

DR IGNATIUS CHOMBO (MINISTER OF HOME AFFAIRS)  
versus  
THE SHERIFF OF ZIMBABWE  
and  
TENDAI BLESSING MANGWIRO  
and  
SHELTON MAHUNI  
and  
VALENTINE MUTATU

HIGH COURT OF ZIMBABWE  
HUNGWE J  
HARARE, 26 July 2017 & 20 September 2017

**Urgent Chamber Application**

*Ms K Warinda*, for the applicant  
*T T G Musarurwa*, for the respondents

HUNGWE J: The parties agreed at the hearing of the urgent chamber application on 26 July 2017 that by consent a provisional order be granted staying the arrest and lodging of the applicant into prison in terms of a writ of execution granted under case number HC 4766/13 and HC 4261/16. Further, the second and third respondents were also interdicted from causing the arrest and lodging into prison of the applicant pursuant to the warrant of execution granted under the said cases pending the determination of the question whether the applicant had complied with his obligations as nominal defendant in terms of the State Liabilities Act, [Chapter 8:14] in relation to the two cases referred to above.

The history of this matter dates back to 2013 when the second respondent sued the then co-ministers of Home Affairs and others for the return of certain amounts of money in both local and foreign currency. The court found in his favour and entered judgment for him. When the then Ministers of Home Affairs failed to return those sums of money in terms of the

court judgment, there followed a spate of litigation between 2015 and 2016. Under HC 4261/16 the second respondent obtained the following order against the applicant:

“IT IS ORDERED THAT:

1. The respondent is ordered and directed to comply with statutory duty cast upon him in terms of Section 5 (2) of the State Liabilities Act, [*Chapter 8:14*] that is **to cause to be paid out** of the consolidated revenue fund, the sum of money awarded to applicant by the order of this Honourable Court dated 18 February 2015 in case number HC 4766/13, judgment number HH 147-15.
2. The respondent is ordered and directed to comply with the order in paragraph (1) within 14 days of this order having been served on him, or his (permanent) secretary, or any responsible person in his Ministry, failing which, the respondent be and is hereby declared to be in contempt of this order.
3. The respondent is to pay applicant’s costs of suit at a legal practitioner and client’s scale.”

The above order is dated 16 May 2016.

The second respondent was not paid his dues despite the above order. He then sought an order declaring the present applicant to be in contempt of this court. In HC 5966/16 (reported as HH 710-16) TSANGA J found the applicant guilty of contempt of court and sentenced him to 90 days imprisonment which was wholly suspended on condition that he complies with the court orders under case numbers HC 4766/13 and HC 4261/16. This order is dated 9 November 2016. It reads:

IT IS DECLARED THAT:

1. The respondent is guilty of contempt of the order of this Honourable court granted under case number HC 4261/16 in that:
  - a) He has wilfully disregarded the court orders in case number HC 4766/13 and HC 4261/16 and refused to comply with them and further preventing the applicant from enjoying his rights as established in the court.

IT IS ACCORDINGLY ORDERED THAT:

2. The Respondent is sentenced to 90 (ninety) days imprisonment with labour until full compliance by the Respondent.

**The term of imprisonment shall be wholly suspended on condition that:**

- a) The Respondent fully complies with the court orders mentioned in paragraph 1 (a)
3. This order shall itself constitute and serve as a writ for the arrest, detention and lodging of the Respondent into prison.

4. The Respondent shall pay for the costs of suit on a legal practitioner and client scale.”

The first respondent, under instruction from the second respondent, twice attempted unsuccessfully to execute the above order both at applicant’s government offices as well as at his party’s headquarters. In between these attempts, so it would appear, the applicant took some action by addressing correspondence to the permanent secretary in the Ministry of Finance and Economic Development on 10 November 2016. It was received by that office on the same day. On the basis of the correspondence given under his hand, applicant filed the present application seeking a *declaratur* that he has complied with his obligations under the Act.

First respondent has not filed any papers. I assume that he will abide the court’s decision. The second to fourth respondent do not agree. They insist that the applicant has not purged his contempt and as such he should be arrested and lodged into prison.

The issue that arises that arises for determination is what meaning is to be given to the phrase “*may cause to be paid out*”. The contention by the applicant is that a reading of the judgment of this court in which he was found to have been in contempt, in its plain ordinary grammatical meaning, required him to do no more than take steps which would trigger the process leading to the disbursement by the secretary of finance, of the money in question. The relevant portion of the judgment reads;

“In terms of s 5 (2) of the State Liabilities Act [Chapter 8:14], his duty in his nominal capacity, is to cause payment to be made out of the consolidated revenue fund. This is what he had seemingly failed to direct up to the time that application for contempt was made. In order to facilitate the process of payment, he must give the directive, or authority to pay as the catalyst for payment. That is his role. In other words, the order sought the order sought was that he be declared to be in contempt until he had taken the necessary measures to cause payment to be made. He evidently does not make the actual payment himself as there are government channels that ultimately make the payment upon his request or directive that payment be made.”

That section provides:

Section 5 (2) of the State Liabilities Act, [Chapter 8:14] provides:

“(2) Subject to this section, no execution or attachment or process in the nature thereof shall be issued against the defendant or respondent in any action or proceedings referred to in section *two* or against any property of the State, but the nominal defendant or respondent may cause to be paid out of the Consolidated Revenue Fund such sum of money as may, by a judgment or order of the court, be awarded to the plaintiff, the applicant or the petitioner, as the case may be.”

The second to fourth respondents argue that such an interpretation would not further the purpose of the legislature. They rely on the dicta in *Nyathi v MEC for Department of Health, Gauteng* 2008 (5) SA 94. By their own admission, there is a significant difference between the

South African State Liabilities Act and ours. The South African court in that case admitted however that s 3 of their Act did not go so far as to require that the nominal defendant causes to be paid out of the National Revenue Fund and recommended that an Act of Parliament be passed in order to rectify that absence of such a provision so as to ensure that judgments of the court were obeyed. The respondents argue that in the present matter this court must interpret s 5 (2) in such a manner as to give effect to the intention of the legislature, which is to ensure compliance with court orders, since, as it stands, the procedure is ineffective. They urge the court to give a purposive interpretation which would result in a mandamus against the nominal defendant.

I disagree. The golden rule of interpretation does not lead to any absurdity, therefore there is no need to resort to the purposive interpretation. The phrase, “cause payment to be made” is plain and simple. Where a Minister directs that certain payment be made in compliance with a court order it seems to me that he would have fulfilled his catalyst role in causing payment to be made. I do not see what else he should be expected to do as his actions will ultimately lead to the disbursement of the funds from the consolidated revenue fund in accordance with the order of the court. The respondents themselves also acted on this interpretation because a few days after applicant’s letter of 10 November 2016, the second respondent’s legal practitioners addressed correspondence to the permanent secretary for finance and economic development as a follow-up on the applicant’s earlier letter. That letter in part reads:

“Having taken cognisance of the fact that the Minister of Home Affairs has written to you as the custodian of the Consolidated Revenue Fund demanding for payment in terms of the State Liabilities Act to satisfy the Court orders granted under case number HC 4677/13 attached hereto and same to be paid out of the consolidated revenue fund in terms of the constitution as read with the State Liabilities Act, Public Finance Act and the Treasury Instructions.....we therefore demand for settlement of same court orders in terms of the above laws within seventy-two hours of your receipt of this letter by your office...”

In the same letter threats are given of legal action against the secretary for finance and economic development if payment is not made in the 72 hour period. Of importance in the present proceeding is the fact that in the same letter too there is an acknowledgement that the secretary for finance was ultimately responsible for the disbursement of funds from the Consolidated Revenue Fund. The respondents urged this court, if it came to the same conclusion as did my sister TSANGA J that the action required of the Minister was to trigger the process that will result in the payment of the money, then I must refer this matter to the

Constitutional Court. Clearly, this cannot be. Referrals to that court are governed by specific requirements in the rules of that court. This is not one of the ways in which to make such a referral. What I need to consider is whether the applicant is entitled to the order he seeks only. No argument was advanced as to whether the matter qualifies for reference. As such I need not even consider the point. It must be properly raised if it has to be properly decided upon. In the premises I am satisfied that the applicant is entitled to the order that he seeks. I therefore make the following order:

It is declared that:

1. The applicant has complied with his obligations as nominal defendant in terms of the State Liabilities Act, [*Chapter 8:14*] in respect of the order of court handed down under case numbers HC 4766/13 and HC 4261/16.
2. That second, third and fourth respondents shall pay costs of this application on a higher scale, jointly and severally, the one paying the others to be absolved.

*Civil Division of the Attorney-General's Office, applicant's legal practitioners  
Mahuni & Mutatu, 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> respondents' legal practitioners*