the union dues they should be transmitted to a trustworthy and secure institution namely the Master of the High Court. This is to prevent the funds being misused or to stop or prevent the various warring factions seeking to apportion a slice of the cake to themselves.

As is usual in such applications points *in limine* were raised. Some of the points *in limine* seem to have been abandoned while others were seemingly overtaken by events.

Points *in limine* raised by 1<sup>st</sup> to 7<sup>th</sup> respondents, were firstly that the matter is not urgent. *Mrs Dzitiro* referred to principles on urgency and various case law. She pointed out that applicant filed heads of argument on 30 September, 2019 as well as an amended draft order. These two sets of documents were only served on her as counsel for 1<sup>st</sup> to 7<sup>th</sup> respondents ten minutes before the scheduled time for the hearing of this application. No warning was given of the amended draft order. *Mr Dzitiro* avers that in HMA 38/19 the applicants chose to abide by the decision of the Court. She sought to demonstrate that the various cases relied upon by the applicants are either misplaced irrelevant or misunderstood. She averred that applicants should not have approached the court without notifying all the parties.

In a long line of cases the issue of urgency has been defined and traversed. Among other cases see:-

- *Kuvarega v Registrar General and Another* 1988 (1) ZLR 188 (HC)
- *Shandong Taishon Sunlight Investments Limited v Yunnan Linkun Investments Group Company Limited & Others* HH 6/16 at pages 6 – 7
- *Triple C Pigs (Partnership and Colcom Foods Limited v The Commissioner General of Zimbabwe Revenue Authority* HH 7/2007 at pages 4 – 5

- *Document Support Centre (Private) Limited v T.F. Mapuvire* HH 117/2006 at pages 3 – 4

*Ms Dzitiro* also avers that the order sought is final in nature contrary to principles established in *Brian Andrew Cawood v Elasto Madzingira* HMA 12/2017.

*Mr Rutanhira* for the applicants argued that the matter is indeed urgent. He strongly based his argument on the fact that applicants are enjoined at law to disburse union dues to the trade union every month lest they face civil or criminal liabilities. He further pointed out that there has been a lot of infighting between the two factions of 1<sup>st</sup> respondent. To that end the two factions are battling through the employer and either faction is demanding union dues from the applicants. A lot more was traversed by *Mr Rutanhira* which spoke more to the merits of the case.

I am however of the view that urgency has been proved.

There is clear acrimony between the alleged factions. Pursuant to the judgment in HMA 38/19 the fighting for control of 1<sup>st</sup> respondent intensified. The appeal launched against the decision did not help matters either. The legal obligation of the applicants to disburse union dues to the 1<sup>st</sup> respondent is common cause. The need to clarify how the disbursement and to whom it should be made is clearly an urgent matter. I am satisfied that when the need to act arose the applicants did act expeditiously in the circumstances of this case.

I am not with *Ms Dzitiro* on her argument that the draft order is final in nature. The draft order is firstly clearly aimed at release of the trade union dues to the Master of High Court Trust Account pending the resolution of SC 518/19.

The final terms of the provisional order pertain the confirmation of the said interim order which interim order is predicated upon a resolution of SC 518/19. The facts of *Brian Andrew Cawood v Elasto Madzingira* are clearly distinguishable from this case. It is important to give proper notice to other parties of any amendments sought timeously and to serve them with the application.

In this case there was an adjournment on the hearing date from 10.00 hrs to 14.00 hrs. This was an attempt to accommodate *Advocate Zhuwarara* at *Mr Rutanhira's* behest. *Advocate Zhuwarara* was said to be busy at the Supreme Court with another matter. *Advocate Zhuwarara* did not make it at the end and *Mr Rutanhira* decided to proceed representing the applicants. I am of the view that the adjournment to some extent mitigated the delayed notification to the other parties of the amendments to the draft order.

*Ms Dzitiro* though partially disadvantaged because of receiving the applicants' papers late in the day, appeared to rise to the occasion in the circumstances.

I have given deep thought to the various points *in limine* raised and am of the view that they are not meritorious.

On the merits I should point out what has been pointed out elsewhere that the parties are involved in various cases wherein their battles appear unabated.

The point is made that pursuant to the judgment in HMA 38/19 there are only 2 executive members of the 1<sup>st</sup> respondent remaining. The question posed is what will happen if there is a deadlock.

*Ms Dzitiro* argues that upon the appeal being lodged the position reverses to that before the appeal.

*Ms Dzitiro* made further submissions as follows; Applicants are the ones manufacturing the confusion. Applicants created the problem by participating in a meeting of 13 July, 2019. Applicants seek to cripple the 1<sup>st</sup> respondent and only want to place their favourite candidates in 1<sup>st</sup> respondent's executive committee before they can transmit dues to 1<sup>st</sup> respondent.

While there is clearly a tug of war between the parties, there is need for a resolution one way or the other. There may also be some truth as to the interests of applicants in the matter.

But is the best resolution to continue paying union dues to 1<sup>st</sup> respondent in the current situation bedevilled by division and factual fighting?

While there may be other avenues or solutions to the problem I am determining the matter with an eye on the relief sought. Justification has been given of the need for a neutral party to receive the union dues pending the Supreme Court resolution of the appeal.

I find that the Trust Fund of the Master of the High Court is a secure account to deposit the union dues in the face of various efforts to control 1<sup>st</sup> respondent.

To some extent not having access to the dues by either faction may knock sense into the various factions to put their houses in order so that normality prevails.

I am mindful of *Mr Ndhlovu's* submissions on behalf of 8<sup>th</sup> to 14<sup>th</sup> respondents on the merits. It appears however that he was principally not opposed to the application.

He had concerns on broadening the relief sought.

*Mr Shamuyarira* pointed out that 1<sup>st</sup> respondent is their affiliate. I have to mention that that position is not shared by all – see Annexure ‘K’ at page 62 of the 1<sup>st</sup> to 7<sup>th</sup> respondents notice of opposition.

In the circumstances I find that the application has merit.

It is hereby ordered that the application be and is hereby granted in terms of the draft order.

*Scanlen and Holderness*, applicants’ legal practitioners  
*Mutumbwa, Mugabe and Partners*, 1<sup>st</sup> to 7<sup>th</sup> respondents’ legal practitioners  
*Ndlovu and Hwacha*, 8<sup>th</sup> to 14<sup>th</sup> respondents’ legal practitioners  
*Zimbabwe Federation of Trade Unions*, 15<sup>th</sup> respondent’s representatives