

PHILLIMON CHIKAURA
versus
MUTSVAIRO ADMIRE
and
THE MINISTER OF LANDS AND LAND REFORM AND
RESETTLEMENT N.O
and
THE CHAIRPERSON KADOMA DISTRICT LANDS COMMITTEE
and
THE D.A. KADOMA DISTRICT

HIGH COURT OF ZIMBABWE
PHIRI J
HARARE, 19 February 2019 & 27 September 2019

Urgent Chamber Application

REASONS FOR JUDGMENT

F. Misihairabwi, for the applicant
H. Magadzire, for the 2nd respondent

PHIRI J: This is a matter in which this court heard an urgent application on 19 December 2016.

After perusing the documents and hearing counsel the court made the following order:

“It is ordered that:

Urgent application is hereby held not to be urgent and interim relief prayed for is hereby dismissed.”

This court notes from the outset and agrees that the second operative part of the order should not have been granted.

Once the court had held that the matter was not urgent, it was not appropriate and competent for the court to then proceed to dismiss the interim relief prayed for.

In the circumstances it is submitted that the appropriate order of the court should simply have been to hold that the matter was not urgent.

The basis upon which this court considered and held that the matter was not urgent was on two grounds. Firstly applicant had, in its founding affidavit deposed to the fact why he had been served with a letter dated 3rd October, 2011, which letter was withdrawing the piece of land, in dispute, from the applicant. This letter was annexed to the founding affidavit as Annexure “B”.

Secondly the applicant had submitted in para 9 of the founding affidavit, that he was on 27 October 2016 called by the third respondent (The Lands Committee) which advised him that his offer letter will be withdrawn.

It was the opinion of this court that the need to act arose on 3 October 2011 when he was served with the notice annexed as Annexure “B” to the founding affidavit.

In addition, applicant averred in his founding papers, that he had been evicted but failed to disclose when exactly he was evicted?

The application was filed on 12 December 2016 and there was no satisfactory explanation given as regards why the applicant failed to take action to timeously file the urgent application.

As the basis of its founding the court relied on the case of *Kuvarega v Registrar General and Another* HH 48/98 as regards the finding as to when the need to act arose.

These are the reasons for the judgment.

The court reiterates that once it had held the matter not to be urgent it should simply have stopped there.

The court submits that indeed the second operative part of the judgment, that is, the dismissal of the Interim Relief Sought, was wrong and should not be upheld.

Lawman Chimuriwo, applicant’s legal practitioners
Civil Division of the Attorney General’s Office, 2nd to 4th respondents’ legal practitioners