

TRUSTEES FOR THE TIME BEING FOR
CHITUNGWIZA RESIDENTS TRUST
and
ALICE KUVHEYA
versus
CHITUNGWIZA MUNICIPALITY
and
CITY OF HARARE
and
RUWA LOCAL BOARD
and
EPWORTH LOCAL BOARD
and
MINISTER OF LOCAL GOVERNMENT, PUBLIC WORKS
AND NATIONAL HOUSING
and
MINISTER OF STATE FOR PROVINCIAL AFFAIRS & DEVOLUTION
and
THE COMMISSIONER GENERAL OF POLICE N.O
and
MINISTER OF HOME AFFAIRS AND CULTURAL HERITAGE
and
ENVIROMENTAL MANAGEMENT AGENCY

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 15 & 18 August and 21 September 2022

Urgent Chamber Application

Mr *T J Chivanga*, for the applicants
N Mangare with *T Kabaya*, for the 1st respondent
Chikwamba, for the 2nd respondent
T D Muchikadowo, for 3rd respondent
No appearance, for the 4th respondent
I Salanje, for the 5th, 6th, 7th & 8th respondents
No appearance for the 9th respondent

TAGU J: This is an urgent chamber application for an interim order to bar the respondents from carrying out and/or continuing their unlawful joint operation to demolish illegal structures in the Chitungwiza and Harare areas. The final order seeks a declaratur to the effect that the intended demolitions are unlawful for failure to obtain the necessary legal requirements to undertake the contemplated actions.

The circumstances are that on the 1st of June 2022, the Secretary for Provincial Affairs and Devolution in the office of the sixth respondent issued a statement notifying of the Provincial Task Force comprising of the first, second, third, fourth, sixth, and ninth respondents was setup for the purposes of removing all illegal invaders, demolish any illegal structures and arrest all land invaders amongst other things in Chitungwiza and Harare provincial areas. Following the statement, on or about the 13th of July 2022 the respondents embarked on the unlawful joint operation, which involves forcible evictions, and potentially involves the loss of life and damage to property. The applicants claim that the operation is unlawful as the respondents have not given the residents adequate notice of the evictions and more significantly do not have a court order permitting the aforesaid actions as obliged in terms of s 74 of the Constitution of Zimbabwe.

The respondents unanimously submitted that there is no urgency in this case which was self-created, that the applicants have no locus standi to represent the residents as shown by lack of any resident who submitted an affidavit supporting the filing of this matter, or confirming that his/her residence was forcibly demolished and were evicted unlawfully. The other issue is that there was a misjoinder of the City of Harare as it did not issue any notices and the Zimbabwe Republic Police which is only there to enforce law and order. The certificate of urgency was attacked on the basis that the legal practitioner who certified this matter as urgent did not apply his/her mind and ended up repeating verbatim what the applicant said in its founding affidavit. he/she failed to explain why no action was taken until the day of reckoning arrived. They said the urgency in this matter is self-created and not the one contemplated by the Rules as stated in the case of *Kuvarega v Registrar General and Anor* 1998 (1) ZLR 188 (H) at 193 of the cyclostyled judgment where CHATIKOBO J said:

“What constitutes urgency is not only the imminent arrival of the day of reckoning; a matter is urgent, if at the time of the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the dead-line draws near is not the type of urgency contemplated by the rules. It necessarily follows that the certificate of urgency or the supporting affidavit must always contain an explanation of the non-timeous action if there has been any delay.”

The applicant submitted that these demolitions and evictions are ongoing. The respondents submitted that the need to act arose at least on two occasions, that is, as far back as 2020 or 1st June 2022 but the applicant only filed the present application over a month after the last statement was made on the 10th of August 2022.

What is clear is that the first statement announcing demolitions of illegal structures was made some time in 2020. Nothing was done then and if anything was done it is not clear what was done thereafter as the founding affidavit does not proffer any explanation. The counsel for the Applicant could only say the matter is pending and it is not clear what is pending. Even if I am to give the applicant the benefit of the doubt in respect of the notices and enforcement orders issued as far back as the 2020 notice, it is difficult to understand what the applicant has been doing from the 1st of June 2022 to the 10th of June 2022 when the present application was only filed on the 29th of July 2022, over a month after the statement was issued. The certificate of urgency does not explain what has been happening causing a delay to file the present application. Equally, the founding affidavit does not explain what caused the delay. Urgency in this matter is self-created and it is not the kind of urgency contemplated by the Rules. I therefore uphold the point *in limine*.

Having found that there is no urgency in this matter there is no need to labour myself on the rest of the points *in limine*.

IT IS ORDERED THAT:

1. The application is struck off the roll of urgent matters.
2. There is no order as to costs.

Scanlen & Holderness, first respondent's legal practitioners

Global Investments, second respondent's, legal practitioners

No appearance for the fourth respondent

Mugomezza & Mazhindu, third to eighth respondents' legal practitioners

No appearance for the ninth respondent