

LEONARD BWANALI
and
PRECIOUS KATURUZA
versus
TOGAREPI ZIVAI MHETU
and
TENDAYI PAULINE MHETU
and
THE DIRECTOR OF HOUSING AND COMMUNITY SERVICES
and
CITY OF HARARE
and
BEANLOPE PROPERTIES (PRIVATE) LIMITED
and
THE SHERIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 2 & 4 February 2016

Urgent chamber application

W Chinamora, for the applicants
T Biti, for the 1st & 2nd respondents
K Mawere, for the 5th respondent

MATANDA-MOYO J: The applicants seek on an urgent basis the following relief;
“TERMS OF THE FINAL DRAFT

1. The respondents shall not sell, or dispose or otherwise deal or encumber the property known as 7410 Glen View Township of Glenview measuring 540 square metres pending the hearing of the appeal.
2. The Registrar of Deeds shall not proceed to transfer the piece of land described in paragraph 1 pending the hearing of the appeal.
3. The respondents shall bear costs of this suit.

TERMS OF THE INTERIM RELIEF GRANTED

1. Execution against the judgement of this court in HH 853/15 is hereby stayed pending the determination of the chamber application for extension of time within which to appeal filed under the cover of Case No. SC 723/15.
2. The first and second respondents shall pay costs of this suit if the matter is opposed.

SERVICE OF THE PROVISIONAL ORDER

3. The applicant/applicant's legal practitioner and/or employees be and are hereby permitted to serve copies of this provisional order on the respondents or their legal practitioners/employees.
.....”

The brief facts are that the first applicant purchased a certain piece of property namely number 7410 Glen View Township of Glen View through a Real Estate Company called Lightvale Properties under a mandate given by the first applicant. The first and second respondents had earlier on purchased the same property through the fifth respondent in the presence of the second applicant. The first and second respondent bought the property for \$29 000.00. The first and second respondent moved onto the property some time in January 2013. In March 2013 the first applicant moved onto the property and dispossessed the first and second respondents.

The first and second respondents sought the eviction of the first applicant and transfer of the above property into their names through HH 853/15. Such order was granted by this court after a finding was made that the present second applicant was improperly before the court. Such an order was made on 4 November 2015. During those proceedings the fifth respondent herein was represented by T. Mpofo.

On 8 January 2016 a writ of ejectment was issued by this court. On 21 January such writ was served upon the applicants. The applicants have lodged this present application before this court.

Firstly I am called upon to determine the urgency of this matter. In determining the urgency this court has to firstly determine the trigger to this application. According to the certificate of urgency filed herein the trigger seems to be the impending eviction of the first applicant which was scheduled for 1 February 2015. Upon being served with a writ of eviction the applicants decided to approach this court for stay of execution on an urgent basis.

However I am of the view that the trigger should be the court order of 4 November 2015.

Having regard to the chronology of events of this matter, I am far from being convinced that the applicants herein acted swiftly to protect their right herein. In my view this is a typical case of self-created urgency. My view is fortified by the fact that the applicants are applying for extension of time within which to appeal; case number SC 723/15. That in itself is evident of the fact that the applicants have failed to treat this matter urgently. Surely a

litigant who fails to treat his/her own matter urgently should not expect the courts to circumvent the rules and accommodate his/her case.

The need to act in the present matter arose on 4 November 2015. The applicants only briefed counsel on 20 November 2015- a mere five days before the expiry of the time period allowed to note an appeal. The application in the Supreme Court was only filed on 29 December 2015. Despite the fact that opposing papers in the Supreme Court matter were filed more than 3 weeks back the applicants have not bothered to file any answering affidavits. The applicants are not proceeding swiftly with the matter leaving doubt that they seriously intended pursuing the matter.

It is trite that an applicant instituting an urgent application must justify the necessity to circumvent the ordinary time periods set out in the rules of court. In so doing an applicant is never allowed to rely on an urgency that is self-created: See *Kuvarega v Registrar General and Others* 1998 (1) ZLR 188, *National Police Service Union and Others v National Negotiating Forum and Others*. The courts have been unanimous on the view that urgency is not available to parties whose very failure to act when the need arose is the cause of the harm on which they seek to rely. Thus in *Kuvarega* case supra the court had this to say;

“Urgency which stems from a deliberate or careless abstention from action until deadline draws near is not the type of urgency contemplated by the rules....”

The need to act in this matter arose on 4 November 2015 and no reasonable explanation has been proffered by the applicants on how their negligence should favour them. I am thus of the view that this matter is not urgent.

Counsels for the respondent urged me to award costs on a higher scale *de bonis* against the applicants’ legal practitioners. I have not had the occasion to listen to submissions from the legal practitioners concerned and am unable to grant such costs without hearing them. However I agree that this is a matter warranting an order of costs on a higher scale as it was apparent matter was not urgent.

Accordingly the matter is removed from the roll of urgent matters with costs on a higher scale.

Rubaya & Chatambudza, applicant’ legal practitioners
Tendai Biti Law, 1st & 2nd respondent’s legal practitioners
Mupawaenda & Mawere, 5th respondent’s legal practitioners