

JULIAN TINOTENDA MADONDO
and
MILLICENT NYARAI MEZA
versus
CECIL MADONDO

HIGH COURT OF ZIMBABWE
UCHENA J
HARARE, 16 and 18 July 2014

Urgent Chamber Application

Applicant in person
M. Kamudewere, for the respondent

UCHENA J: This urgent application was filed by the applicant against his father for an order compelling him to pay fees and other necessary expenses to enable him to study pharmacy at Erode University in India. The respondent opposed the application, but stressed that he is not denying his son education. He wants him to study at local universities which he says he can afford.

The applicant persisted with the application. The application was preceded by a history of a strained father and son relationship. The applicant's mother and the respondent are divorced. The applicant stays with his mother and siblings at a house rented for them by the respondent. The applicant seems to have no direct communication with his father. He had to send his "A" level results to his father through a text message. The father denied receiving the text message saying he became aware of the applicant's results through this application. After hearing submissions from both parties, I postponed the case to 18 July 2014, when I gave an *extempore* judgment based on the notes for judgment I had recorded in my note book, in which I dismissed the applicant's application with no order as to costs. I have now by letter dated 2 September 2014, from Muringi, Kamdefwere Legal Practitioners been asked for a written judgment which I give below.

When the applicant was offered a place by Erode University he braved the cold relationship between him and his father. He paid him a visit at his offices. He was however told to make an appointment to see his father. He decided to way lay his father in the foyer. His father emerged from a lift. He greeted him but was not favoured with a response. He however went on to state the purpose of his visit. He told his father that he had secured a place to study pharmacy at Erode University in India. The respondent told him he was not able to fund foreign study and asked applicant to enrol at a local University which he can afford. This set the battle line leading to this application. It is unfortunate that the father son relationship has degenerated to this level. The respondent being the elder of the two should have led by example to guide his son back into a normal father and son relationship. Requiring him to make appointments to see his own father and not answering his greetings will certainly not help their relationship. The applicant has taken his fight against his father too far as demonstrated by his refusing his father's offer to discuss his needs at a meeting with him, which was, to be held, at his lawyers' offices, or his office. The applicant refused to meet his father at either place, in the absence of a security guard. His mother who was present at the hearing offered to accompany him to his father's office, but he refused insisting that he can only talk to his father in the presence of a security guard. It seems he no longer trusts his father to an extent of not wanting to be with him in the absence of security guards. This is not a healthy relationship, but that is not relevant to the determination of this case. The law should simply be applied to resolve the dispute between the parties.

The real issue is on the applicant's quest for education. It is a legitimate expectation of every child that his parents will pay for his education. The respondent did not refuse to educate his son. He said he has been paying his fees up to "A" level and is willing to pay for his education at a local University. He told the court that he has limited time and means within which he has to raise the required funds. He tendered Annexure B1 his payslip which shows he earns US\$8 000-00 per month and has a net salary of US\$5539.17. He also receives rentals in the sum of US\$750-00. In Annexure B2 he gave a list of expenses which he said leaves him with a disposable balance of US\$911.17.

It is unfortunate that this application was not made to a court which can *mero motu* investigate the respondent's means. The applicant did not challenge the respondent's means leaving me with inadequate information from which to make an informed decision on whether or not to grant the order sought.

Maintenance orders primarily depend on the responsible person's means. From the facts before me it is not possible to make an order which would commit the respondent to paying applicant's educational expenses at Erode University for the duration of his studies. He in his expenses included the education of the applicant's siblings, their rentals, his rentals and other expenses. The court should guard against making an order in favour of one child which can drain all the resources of the responsible person to the prejudice of his other dependents. The responsible person's means must be evenly spread to all his dependants.

While I think it is important for the applicant to receive a good education I must be mindful of the respondent's means and the needs of his other dependants. I find myself restrained by the respondent's means which could only have been challenged by the applicant or exposed by an inquiry in terms of s 5 of the Maintenance Act [*Cap 5:09*]. One hopes the respondent will as demonstrated by his offer to meet and discuss with the applicant, reflect on his son's needs and respond to them.

The applicant's application cannot succeed. I will not order costs against the applicant. He is a young man who has just completed his "A" levels. He has no means of his own. He should also not be discouraged from applying for maintenance from his father who until the hearing of this application seemed unwilling to voluntarily discuss his son's welfare with him.

The applicant's application is dismissed with no order as to costs.

Muringi Kamdefwere, respondent's legal practitioners