

CLEOPAS MUGOMBA
versus
VICEMAST (PVT) LTD
and
ZIDCO (PVT) LTD

HIGH COURT OF ZIMBABWE
NDEWERE J
HARARE, 18 December 2014 and 21 January 2015

Urgent Chamber Application

Ms Kenende, for the applicant
E. Jera, for the 1st respondent
S. Chako, for the 2nd respondent

NDEWERE J: The background of the facts are that the applicant was a tenant of the second respondent from 4 December, 2012 at Number 29 and Number 589 of Rusape, commonly referred to as No. 29 Herbert Chitepo Street, Rusape. The lease agreement between the parties was meant to expire on 30 September, 2017. However, on 10 April, 2014, the second respondent cancelled the lease because of the applicant's failure to pay rentals in terms of the lease agreement. The applicant did not challenge the cancellation. He however, remained in occupation of the premises despite the cancellation.

Following the cancellation of the applicant's lease agreement, the second respondent concluded a lease agreement with the first respondent on 14 April, 2014. It is common cause that the first respondent began to claim the leased premises from the applicant in April, 2014. It is common cause that in May, 2014, the first respondent took occupation of most of the premises which the applicant was occupying, save for one small office which the applicant was still occupying at the time of filing the application. It is also common cause that the arrival of the first respondent on the scene resulted in a continuing dispute between the applicant and the first respondent. The applicant and the first respondent have been accusing each other of harassment and interference. The allegations of interference include the

collection of rentals from subtenants by the first respondent, with the applicant being aggrieved thereby.

It is common cause that as a result of this dispute on 30 June, 2014, the applicant filed an application for an interdict with Rusape Magistrate's Court, Case No. 743/2014 and that court said it had no monetary jurisdiction over the matter. It referred the parties to the High Court on 28 July, 2014.

The first respondent filed its own application for a spoliation order against the applicant at Rusape Magistrate's Court, Case No. 782/2014 on 10 July 2014. The court ruled that it had no monetary jurisdiction and referred the parties to the High Court on 28 July, 2014.

On 29 July, 2014, the first respondent filed a case for the applicant's eviction, Case No. HC 6394/14 which is still pending. On 19 August, the first respondent filed an urgent application for an interdict against the applicant, HC 7010/14. A judge ruled that the matter was not urgent on 26 August, 2014.

On 29 August, 2014, the second respondent issued summons against the applicant in Case No. 7654/14, seeking confirmation of the cancellation of the lease agreement, eviction of the applicant and payment of arrear rentals of US\$36 000-00 and holding over damages of US\$2 000-00 per month from May 2014, to date of eviction. The case is still pending. During the hearing, the applicant did not dispute the claim of arrear rentals of US\$36 000-00. He actually consented to production of an acknowledgment of debt he signed for the debt.

On 18 September, 2014, the first respondent filed an ordinary court application for an interdict against the applicant and another, Case No. HC 8241/14 which is still pending.

The above is the litigation history between the parties since the beginning of the dispute in April, 2014. The applicant and the second respondent have each approached the court once previously, while the first respondent has approached the courts on four different occasions. Three of those cases are still pending namely, the case for the applicant's eviction filed by the first respondent, the case for the applicant's eviction, arrear rentals and holding over damages filed by the second respondent and the case for interdicting the applicant and another filed by the first respondent.

On 24 October, 2014, the applicant approached this court on an urgent basis for a provisional order barring the respondents from interfering with its operations at Stand 29 and

589 of Rusape, commonly known as Number 29 Herbert Chitepo Street, Rusape. The relief applied for is for the entire premises, not just for the small office which the applicant is still occupying.

Both the first and the second respondent opposed the urgent chamber application, arguing that the application was not urgent.

The first respondent said the need to act arose in April, 2014, when it claimed the property from the applicant. The second respondent says it arose on 28 July, 2014 when the Magistrates Court declined jurisdiction and referred the matter to the High Court. The applicant says the need to act arose in mid-October, 2014.

In my view, the need to act arose when the Rusape Magistrates Court referred the parties to the High Court on 28 July, 2014. That is when the applicant should have approached the court urgently, but he did not approach the court then.

In *Kuvarega v Registrar General & Anor*, 1998 (1) ZLR, 188, the court said:-

“... a matter is urgent if at the time the need to act arises the matter cannot wait.”

In my view, the fact that the applicant could wait after being referred to the High Court on 28 July, 2014, shows that the application is not urgent. If it was urgent, it could not have waited. Even the applicant himself did not treat the matter urgently. Not only did he fail to act on 28 July, 2014, he also delayed in approaching the court even in mid-October, when he says the need to act arose. Mid October is 15 October, but he delayed by nine days and filed his urgent application on 24 October, 2014. He never bothered to explain the delay in filing the application contrary to the dicta in the *Kuvarega* case about the need to explain any delays.

It is clear that this application is about a continuing dispute between the parties from April, 2014 and there is nothing new which warrants urgent intervention by this court. That is why the applicant himself did not approach the court in July, 2014.

The applicant alleged that the first respondent had damaged and demolished the property but no evidence was placed before the court to substantiate that. In fact the police denied receiving any report of criminal conduct from the applicant concerning malicious damage to the property or violence. The court therefore has no basis to accept the applicant's allegations as truthful.

Furthermore, in August, 2014, the High Court ruled that the first respondent's application on the same dispute was not urgent. The applicant should not therefore have brought the same dispute between the parties to the High Court on an urgent basis for the second time in the absence of any new exceptional circumstances.

As stated in *Mushonga & Ors v Minister of Local Government, Public Works and National Housing*, HH 129/04, justice dictates that unless there are special or exceptional circumstances, the courts must deal with cases on a first come first served basis.

Accordingly, my ruling is that the application is not urgent.

Having ruled that the application is not urgent, I shall not proceed to deal with the issues raised by the parties on the merits.

The applicant shall pay the first and second respondent's costs on the ordinary scale because I am not convinced that a punitive scale is justified.

Tavenhave & Machingauta, Applicant's Legal Practitioners
Jakachira & Co., 1st Respondent's Legal Practitioners
Mushangwe & Co., 2nd Respondent's Legal Practitioners