

JONATHAN KANESHONGA

versus

MINISTER OF LOCAL GOVERNMENT, PUBLIC WORKS AND NATIONAL HOUSING,
N.O.

and

THE PERMANENT SECRETARY OF THE MINISTRY OF LOCAL GOVERNMENT,
PUBLIC WORKS AND NATIONAL HOUSING, N.O.

and

THE PRINCIPAL DIRECTOR OF TRADITIONAL LEADERS DEPARTMENT IN THE
MINISTRY OF LOCAL GOVERNMENT, PUBLIC WORKS AND NATIONAL HOUSING,
N.O.

and

MIKE KUTYAVAZUNGU

IN THE HIGH COURT OF ZIMBABWE

MATANDA-MOYO J

HARARE, 30 September 2014 and 2 October 2014

Urgent chamber application

S.M. Guwuriro, for the applicant

Ms C. Garise-Nheta, for the 1st, 2nd & 3rd respondents'

Ms R. Zvimba, for the 4th respondent

MATANDA-MOYO J: This matter is for determination of whether or not the application before me is urgent. The brief background of the case is that on the 17th of September 2014 this urgent chamber application was allocated to me. On the same date after reading the papers I endorsed on the record that the matter is not urgent. On 24 September 2014 the applicant's legal practitioners wrote to the Registrar seeking an opportunity to argue the urgency of the matter before me. Their letter was brought to my attention on 26 September which was a Friday and I therefore directed that the matter be set down on 30 September 0900hrs.

The interim relief sought is stated as follows:

“INTERIM RELIEF GRANTED

Pending determination of this matter, the applicant is granted the following relief-

1. That the 1st to 3rd respondents be and are hereby interdicted from forwarding the name of the 4th respondent to the President of the Republic of Zimbabwe pending the

completion of a new selection process to be conducted in terms of the Traditional Leaders Act [*Cap 29:17*]"

TERMS OF FINAL ORDER SOUGHT.

1. That the 1st to 3rd respondents be interdicted from forwarding the name of the 4th respondent to the President for appointment.
2. The 1st to 3rd respondents be ordered to recall a selection process for the appointment of Chief Nemangwe forthwith.
3. The 1st to 3rd respondents be ordered to comply with the Traditional Leaders Act [*Cap 29:17*] in the selection process for Chief Nemagwe.
4. That respondents pay costs of suit on a higher scale of legal practitioner and client scale.

At the present moment I have to determine whether the applicant has established that it will suffer irreparable harm if this application is not treated urgently.

Looking at the certificate of urgency I found it to be mainly pregnant with the merits of the case which are the province of hearing of the main matter. From the certificate of urgency one cannot help wonder as to where the urgency is, there is no allusion to time frames or dates so as to justify why the case must by pass time frames of ordinary court cases. See *Gifford v Muzine and Ors* 2007 2 ZLR 131 (A) @ 134H-135H where KUDYA J had this to say about urgent application.

"All the applicant has to show is that the matter cannot wait the observance of court rules...."

It seems the meeting from which the disputed selection arose was held in January 2014. Surely the applicant ought to have filed his summons claiming the relief that he is seeking instead of filing an urgent application. By now the matter would have been at an advanced stage.

The majority of cases cited by applicant's legal practitioners are clear that in succession cases the aggrieved party initiates the legal process by filing summons. See *Kidwell Machaka v Minister of Local Government, Urban and Rural Development* where applicant in that case filed summons seeking a declarator.

In the case of *Murenga Edward Chikwamba v Matius Mahande Mukunga & 3 Ors* HH366-13 the applicant firstly filed an ordinary action by way of filing summons commencing action. *Mbedzi* case HB145/11 was an ordinary application.

The applicant's representatives cited the case of *Econet Wireless P/L v Trust Co Mobile Proprietary Ltd & Ors* SC43/13 @ 14 whose import is that if a matter cannot wait then the matter is urgent. I however noted that the applicant waited from January 2014 when he learnt of the anomalies in the selection to September 2014 to file an urgent chamber application. No explanation has been tendered as to the 9 months inactivity. If the matter waited from January 2014 to date surely such matter cannot be treated as urgent.

Ms *Garise-Nheta* and Ms *Zvimba*'s argument that there are other remedies available to applicant as provided for in s 283 (c) (ii) of the Constitution of Zimbabwe finds favour with me. It is trite law that a litigant who comes to court on an urgent basis must be able to show the court that no other remedies are at his disposal. The applicants have failed dismally to justify urgency of the matter.

In the result I refuse to hear the matter on an urgent basis. The applicant is ordered to pay costs of the hearing.

Kachere & Guwuriro, applicant's legal practitioners
Attorney General's Office, 1st, 2nd & 3rd respondent's legal practitioners
Mugiya & Macharaga, 4th respondent's legal practitioners