

SHEPHERD MURAHWI  
and  
DEBORAH MURAHWI  
and  
PETER SIGAUKE  
and  
OZWELL C. MASARA  
and  
GRACE MASARA  
and  
EDMORE MUKAKAVARI  
and  
TAPIWA T. MUKAKAVARI  
versus  
MS MAGWENZI  
and  
ARROSUM CONSTRUCTION (PVT) LTD  
and  
DIVINE HOMES (PVT) LTD  
and  
NICANOR ENTERPRISES (PVT) LTD

HIGH COURT OF ZIMBABWE  
BERE J  
HARARE, 13, 23, 24 and 25 August 2010

*J. Mabulala*, for the applicant  
*R.F. Mushoriwa*, for the first and second respondents  
*G. Chikumbirike*, for the third to fifth respondent

BERE J: When we adjourned yesterday I had asked counsel to prepare heads of argument to give the court a broader and a more informed perception of the issues that occupied all of us yesterday. Immediately the parties had left my chambers and as I embarked on my crash research exercise, I realized I was able to come up with a decision unaided by counsel.

I must emphasise though that, when legal issues arise and or any other issues arise for deliberation before the court our legitimate expectation is that legal practitioners being officers of this court strive to retain their concomitant duties to both the court and their clients. We do not wish legal practitioners to do the work for us but merely to assist us arrive at just decisions. It is not a question of striving to get a favourable decision by hook or crook or through unprofessional conduct. That avenue has short lived benefits and will not add value to the stature of any legal practitioner.

The thrust of Mr *Chikumbirike*'s point in *limine* was that the applicants were not on firm ground in bringing the interim interdict sought particularly against the third and fifth respondents because they did not have a real right to justify their action. He passionately argued it was an elementary principle of our law that if one does not have a real right he is incapacitated from initiating an action for an interim relief as sought by the applicants.

Counsel for the first and second respondents associated himself with the position adopted by Mr *Chikumbirike*. He elaborated on the position by suggesting that the applicants being holders of personal rights could not bring the urgent application they had sought before the court for determination.

Counsel for the applicants' position was that the applicants' rights were under siege and were therefore entitled to bring this action. He reasoned it was for the benefit of all the parties involved that this matter be resolved. It was also his contention that the applicants did not need to establish the existence of a real right against the respondents in order to justify the granting of an interim interdict.

The legal position governing the granting of interim relief in the form of interim interdict is not a subject of speculation. It is settled law and the elementary position is not as espoused by Mr *Chikumbirike* and blindly supported by one *Ronald Farai Mushoriwa* for the first and second respondent. The practice of law is not a question of guess work. It is an exercise that is rooted in well established legal principles most of which have withstood the test of time.

The requirements which an applicant for interim relief must satisfy before he can be granted such relief and which have been restated on countless occasions are as follows:-

The applicants in this case must satisfy the following:

- “ a) that the right which has prompted this urgent application and which they seek to protect is clear or if not clear is *prima facie* established though open to some doubt;
- b) that if that right is only *prima facie* established, there is a well grounded apprehension of irreparable harm to the applicants if the interim interdict is not granted and the applicants ultimately succeed establishing their right.
- c) that the balance of inconvenience favours the granting of interim relief in favour of the applicants and
- d) that the applicants have no other satisfactory remedy”

See *Airfield Investments (PRIVATE) Limited v The Minister of Lands and 3 ors* Jdt no SC 36/04 at p 9, *L.F. Boshoff Investments (Pty) Ltd v Cape Town Municipality* 1969 (2) SA 256 AT 257.

If these are the legal requirements, then it follows that the whole basis of raising the points in *limine* by both counsels for the respondents was both mischievous and a deliberate attempt to poison the court's mind. It was calculated to mislead the court.

The points in *limine* raised by both counsels are accordingly dismissed as they do not have any legal foundation.

The case must be considered on merits.

*Mabulala & Motsi*, applicants' legal practitioners

*Mawere & Sibanda*, first and second respondents' legal practitioners

*Chikumbirike & Associates*, third to fifth respondents' legal practitioners