

IGNATIUS MASAMBA
versus
THE SECRETARY OF JSC

HIGH COURT OF ZIMBABWE
PHIRI J
HARARE, 11 July 2018 & 9 October 2018

Opposed application

Applicant in person
T Makwasha, for the respondent

PHIRI J: These were two opposed applications which were heard before me in the opposed roll for the 11th July, 2018.

With the concurrence of the applicant these two matters were heard at the same time as the nature of the relief so sought by the applicant was similar in both instances.

Case No. HC 6164/17

In case number HC 6164/17 the applicant brought a court application in which he cited The Secretary of the Judicial Service Commission as the respondent.

The applicant made a court application in which he referred to as a:

“Court application for a mandatory injunction to release ruling with sated reasons for the dismissal judgment related to Civil Appeal Case NO CIV “A” 111/13”

I quote his application verbatim to demonstrate how fatally defective it is. It is this court’s view that the founding affidavit is clouded with emotion and unfortunate outbursts against the judiciary.

I herewith give examples of the same.

Paragraph 2

The applicant refers to what he calls “the deliberate failure is therefore a planned collusive action in the physical violence against me by the judges thus in reckless violence against me by the judges....”

Paragraph 4

The applicant states that;

“Thus to me it is emotionally shocking that some judges seem to support the political abuse of some citizens through the brutal and deathly violence at the hands of ZANU PF thugs than deter it is they were impartial through the awarding of damages and considering violence for benignant influence for a better Zimbabwean Society through civilized tolerance as happens in other countries.”

The applicant proceeds to make several other allegations against the judges which really, are unfortunate, and, in my view amount to some form of political grandstanding or, borders on contempt of court.

Paragraph 28

The applicant sates the following;

“It seems as if the president of Zimbabwe Mr Robert Mugabe is interfering with the work of the judiciary who themselves appear to be more than willing political hack judges who seem more than most likely crypto members of ZANU (PF) which fudice some parts, if not all the parts of section 165 (4) (0) to (d) of the Constitution of Zimbabwe.”

In para 29 he states

“...I have as a sensible observed reached the conclusion that when such matters of violence ended up at the courts there is an arguable evil confederacy of a frustrative nature surfaciny and the malevolent confederacy seems to start from the villain thugs then extends to involve some magistrates and then some judges obviously as well as ZANU (PF) party and/or the president directly delegating himself or just vacarious involvement as the leader of the villaneous political party which subverts every reasonable Zimbabweans goal of seeing the upholding of the rule of law as guided by the Constitution.”

Case Number HC 6187/17

The applicant makes a similar court application in case number HC 6187/17 and the founding affidavit almost repeats word for word what is stated in case no. HC 6164/17.

Notice of Opposition

The respondents raised the following:

Locus Standi

1. That there is no legal entity as the Secretary of the Judicial Service Commission and accordingly the second respondent has been improperly cited. The cited respondent is not juristic person.

This court agrees with this submission.

This court's Ruling.

Decree of Perpetual Silence

There already is a decree of perpetual silence already operating against the applicant which was granted in the case of *Masamba v JSC Secretary & Anor* case No. HH 238/17.

The applicant is clearly aware of this issue and has raised it in his papers.

This court does not condone the conduct of the applicant in setting the aforesaid application on the opposed role when the applicant was fully aware that a decree of perpetual silence was granted against him.

I agree with the respondent's submissions that the present applications are an abuse of court process and should be dismissed and visited with a punitive order of costs.

Equally the applicant's actions have brought additional and unwarranted expenses to the respondent.

This court is satisfied that the applicant does not need to be furnished with any further reasons in respect of the dismissal of his appeals.

Clearly the ruling that the applicant's notice of appeal was fatally defective and thus a nullity is clear enough and there is no need for any further reasons to be given.

Accordingly this court makes the following order against the applicant:

1. The applications in case numbers HC 6164/17 and HC 6187/17 are hereby dismissed.
2. The applicant's ordered to pay costs of suit on a legal practitioner and client scale for the aforesaid cases.
3. A decree of perpetual silence is hereby granted against the applicant and;
4. The Registrar of the High Court is directed not to accept or issue any process from the applicant without leave of a Judge of this court.

Dube-Banda Nzarayapenga and Partners, respondent's legal practitioners