

MASLINE BERE
versus
DENIAS KAGANDE
and
HARARE CITY COUNCIL
and
DIRECTORS OF WORKS FOR CITY PLANNING AND DEVELOPMENT
and
ENVIROMENTAL AGENCY

HIGH COURT OF ZIMBABWE
KATIYO J
HARARE, 4 October 2022 & 19 October 19 2023

Urgent Chamber Application

MI Mutero with C Makorokotera, for the applicant
T Madzvamuse, for the 1st respondent
T Chiwanza, for the 2nd and 3rd respondents
No Appearance for the 4th respondent

KATIYO J : The applicant approached this court seeking a prohibitory interdict in terms of r 60(1) of the High Court Rules, 2021. The court granted the order and the first respondent requested reasons for granting the order:

The provisional order sought reads as follows:

“Terms of the Final Order Sought

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

1. First respondent contractors and all those who act through him be and are hereby interdicted from constructing an industrial structure on No 6 Glenara Avenue at a property adjacent to No 4 Gleanara Avenue, Eastlea, Harare.
2. The first respondent shall pay the costs of this application on the scale of legal practitioner and client.

Interim Relief Granted

Pending the determination of this matter the applicant is granted the following relief:

1. First respondent, contractors and all those who act through him be and are hereby interdicted from constructing an industrial structure on No. 6 Glenara Avenue at a property adjacent to No 4 Glenara Avenue, Eastlea, Harare.
2. First respondent be and is hereby ordered to remove and demolish the industrial structure already constructed at No 6 Glenara Avenue within ten (10) days of this court order.
3. In the event that the first respondent fails, refuses and or neglects to comply with paragraph 2 above, the Sheriff for Zimbabwe be and is hereby empowered and directed to demolish any and all illegal structures on the said property.
4. Each party shall bear its own costs.

Service of the Provisional Order

That this Provisional Order be served on the respondents by the applicants' legal practitioner or the Sheriff for Zimbabwe.”

Brief Facts

The applicant resides at stand number 12712 Salisbury Township of Salisbury (herein referred to as the property). The first respondent is applicants' neighbour. The first respondent commenced construction of an industrial structure in a residential area adjacent to the applicant's property aforementioned. The applicant lodged a complaint to the second respondent's office on 19 the September 2022 demanding that the first respondent put the construction on halt and subsequently take down the already erected pillars since the same constituted a nuisance to the applicants' property. On 21 September 2022 the second respondent inspectorate team came to the construction site and informed the first respondent to stop construction. However, the first respondent resumed construction on the property on 26 September 2022 without any further communication to the applicant. The first respondent stated that the second respondent did not order him to stop but had told him to apply for a permit after he had payed a prescribed fine. The first respondent admits that he doesn't have a permit but that his application is still pending before the second respondent.

Urgency

In the case of *Mundikwidza v Sithole N.O & Anor [2021] ZWMTHC 21 MWAYERA J* stated that:

“It is settled that a matter is deemed urgent if the party bringing up the matter treats it as urgent. The nature of relief and cause of action is central in determination of whether or not a matter is urgent”

Moreso in *Document Support Center (Pvt) Ltd v Mapuvire 2006 (2) ZLR 240*

MAKARAU J (as she was then) on p 243 stated as follows;

“Without attempting to classify the causes of action that are incapable of redress by way of urgent application, it appears to me that the nature of cause of action and relief being sought are important considerations in granting or denying urgent application”

Furthermore, in *Gwarada v Johnson & Ors* 2009 (2) ZLR 159 the court remarked as follows:

“Urgency arises when an event occurs which requires contemporaneous resolution, the absence of which would cause extreme prejudice to the applicant. The existence of circumstances which may, in their very nature be prejudicial to the applicant is not the only factor a court has to take into account, time being of essence in the sense that the applicant must exhibit urgency in the manner in which he reacted to the event or the threats whatever it may be.”

In this case the applicant timeously brought this application before the court and thus showing that the matter was very urgent to them and they treated it as such. The cause of action is also very urgent as the building that the first respondent is constructing is a hazard to him and his neighbors. Therefore, the court finds this matter to be urgent.

Merits

The first respondent is constructing an industrial structure using heavy cast iron and concrete in a residential area, and he is doing so without a permit. The applicant is within her rights as that structure is a disaster awaiting to happen and it has been built to where it is now without the inspection of second respondents engineers to ensure that the structure is safe. The first respondent doesn't have a permit to construct that structure. The fact the respondents says that he made an application and therefore is allowed to build is When one makes an application, it is either granted or denied and until the application is finalized you have to stop all construction. Section 26 (3) of the *Regional Town and Country Planning Act*.

[*Chapter 29:12*], the respondent was supposed to notify the applicant of his intention to develop his property. More so the construction of the structure is contravening the *Model Building By laws*, 1977. This court cannot sanitize the illegality by the first respondent by allowing that structure to stand awaiting outcome of the permit. The nature of the structure is that of an industrial area and not of a residential area. It is a danger to not only the first respondent but to feel community at large.

In conclusion I find it unusual for one to appeal against a finding that a matter is urgent. He is quite aware that he has no authority from the City fathers of Harare.

Having perused papers filed of record and hearing from all parties. **IT IS ORDERED THAT:**

“The Provisional order is granted as ammended.”

Sinyoro and Partners, first applicant’s legal practitioner
Karuwa and Associates, respondent’s legal practitioner