

AMALEM INVESTMENTS (PVT) LTD  
T/A FULL TASK PROJECT MANAGERS  
versus  
TAPIWA MABHIZA  
and  
LOADSHED CHIDA  
and  
CHARLES KANDIRA  
and  
JUSTICE MUREHWA  
and  
OBERT MUREHWA  
and  
PATRICIA MADAVANA  
and  
ZIMBABWE REPUBLIC POLICE

HIGH COURT OF ZIMBABWE  
MANYANGADZE J  
HARARE, 5 & 8 July 2022

**Urgent Chamber Application**

Mr *G Madzima*, for the applicant  
Mr *J Koto*, for the respondents

**MANYANGADZE J:** This is an urgent chamber application for an order couched in the following terms:

**“TERMS OF THE FINAL ORDER SOUGHT**

That you show cause to this Honourable Court why a final order should not be made in the following terms-

**IT IS ORDERED THAT-**

- 1) The provisional order be and is hereby confirmed.
- 2) The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> Respondents be and are hereby declared unlawful occupiers or claimants of Saturday Retreat Stand measuring 14 hectares. Known as Stand Numbers 23401 to 23601 and 23603 to 23631 Saturday retreat.
- 3) Respondents Occupation of Stand Numbers 23401 to 23601 and 23603 to 23631 Saturday retreat Waterfalls, Harare be and is hereby declared unlawful.

- 4) The Sherriff of Zimbabwe be and hereby authorized to demolish to any structure or improvement, building or developments that is established or that shall be established on applicant's property without its written consent or authority.
- 5) The 7<sup>th</sup> respondent is empowered to arrest anyone who shall defy this order.
- 6) 1<sup>st</sup> to 6<sup>th</sup> Respondents be order to pay costs of suit should any of such Respondents oppose this application.

#### **TERMS OF THE INTERIM ORDER SOUGHT**

Pending determination of this matter, the Applicant is granted the following relief-

- 1) The 1<sup>st</sup> to 6<sup>th</sup> Respondents, their agents, subsidiaries if any or anyone acting through them or at their behest be and are hereby interdicted from disrupting Applicant and its agents undisturbed use on Applicant's land situated in Saturday Retreat, Waterfalls, Harare measuring 14 hectares. Known as Stands Number 23401 to 23601 and 23603 to 23631 Saturday retreat.
- 2) The 1<sup>st</sup> to 6<sup>th</sup> Respondents, their assignees, agents and subsidiaries if any and anyone acting through them or at their behest or instigation be and are hereby prohibited from harassing, threatening or physically harming the Applicant's agents or assignees or instigate any third parties to interfere in any manner with the Applicant's land development operations currently undergoing.
- 3) The 1<sup>st</sup> to 6<sup>th</sup> respondents, their assignees, agents and subdiaries if any and any one acting through them or at their behest or instigation be and are hereby evicted from applicants property.
- 4) The 7<sup>th</sup> respondent is empowered to disperse anyone who is in occupation or claiming occupation of applicant's property without its written consent.

**SERVICE OF PROVISIONAL ORDER** The Sheriff of Zimbabwe, the Applicant or its legal practitioners be and are hereby authorized to serve this Provisional Order upon the Respondents with the assistance of the Zimbabwe Republic Police where necessary which every manner is expedient.”

The facts upon which the application is based, as deposed to in the founding affidavit, are that the applicant was offered a certain piece of land, measuring 14 hectares, situated in Waterfalls, Harare, in an area known as Saturday Retreat (“the property”) for the development of residential stands. The offer was made by the Ministry of Local Government and Public Works (the Ministry) through an offer letter dated 24 December 2021.

On 4 Jun 2022, the respondents invaded the property. They began pegging stands and digging trenches without any authority from the applicant or the Ministry. The pegging and trenching is contrary to approved plans the applicant had submitted to the Ministry. In addition, they are denying the contracted surveyor access to the property, thereby stalling an urgent land survey process.

The respondents' activities are causing "unrestorable demarcations" on the property and seriously disrupting applicant's land development business.

The application is opposed by the respondents. In the opposing affidavit, deposed to by the third respondent and supported by the rest of the respondents, they aver that they have been in occupation since 2020.

The affidavit however, does not clarify the basis on which the respondents occupied the property. It appears they did so as members of the Harare South ZANU (PF) Youth League - para 3.1 of the opposing affidavit. This caused skirmishes with some residents of Southlely Park who also wanted to occupy the property. They were assisted by one Richard Chibaya to drive out the rival occupiers.

The said Chibaya, on the pretext of assisting the respondents to regularize their occupation, ended up claiming he had been offered the land by the Ministry, through his company. He allegedly used his connections with the Ministry to acquire the land, and is now seeking respondents' eviction therefrom.

The respondents have raised 4 points *in limine*. These are that:

- (i) The matter is not urgent
- (ii) The applicant has no *locus standi*
- (iii) The offer letter is invalid
- (iv) There are material disputes of fact

I note that the opposing affidavit has 6 points *in limine*, the other 2 being "incompetent relief" and "dirty hands."

During oral submissions, the one on "incompetent relief" was argued under "urgency." The "dirty hands" point was not argued. Presumably it was abandoned.

I now proceed to deal with the preliminary points outlined above.

(i) **Urgency**

The main basis for the respondents' contention that the matter is not urgent is their claim that they have been in occupation of the property all along. Urgency could not suddenly spring up in June 2022, when they have been on the property for 2 years.

The respondents aver that the need to act arose when they first occupied the property, way back in 2020. There is a settlement of some sort, with some structures having been constructed. In this regard, Mr *Koto* for the respondents, remarked during oral submissions:

“.....This settlement could not have been built within 7 days. It had been there for sometime. The matter cannot be urgent now.”

The question of what constitutes urgency has been considered and explained in a number of case authorities.

What has become the *locus classicus* on this is the case of *Kuvarega v Registrar – General & Anor* 1998(1) ZLR 188(H). CHATIKOBO J stated, *inter alia*, that;”

“..... a matter is urgent if, at the time the need to act arises, the matter cannot wait.....”

MAKARAU J (as she then was) elaborated the position further in *Document Support Centre Ltd v Mapuvire* 2006(2) ZLR 240(H), when she stated;

“I understand CHATIKOBO J in the above remarks to be saying that the matter is urgent if when the cause of action arises giving rise to the need to act, the harm suffered or threatened must be redressed or arrested there and then.....”

MAWADZE J in *Bonface Denenga v Ecobank Zimbabwe (Pvt) Ltd & Ors* HH 177/14, observed that the general thread which runs through all these cases is that a matter is urgent if;

- a) It cannot wait for the observance of the normal procedural and time frames set by the rules of the court in ordinary applications as to do so would render negatively the relief sought.
- b) There is no other alternative remedy.
- c) The applicant treated the matter as urgent by acting timeously and if there is a delay to give a good and sufficient reason for such a delay.
- d) The relief sought should be of an interim nature and proper at law.

From these authorities, it is clear that the issue of timing is significant.

*In casu*, what triggered the urgent application is the unlawful pegging and trenching taking place on the property, after the respondents came back on the property in June 2022.

I did not hear the respondents address much on this aspect, in oral submissions which addressed this point *in limine*. Focus appeared to be on the letter of 21 December 2021, wherein the Ministry is requesting the ZRP, Waterfalls Police Station, to assist in removing the invaders. The respondents are questioning the authenticity of the letter. It is not clear on what basis. This is an official letter, bearing the Ministry’s letterheads and datestamp. It is simply a request for

police assistance. It shows that the applicant was allocated the property in question by the Ministry, and is facing challenges from occupiers who have no similar allocation.

If anything, the letter lends weight to the applicant's averment that efforts were made to remove the respondents earlier on, in December 2021.

This position is corroborated by averments in the opposing affidavit para(s) 3.8 -3.9. These para(s) talk of the police arriving at the scene at the end of December 2021. The averments however, refer to a character who is not part of the pleadings - one Richard Chabaya. It is not clear why respondents have not bothered to have this person joined to the pleadings, if they allege he is the one behind all efforts to evict them from the property.

Be that as it may, the significant point to note is that the trenching and pegging caused alarm in the applicant's camp, who was in possession of approved plans for the development of the area.

The pleadings show a whole lot of official documents relating to applicant's interest in the property. These include;

- (i) The certificate of Incorporation of applicant as a registered corporate entity
- (ii) A resolution authorizing the deponent to the applicant's founding affidavit to attend to all legal matters concerning the property
- (iii) The offer letter from the Ministry
- (iv) Valuation of the property from the Ministry
- (v) Approval of lay out plans by the Ministry
- (vi) Approval of survey of the stands on the property.

It is significant to note the approval of survey of the stands is classified as "very urgent" by the Ministry.

Against all this, the respondents have no single document to show. They simply took occupation of the property.

The trenching and pegging, if unchecked, will disrupt the land development plans, especially the surveying, that has been approved by the Ministry. That, in my view, constitutes irreparable harm to the applicant's development plans.

In the event that the provisional order is confirmed, the property would already have been trenched and most probably some structures put up. One might want to argue that the trenches can

be back-filled and any structures created demolished. Why go that far, when the whole process can be put on hold pending the return day, when a determination will be made on the parties' substantive rights?

If the provisional order is discharged, then the respondents can proceed with whatever plans they have on the property. The balance of convenience favours a moratorium on construction projects, which preserves the subject matter of the dispute, until the parties' rights are substantively determined.

So, it seems to me that the requirements for urgency, as set out in the cases cited, are all met in the instant case.

In the circumstances, I am unable to uphold the point *in limine* that the matter is not urgent.

(ii) **Locus Standi**

The respondents aver that the applicant has no *locus standi in judicio* to bring this application because it does not own the property in question. They contend that only a person with real rights can bring such an application.

The applicant, on the other hand, avers that it has *locus standi*, on the basis of the real and substantial interest test or principle. It contends that once it is established that a person has a real and substantial interest in the subject matter of a suit, then that person has *locus standi*. In this regard, the applicant refers to a number of case authorities. These include *SA Optimetrie Association and Frames Distributers* 1985(3) SA 100, *Stevenson v Minister of Local Government and National Housing & Ors* SC 38-02, *Jameson Zvidzai Timba v Chief Elections Officer and Ors* SC 69/15.

Under urgency, it has been shown that the applicant has been given an offer letter by the Ministry. Its plans for a housing development project have been approved. Substantial documentation is attached to the application, showing the nature of the interest applicant has in the property.

In my view, applicant has established requisite legal interest in the matter to entitle it to bring the instant suit.

Again, this point *in limine* lacks merit.

**(iii) The offer letter is invalid**

Under this point, the respondents make the bold and bald averment that the whole application is a fraud. The entity called Full Task Project Managers is part of a fraudulent scheme, in collusion with Ministry officials, to fraudulently benefit from the property.

All that can be said under this point is that the respondents have made bald and unsubstantiated assertions. They have not explained why they have not sought joinder of the Ministry if they allege that its documents are fraudulent. Documents have been produced by the applicant which, on the face thereof, show that it was offered the property for purposes of housing development.

To the contrary, no documentation has been shown justifying respondents' occupation of the property.

**(iv) Material Disputes of fact**

This point is closely tied to the one on urgency. The respondents aver that there is lack of explanation, under urgency, as to whether the respondents were ever removed from the property. The applicant did not explain how and who applied for the land in question. As already indicated, attached to the application is substantial documentation related to the property. This documentation constitutes *prima facie* evidence of applicant's rights in the property. Nothing has been produced by the respondents to controvert it. There is only their bald assertion that the documentation is part of a fraudulent scheme to drive them out of the property.

It is my considered view that the preliminary points raised lack merit and cannot be upheld. I now turn to the merits. The merits, essentially, are concerned with whether the requirements for an interim interdict have been met.

The same cases considered under the question of urgency set out these requirements. These are;

- (i) A clear or *prima facie* right, though open to some doubt.
- (ii) Well grounded apprehension of irreparable harm
- (iii) The absence of any other satisfactory remedy
- (iv) Balance of convenience

It is my further considered view that the above requirements have been canvassed under urgency. Indeed, the parties' submissions under merits were much briefer, taking into account the

same points have been ventilated in submissions on whether or not the matter is urgent. It often happens that in arguing urgency, the merits on the basic requirements for an interim interdict are inevitably traversed.

It has been shown that the applicant has documents that show, at the very least, a *prima facie* right on the property, emanating from the offer letter and documents that followed thereafter. It has been found that there is an apprehension of irreparable harm if the unauthorized digging of trenches goes on. It would render it extremely difficult, if not impossible, for the applicant to implement its housing plans should final relief be granted in its favour.

In this regard, the balance of convenience leans in favour of granting interim relief. The documents from the Ministry classify surveying of the stands as “very urgent”. In the face of the unauthorized activities of the respondents, there is no alternative relief other than an urgent interim order.

Having said this, there is one final issue that needs to be clarified and resolved. It concerns the nature of the relief sought by the applicant under “Terms of the interim order sought.”

Paragraphs (3) and (4), read together, seek the eviction of the respondents from the property. This is final relief. It has been argued, under the issue of urgency, that such relief is incompetent, applicant cannot seek what sounds final in an interim order, which is granted on the basis of *prima facie* evidence.

The final order seeks a declaratur that the respondent’s occupation of the property is unlawful. So, confirmation or discharge of the interim order will definitively pronounce on the substantive rights of the parties. From that pronouncement, eviction may be pursued, depending on whether or not the provisional order is confirmed.

I am therefore unable to incorporate para(s) 3 and 4 into the interim relief. This means the application only partially succeeds, to the extent of granting interim relief as per para(s) (1) and (2) There will be para(3), ordering that costs be in the cause.

It is accordingly ordered that;

**TERMS OF FINAL ORDER SOUGHT**

That you show cause to this Honourable Court why a final order should not be made in the following terms:-

1. The provisional order be and is hereby confirmed.
2. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents be and are hereby declared unlawful occupiers or claimants of Saturday Retreat Stand measuring 14 hectares known as Stand Numbers 23401 to 23601 and 23603 to 23631 Saturday retreat.
3. Respondents occupation of Stand Numbers 23401 to 23601 and 23603 to 23631 Saturday Retreat Waterfalls, Harare be and is hereby declared unlawful.
4. The Sheriff of Zimbabwe be and is hereby authorized to demolish any structure or improvement, building or developments that is established or that shall be established on applicant's property without its written consent or authority.
5. The 7<sup>th</sup> respondent is empowered to arrest anyone who shall defy this order.
6. 1<sup>st</sup> to 6<sup>th</sup> respondents be ordered to pay costs of suit should any of such respondents oppose this application.

**TERMS OF THE INTERIM ORDER GRANTED**

That pending the determination of this matter the applicant is granted the following relief:-

- 1) The 1<sup>st</sup> to 6<sup>th</sup> respondents, their agents, subsidiaries if any or anyone acting through them or at their behest be and are hereby interdicted from disrupting applicant and its agents undisturbed use of applicant's land situated in Saturday Retreat Waterfalls, Harare measuring 14 hectares, being Stands Number 23401 to 23601 and 23603 to 23631.
- 2) The 1<sup>st</sup> to 6<sup>th</sup> respondents, their assignees, agents and subsidiaries if any and anyone acting through them or at their behest or instigation be and are hereby prohibited from harassing, threatening or physically harming the applicant's agents or assignees or instigate any third parties to interfere in any manner with the applicant's land development operations currently undergoing.
- 3) Costs shall be in the cause.

**SERVICE OF PROVISIONAL ORDER**

The Sheriff of Zimbabwe, the applicant or its legal practitioners be and are hereby authorized to serve this Provisional Order upon the respondents or their legal practitioners with the assistance of the Zimbabwe Republic Police where necessary.

*Madzima and Company Law Chambers*, applicant's legal practitioners  
*Koto and Company*, respondent's legal practitioners