

Civil Appeal No. 301/01

KINGSTONE MANDISODZA v

(1) THE PRESIDING MAGISTRATE (2) MABEL MANDISODZA

SUPREME COURT OF ZIMBABWE
SANDURA JA, CHEDA JA & MALABA JA
HARARE, MAY 11, 2004

N T Chitsungo, for the appellant

No appearance for the first respondent

The second respondent in person

CHEDA JA: The appellant was reported at the magistrate's court for failure to pay maintenance in terms of the Maintenance Act [*Chapter 5:09*]. The papers do not even reflect which magistrate's court.

The magistrate who heard the matter ordered that the appellant be imprisoned. This led to an urgent application being made to the High Court. The order sought from the High Court was as follows:

- “1. That the applicant be released forthwith from custody.
2. That the second respondent pays costs of suit in this court and in the court *a quo*.”

SMITH J, who heard the urgent application, ordered that the applicant be released forthwith from custody but refused to order that the second respondent pay any costs.

The appellant then appealed to this Court against the refusal to order the second respondent to pay the costs. When the matter came to this Court, we dismissed it with costs and stated our reasons would follow. This was after hearing the appellant only, as we saw no need to hear the second respondent. These are our reasons.

SMITH J had this to say when refusing the application to order the second respondent to pay the costs:

“In the urgent chamber application an order was sought ordering that the applicant be released from custody and that the second respondent pay his costs in the court *a quo* and in connection with this application. The founding affidavit alleged that the first respondent had misdirected herself in a number of instances. Because I accepted the submissions I issued the order that the applicant be released. There was nothing in the founding affidavit to support the claim that the second respondent pay the costs. Accordingly I refused to order that she pay the costs.”

Indeed no basis was laid on the papers for a claim of costs against the second respondent.

In his heads of argument counsel for the appellant stated, and I quote:

“The first respondent cancelled the warrant, however, for completely inexplicable reasons and at the instigation of the second respondent.”

Later in the same heads of argument he said:

“The first respondent could not have *mero motu* raised the issue of arrear maintenance and proceed(ed) to enquire into the matter as it (she?) did without the insistence of the second respondent.”

This argument does not make sense. The second respondent had all the right in the world to report a maintenance defaulter. Once she had reported the matter, it was for the court to look into the matter, which it did.

It is obvious that the appellant believes he has a grievance against the presiding magistrate, whom he cannot sue for costs, and now claims them from the second respondent.

I agreed with the decision of the court *a quo*. There is certainly no basis for the claim and no merits in the appeal. That is why we dismissed it with costs.

SANDURA JA: I agree.

MALABA JA: I agree.

Chikumbirike & Associates, appellant's legal practitioners