ANDREW RICHARD BRUFORD
versus
ATTORNEY GENERAL
and
MAGISTRATE JARABINI

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE 12th March 2010

Mrs. Maphosa, for the applicant.
Mr.Zvekare, for the respondent.

Urgent Chamber Application

BHUNU J: The applicant is standing trial in the Magistrates Court on charges he has not specified in his founding affidavit The nature of the charges that the applicant is facing is however immaterial to the determination of this application.

What is material is that 0n the 15th February 2010 the applicant made an application for discharge at the close of the state case. The application did not find favour with the trial magistrate who has now been cited as the second respondent. The trial magistrate having found no merit in the application dismissed the application and ordered that the trial must proceed at 2:15 pm on the 4th of March 2010. That date was subsequently extended to today the 12th of March 2010 at 12 noon. I have further extended the time to 3pm this afternoon.

In dismissing the application for discharge at the close of the state case the trial magistrate did not give his reasons for his determination. Aggrieved by the trial magistrate's interim determination the applicant's lawyers wrote to the Clerk of Court on the 22nd February 2010 in the following vain:

"We refer to the above matter in an application for discharge of the Accused at the close of the State Case which was dismissed on the 15th March 2010.

We confirm that our Miss. Maphosa requested for reasons for judgment for the purpose of an appeal to the high Court against the decision of his worship, Magistrate Jarabini on the same day.

Kindly place this letter before his worship as a reminder."

In paragraph 5 (c) of his founding affidavit the applicant had this to say:

"c) My legal practitioner indicated that the said reasons were required for an appeal the defence intended to file with the High Court on my behalf."

d) The 2nd Respondent advised that the said reasons would be furnished and directed my legal practitioner to check with the court before the end of the following week.

e) On the 22nd February 2010, the beginning of the following week, Miss. Maphosa wrote a letter to the Clerk of Court which was received on 24th February 2010 as a reminder to the 2nd Respondent's commitment …

f) …

g) …

h) …

i) The 2nd respondent stated that he had not seen the letters but that he had written on the record that despite the request by the defence, he would only give his reasons in the main judgment."

Aggrieved by the trial magistrate's refusal or failure to give reasons for his interim determination the applicant logged this urgent application to this Court seeking a provisional order staying the criminal proceedings pending receipt of the trial magistrate's reasons for dismissing the application for discharge at the close of the state case. Finally the applicant seeks an order compelling the 2nd respondent to furnish him with the reasons for the interim determination

During the course of argument counsel for the applicant made the valid concession that it would be premature and incompetent to appeal against the trial magistrate's interim determination at this stage as intimated in her letter and confirmed in the applicant's founding affidavit. The defence having realized the folly of its written word counsel has now made an about turn and has submitted that the defence in fact meant that it intended to seek a review of the of the trial magistrate's interim determination. That may very well be so, but applications are determined on the record with affidavits constituting the evidence.

While counsel may seek to amend her own letter, it is virtually impossible to amend her client's affidavit. Having regard to the letter of the 22nd February 2010 and the applicant's own affidavit the trial magistrate can hardly be faulted for deciding to proceed with the trial when the reason for which the reasons were required was inappropriate and incompetent at law.

Counsel for the 1st respondent has cited a plethora of cases stating that it is only in exceptional circumstances that the superior Courts entertain interim applications for review. I did not here counsel for the applicant to contradict that submission. While I do not want to preempt the outcome of the applicant's intended application for review I am constrained to say that he has a mountain to climb.

That being the case the ends of justice can only be served by giving the green light for the trial to proceed while the applicant proceeds to lodge his application for review if he is so minded. Proceeding with the trial is no impediment to the intended trial. The adage that 'Justice delayed is justice denied is apt in this case. I have deliberately chosen to ignore the question of urgency electing to determine the application on the merits for the sake of finality.

It is accordingly ordered that the application be and is hereby dismissed with costs.

Sawyer and Mkushi, the applicant's legal practitioners.
The Attorney General's Office, the 1st respondent's legal practitioners.