

LEROY GOLIATH  
and  
SIMBARASHE CHAITEZVI  
and  
LARRY MAKAHAMADZE  
and  
ERIC MAPONGA  
and  
CLEVER GWATIRISA  
versus  
ELEGIA GANDIWA  
and  
MINISTER OF LOCAL GOVERNMENT,  
PUBLIC WORKS & NATIONAL HOUSING N.O  
and  
CITY OF HARARE

HIGH COURT OF ZIMBABWE  
MUCHAWA J  
HARARE, 7 & 29 June, 28 July, 3 August, 18 October 2022 & 9 March 2023

**Urgent Chamber Application**

Mr *F Siyawareva*, for the applicants  
Mr *S Sibanda*, for 1<sup>st</sup> respondent  
Mr *C Chibidi*, for 2<sup>nd</sup> respondent  
No appearance for the third respondent

**MUCHAWA J:** On the 25 of October, I handed down an *ex tempore* ruling in which I dismissed the applicants' claim. At that point, the applicants were represented by James Majatame Attorneys At Law. It appears that the applicants have now secured representation from Mugiya and Muvhami Law Chambers who have written requesting an upliftment of the judgment. This is a curious fact as Mugiya and Muvhami Law Chambers were representing the first respondent at the time the matter was heard before me, as evident from the record. It is improper for Mugiya and Muvhami Law Chambers to switch camp at this stage, as their letter seems to imply.

Below I simply reproduce the ruling which was read out to the parties at the relevant time wherein Mugiya and Muvhami Law Chambers were present for the first respondent.

The applicants filed an urgent chamber application for a spoliation order, an interdict and a *declaratur*, in which in the interim they wanted the following relief;

1. Pending the finalization of this matter, the first respondent be and is hereby ordered not to carry any operations on the greenway at Ongar Avenue and Maldon Road, Ongar Avenue and Stoney Road, and Newport Road and Stoney Streets stand 1388 Mabelreign Township.
2. That the first respondent be and is hereby ordered not to interfere with applicants' peaceful and undisturbed possession of greenways at Ongar Avenue and Maldon Road, Ongar Avenue and Stoney Road, and Newport Road and Stoney Streets stand 1388 Mabelreign Township.
3. Costs be in the cause.

When the matter was initially heard, an interim order was granted by consent, which directed as follows;

1. That the second respondent carries out an inspection *in loco* in the presence of all the parties
2. The second respondent shall file a report indicating whether or not the following stands 1388, 3540, and 3375 fall on the greenway.
3. The second respondent to also submit in that report the current land use plan for those stands, whether or not there was change of land use, if so, whether due process was followed
4. All parties to stop any further developments pending compilation of the report within two weeks.

The final relief sought is as follows;

1. That pending consideration of the applicants' objections against change of land use, first, second and third respondents be and are hereby interdicted from changing land use at greenways between Ongar Avenue and Maldon Road, Ongar Avenue and Stoney Road and Newport Road and Stoney commonly known as stand 1388 Mabelreign Township.

2. The first respondent be and is hereby ordered to permanently restore applicants of their peaceful and undisturbed possession of walls on Ongar Avenue and Maldon Road, Ongar Avenue and Stoney Road and Newport Road and Stoney streets stand 1388 Mabelreign Township.
3. The first respondent be and is hereby ordered to reconstruct walls that she caused to be destroyed without a court order within seven days of this order.
4. The first respondent be and is hereby ordered to cease all developments on greenway and remove its machinery.
5. Construction of residential houses be and is hereby declared unlawful for failure to comply with the requirements of developing on any land in City of Harare and in contravention of good urban planning.
6. The first, second and third respondents be and are hereby ordered to pay costs of suit on a legal practitioner and client scale, with one paying the others to be absolved.

On the return day, with the report now at hand, it is clear that the stands in issue fall within the greenway. The current land use was duly changed to residential. Some of the applicants filed objections at the relevant time. The application for change of reservation was done on 24 October 2013. Authority was granted on 24 October 2013. Consultations of abutting property owners and adverts were placed in the Herald Newspaper in 2014. There were objections then and a response from the Department of Physical Planning. There was then an approval of the application by the Minister. It was stated that some of the applicants had then appealed to the Administrative Court and lost. This is however not on record.

The applicants cannot, now in 2022, seek to have their objections to change of land use considered. This was done in 2014. They are said to have appealed.

If the first respondent is the owner of the stands in question, as the papers show and the applicants had built walls on these stands, who was the despoiler?

To succeed in a final interdict, the applicants have to show a clear right. In the light of the evidentiary support for first respondent, they have failed to establish this. They cannot therefore succeed in interdicting the first respondent from conducting developments on a stand she has a clear right to.

The prayer for a *declaratur* that the construction of residential houses is unlawful when due process was followed in terms of the Regional Town and Country Planning Act [*Chapter 29:12*] cannot be sustained. The Minister gave approval in terms of s 47 (6). The applicants' initial concerns were that the first respondent had no proof of ownership of the land. This was provided in the report from the second respondent. If the applicants had erected walls for security purposes, this has been overtaken by events as the new owner is in place. Issues of infringement of environmental rights and non-compliance with town planning laws are all addressed in the report. The first respondent's actions cannot qualify as unlawful in the circumstances.

Accordingly, the urgent chamber application for a spoliation order, an interdict and a *declaratur* be and is hereby dismissed. Each party bears its own costs.

*James Majatame Attorneys At Law*, applicants' legal practitioners  
*Mugiya & Muvhami Law Chambers*, first respondent's legal practitioners