

CHITUNGWIZA MUNICIPALITY
versus
NYATSIMBENEFICIARIES TRUST
and
MAVHUTOMATAMBO
and
ALICE MATAMBO

HIGH COURT OF ZIMBABWE
MWAYERAJ
HARARE, 7 & 9 March 2015

Urgent Chamber Application

J Marume, for the applicant
M Kamdeferwe, for the respondent

MWAYERA J: The applicant approached the court through the urgent book on a certificate of urgency on 12 March 2015. The respondents filed opposition on date of hearing. The applicant in this application sought:

TERMS OF FINAL ORDER

- “(a) the 1st, 2nd and 3rd Respondent and/or any person acting for and through them is permanently prohibited and are to cease building, erecting, developing and/or piling building material and establishing structures on the Nyatsime Cemetery area.
- (b) The Respondent and/or any person acting for and through them be and are hereby permanently prohibited from interfering with the Applicant’s activities in the administration of the cemetery area which include but are not limited to the erecting of the access control mechanisms to the area.
- (c) Upon failure by the Respondents comply with Paragraphs 1 and 2 above, or to demolish their illegal structures within the seven days of granting of this order, Applicant with assistance of the Sheriff and the relevant authorities be allowed to demolish the illegal structures at Respondents’ cost.
- (d) The Respondents jointly and severally with one paying the other to be absolved pay costs of suit on an attorney-client scale”.

INTERIM RELIEF GRANTED

It is hereby ordered that:

- “(a) The 1st, 2nd and 3rd Respondent and any person acting for and through them is prohibited and are to forthwith cease building, erecting, developing and/or piling building material and establishing structures on the Nyatsime Cemetery area pending the finalization of this present application on the return date.
- (b) The Respondents and any person acting for and through them be and are hereby prohibited from interfering with the Applicant’s activities in the administration of the cement area which include but are not limited to the erecting of the access control mechanisms to the area pending finalization of this matter on the return date.

The background to this matter is as follows:

The applicant being the Municipal authority and in charge of administering the Municipal area alleges that the first respondent a pressure group under the leadership of the second and third respondent are disrupting the administrative roll by preventing them from erecting boom gates to a designated cemetery area in Nyatsime area. The applicant presented argument that the matter was urgent and that they sprout to action when the need to act arose. The respondent violated their administration on 7 March 2015 and on 9 March 2015 and that efforts to be assisted by ZRP did not yielded any positive results. The applicant further argued that they would suffer irreparable harm if the respondents continued to disrupt their administrative role.

The respondents on the other hand argued that the matter was not urgent since the applicants did not satisfy the requirements of urgency. The respondents argued that the matter was not urgent as facts on ground revealed self-created urgency. The respondent argued that the area in question was a residential area in which the respondent and its members had purchased land and built houses. The respondent also argued that the applicant would not suffer on irreparable harm as there were other remedies readily available. It was further argued that the certificate of urgency and founding affidavit was devoid of any urgency.

The legal position on what constitutes urgency is settled. The cases of *Tripple C Pigs and Anor v Commissioner General*, ZLR 2007 (1) 27 and *Kuvarega v Registrar General and Anor* 1998 (1) ZLR 188 are instructive.

In Kuvarega case Chatikobo J under scored the fact that urgency which stem from deliberate or careless abstention from action is not the type of urgency contemplated by the

rules of this court. The history leading to the cause of action and the nature of relief sought fall for scrutiny when the court exercises its discretion in deciding whether or not the matter should be given preferential treatment and be treated as urgent.

In this case although the counsels addressed the court on both urgency and merits it will not be necessary for purposes of the judgment for the court to go beyond urgency given the matter is not viewed as urgent.

From the circumstances of this matter it can easily be discerned that the applicants waited for the day of reckoning for them to act. The cause of action and nature of relief does not support and show urgency in the matter primarily considering the fact that the matter is not one which can be classified as a matter which cannot wait. The applicant has other remedies at their disposal and there is no indication of suffering irreparable harm. There are legislature remedies readily available and remedies contractual and delictual available by recourse to the court through normal set down. This is not a case where swift intervention on urgent basis is supported by the certificate of urgency and the founding affidavit. The nature of relief sought and cause of action fall short of meeting the requirements of urgency contemplated by the rules of this court. In other words there is no justification in the circumstances of this case to give the applicant's matter preferential treatment of being heard on urgent basis.

The test of urgency is objective and cumulatively considering requirements of urgency anchored on the principle that the matter ought to be one which cannot wait, for waiting would render any other future intervention hollow, the circumstances of this case, the nature of relief sought, and cause of action fall far short of fulfilling the test.

Accordingly there is no justification for treating the matter as urgent. It is ordered that:

1. The matter is not urgent and it is removed from the urgent roll.
2. The applicant shall pay costs of his application.