

PETER MAKANI  
and  
THOMAS MARUMISE  
and  
PHILIP CHIKEYA  
and  
MEMORY NGWARAI  
and  
BEATRICE PANA VANHU  
and  
TICHAONA NYAMHUNGA  
versus  
EPWORTH LOCAL BOARD  
THE MINISTER OF LOCAL GOVERNMENT  
and  
RURAL AND URBAN DEVELOPMENT  
and  
THE COMMISSIONER GENERAL OF POLICE  
and  
THE CO-MINISTERS OF HOME AFFAIRS  
and  
THE ATTORNEY GENERAL ZIMBABWE

HIGH COURT OF ZIMBABWE  
MATHONSI J  
HARARE, 7 October 2014 and 9 October 2014

**Urgent Chamber Application**

*T. Bhatasara*, for the applicants  
*D. Muzavazi*, for the 1<sup>st</sup> respondent  
*Ms C. Garisenheta*, for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents  
5<sup>th</sup> respondents in default

MATHONSI J: There can be no doubt whatsoever in the minds of all well-informed persons that this country currently faces extremely serious problems relating to poverty, unemployment and more importantly housing. The latter problem has, in recent history, manifested itself in illegal occupations of municipal land by hordes of citizens who are without

shelter and are, more often than not, being encouraged by a new breed of people bent on cashing in on the misfortunes of these home-seekers and have since been christened in common parlance as land barons. Illegal settlements are sprouting all over the place with indecent abandon under the watch of local authorities charged with the responsibility of superintending urban settlements, who have been generally complicit in the whole issue. Having allowed these illegal settlements to take root, at the expense not only of the settlers but also of organized urban planning and public health, local authorities are now waking up and, by force and power, demolishing the structures without regard to the law and human dignity.

The 5 applicants are some of several illegal settlers who allocated themselves (or someone else claiming to have authority which they did not have allocated them) stands at a part of Epworth, a sprawling settlement some 12 kilometres out of Harare, called Stoob. It is an informal settlement at which desperate homeseekers have helped themselves to land and erected unapproved houses. The first respondent is the local authority assigned the responsibility of managing that land and ensuring service delivery for the benefit of the inhabitants. It falls under the second respondent.

The applicants have come to court on an urgent basis seeking the following relief:

“TERMS OF THE FINAL ORDER SOUGHT

1. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents and any other person acting through them be and is hereby interdicted from demolishing the homes or evicting the applicants from the Stoob area of Epworth without a court order.
2. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents are interdicted from interfering or obstructing applicants efforts to rebuild their houses in the Stoob area.
3. The demolition of applicants’ homes in the Stoob area constituted a violation of their rights as provided for in section 50, 51, 52, 53, 56, 57, 68, 74, 76 and 77 of the Constitution of Zimbabwe.
4. The 1<sup>st</sup> – 4<sup>th</sup> respondents to pay cost(s) of suit.

TERMS OF THE INTERIM RELIEF GRANTED

Pending the return date in this matter, the following interim relief be and is hereby granted;

1. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents and all those acting through them be hereby interdicted from demolishing the houses and/or evicting applicants and residents located in the Stoob area of Epworth.”

Of course the draft provisional order presented by the applicants is not in Form 29 C as provided for in r 247 of the High Court of Zimbabwe Rules, 1971. This court has repeatedly bemoaned the failure by legal practitioners who draft court papers on behalf of litigants to merely reproduce precedents provided for them in the rules of court. Quite often they invent their own forms in the face of peremptory provisions of the rules. Legal practitioners are reminded to take time to correct their precedents of court processes to ensure compliance with the rules. There can be no justification whatsoever for failure to do that which results in judges spending a lot of time correcting draft orders before granting orders.

The applicants admit that they settled themselves at the Stoob area of Epworth along with other people. They constructed houses which were however razed down by the first respondent assisted by the police in September 2012. They approached the Supreme Court on those demolitions and the matter is now pending in the Constitutional Court in terms of the new constitution. It would appear that although their homes were destroyed, the applicants and other illegal settlers may have reconstructed them and continued living in the informal settlement of Stoob.

What has prompted them to come to court now is the conduct of the first respondent, assisted again by the police, on 26 September 2014. The applicants allege that officers of the first respondent, with police officers in riot gear on tow, descended on them initially during the day and later at night. They allegedly caused mayhem with the police indiscriminately assaulting them causing them to flee in the darkness and went on to demolish houses and other structures. It is said that the police returned on 28 September 2014 at night kicking doors open, assaulting people and arrested 23 people vowing to return to complete the demolitions and evictions of the settlers.

Photographs of demolished structures have been attached to the founding affidavit of the first applicant. They depict a sorry sight of destroyed brick structures with household effects turned upside down and under the rubble.

The respondents, except for the fifth respondent, have opposed the application. The first respondent denies that any evictions and/or demolitions took place. Through its Acting Secretary

Wilton Mhanda who deposed to the opposing affidavit, the first respondent admits visiting the area occupied by the applicants but states that its officers went there to survey stands and allocate them to people who had paid for them as industrial stands. Mhanda states that the applicants and others have allocated themselves stands and now occupy an area which has been set aside for industrial development. After settlement structures were demolished in 2012 the first respondent proceeded to sell stands to individuals. It is only on 25 September 2014 that its officers went to the area to survey and peg the stands which they were then allocating to the purchasers. The exercise was interrupted by the settlers who attacked the officers and police officers who had been called to assist.

Mr *Muzavazi* who appeared for the first respondent tried desperately to dispute the allegations of eviction and demolition. According to him, when the first respondent was conducting surveys and allocations of stands there were people who were “hovering” around who eventually became violent. It is not difficult to understand why the first respondent would like to distance itself from such conduct. It is because local authorities cannot in terms of the new constitutional dispensation, resort to self-help without due process.

There is evidence within the first respondents opposing affidavit pointing to the fact that indeed demolitions and evictions are being conducted. In para 5 of the opposing affidavit of Mhanda, it is stated that the first applicant is “trampling on the law by allocating himself a residential stand in an industrial area.” In para 7 Mhanda repeats that “here we are dealing with people who have occupied industrial stands knowingly”. In paragraph 8.1 he maintains that the settlers pelted his team which was allocating stands with stones “as a way of protecting their own space”. He winds up at para 8.6 by stating:

“Applicants cannot seek to benefit from an illegality and the fact that shelter is a basic right does not entail invasion of any open space. To sanction such occupation will be buttressing an illegality”

The pattern that emerges from this evidence is that the seeming dispute of fact is not a dispute at all and adopting a robust approach, as I am entitled to do, I am able to resolve that dispute. Clearly the applicants are illegal settlers on a piece of land falling under the municipal jurisdiction of the first respondent. They have settled themselves informally on land that has

been earmarked for industrial development. There is no doubt that the first respondent has moved in to remove them from there and to allocate the same land to other people who have paid money. The dwelling houses which the settlers have erected are now being systematically demolished and this is being done without a court order.

Ms *Garisenheta* for the second, the third and the fourth respondent's poured cold water onto the first respondent's nervous attempt to deny the demolitions. She conceded that the applicants are what she called "*mala fide* occupants" of land set aside for industrial development. She conceded further that there are structures that have been constructed although she tried frantically to exculpate the police by suggesting that they attended only for "peace keeping" purposes. In fact through out his opposing affidavit, the third respondent does not deny that demolitions are taking place. He only sought to exonerate the police from conducting them or the forced evictions.

Section 74 of the Constitution of Zimbabwe whose perch is firmly under the Fundamental Rights and Freedoms enshrined in Part 2 of the [Cap 4] on the Declaration of Rights provides:

"74: Freedom from arbitrary Eviction

No person may be evicted from their home, or have their home demolished, without an order made after considering all the relevant circumstances".

While in our jurisdiction we do not have legislation in place, unlike South Africa which has the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998, we do have constitutional provisions governing such issues. Until such time that legislation has been put in place aligned with the new constitution, its provisions protecting the fundamental rights of individuals will always override any other law and must be enforced by courts of law.

There can be no doubt that the applicants are illegal settlers who have arrogated to themselves tracts of land in a municipal area without any regard to the law. There can never be any doubt that such conduct is as unacceptable as it is reprehensible. We cannot allow people to assign to themselves the functions of local authorities of allocating municipal land outside the law. It is conduct that has been allowed to perpetuate over a long period of time out of

expediency resulting in the mushrooming of illegal settlements which were later “regularized” by the authorities and the settlers allowed to assume legal status.

Local authorities must take the blame for the consequences which are regrettably dire indeed for urban planning and structured development. One does not stop to wonder what the local authorities were doing when these illegal settlements were taking root. Now they return after people have turned such places into homes, to demolish those homes and forcibly evict the settlers outside the law.

I must express the view that unlawful occupation of immovable property belonging to municipalities must be discouraged by all means. The effective legal remedy for unlawful occupation of such land is an eviction order. Of course such eviction orders would have to be made with compassion and upon a realization that human beings, no matter how poor, must be treated with dignity, after all s 51 of the constitution provides that every person has inherent dignity in their private and public life and protects that right.

The socio-economic rights that have been incorporated in the new constitution were informed by past experiences which the law giver saw fit to guard against. Municipal authorities which stood *akimbo* as informal settlements mushroomed all over cannot be allowed to now ride on such rights rough shod operating under the cover of darkness to perform forcible evictions and demolitions of houses they allowed to be constructed in broad daylight. They must now follow the law and approach the courts for authority to do so. To allow authorities to proceed in razzmatazz style as they are fond of doing would render nugatory the socio-economic rights enshrined in the constitution.

I conclude therefore that the applicants have made out a good case for the relief sought.

In the result, the provisional order is hereby granted in terms of the draft order, as amended.

*Mupanga Bhatasara Attorney, applicant’s legal practitioners*  
*Mutombeni Mkwesha Muzavazi & Associates, 1<sup>st</sup> respondent’s legal practitioners*  
*Civil Division of Attorney General’s Office, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents’ legal practitioners*