

NICHOLAS DHINGANI
versus
THE COMMISSIONER GENERAL OF POLICE

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 19 February 2014

Unopposed application

Ms SC Thembani, for the applicant
Respondent in default

MATANDA-MOYO J: On 19 February 2014 I dismissed an application by applicant for confirmation of a provisional order granted on 13 December 2005. These are the reasons. This is an application for confirmation of a provisional order granted on 13 December 2005. The salient facts are that on 24 November 2005 the applicants, under a certificate of urgency, instituted proceedings for the granting of a provisional order. After its being granted, no action was taken in pursuance thereof until 6 February this year, nine years down the line, when the applicant set the matter down for confirmation of the provisional order.

When the matter came before me on 19 February 2014 I raised the question of the delay with counsel. To that end no explanation was proffered. This can be compared to a litigant who duly serves summons but takes no action in pursuance thereof until the summons are stale. A litigant is to prosecute its case with due expedition within a reasonable time.¹ There is no rule of court which lays down the period beyond which a summons if not pursued, becomes stale, likewise there is no rule of court that makes a provisional order stale. It is within the discretion of the court whether or not to allow proceedings to continue in the face of delay in the prosecution of the matter.

¹ Herbstein & van Winsen, *Civil Practice in the Supreme Court of South Africa* 4ed by van Winsen colliers *Loots and Dendy* at p(p) 425-6.

In the present case I am not prepared to exercise any discretion in favour of the present applicant. The provisional order is so stale as to be valueless; see the case of *Bernstein v Bernstein* 1948 SA 705 @ 207, *Molala v Minister of Lands and Order and Anor* 1993 I SA 673 (W), and the trenchant and pertinent remarks of FLEMMING DJP at 676-79 concerning delay in prosecution generally.

Accordingly, I dismiss the application.

Mugabe Legal Counsel, applicant's legal practitioners