

COMMUNITY WATER ALLIANCE TRUST
versus
CITY OF HARARE
and
MINISTER OF LOCAL GOVERNMENT, PUBLIC WORKS AND NATIONAL HOUSING
and
THE PRESIDENT OF ZIMBABWE
and
MINISTER OF ENVIRONMENT, WATER AND CLIMATE

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 3 & 9 October 2019

Urgent Chamber Application

D Halimani, for applicant
C Kwaramba, for 1st respondent
M Mawemwa, for 2nd, 3rd and 4th respondents

TAGU J: This is an urgent chamber application for a mandamus, prohibitory interdict and a declaratory order pertaining to the prevailing water crisis in Harare. The order is being sought by Community Water Alliance Trust which is a trust established in terms of a deed of trust. The order is being sought against the City of Harare which is a Municipality established in terms of the Urban Councils Act, the Minister of Local Government, Public Housing and National Housing who is cited herein in his official capacity as the Minister responsible for local government, the President of Zimbabwe who is cited herein in his official capacity and for the purpose of this application as the authority with power to declare a state of disaster in any affected area in Zimbabwe and the Minister of Environment, water and Climate who is cited herein in her capacity as the Minister responsible for among other things water related issues.

What precipitated this application is that on the 23rd of September 2019 the City of Harare published a notice to the effect that it was stopping the provision of water because of lack of chemicals to purify water. Water being the source of all life on earth, it being required for human needs, sanitation services, direct personal consumption, household hygiene, food preparation and

for household cleaning the decision by the first respondent that it was stopping the provision of this precious liquid jolted the applicant to file the present application on the 25th of September 2019. The relief sought by the applicant was that –

“TERMS OF FINAL ORDER SOUGHT

That the respondents show cause to this Honourable Court why a final order should not be made in the following terms:

1. It is declared that under no circumstances is a water supply authority such as the 1st Respondent permitted to stop supplying water to residents under its jurisdiction.
2. The failure to supply water to residents of Harare by the Respondents is a serious breach of the Constitution as it is a threat to the right to life, right to health, right to human dignity, right to food and accordingly impermissible.
3. The failure to ensure supply of safe, clean and potable water by the Respondents constitutes a serious breach of the Applicant’s right to water in terms of section 77 of the Constitution and other rights necessarily linked to the right to water.
4. The failure by the 1st and 2nd Respondents to act is an abdication of their constitutional and statutory duty and responsibility and accordingly a violation of the Constitution of Zimbabwe and statute.
5. That the Respondents jointly and severally, the one paying the others to be absolved be ordered and directed to pay the legal costs incurred by the Applicants in this matter on an attorney and client scale.

INTERIM RELIEF:

Pending finalization of this matter, the Applicant is granted the following relief:

1. That the decision of the 1st Respondent to stop supplying clean, safe and potable water to Harare residents is hereby suspended.
2. The 1st, 2nd, 3rd and 4th Respondents are ordered to immediately take necessary reasonable steps to ensure the immediate and continued provision of safe, clean and potable water to Harare residents.
3. The 3rd Respondent is ordered to forthwith declare a state of disaster in Harare to facilitate the immediate and continued provision of safe, clean and potable water.
4. The 4th Respondent is ordered to take immediate steps to intervene and alleviate the water crisis in Harare.
5. Pending the purification of water the Respondents are ordered to provide potable water to the residents of Harare.
6. That this order be served upon the Respondents by the Applicant’s legal practitioners.”

All the respondents opposed the application.

At the commencement of the hearing of this application the respondents raised a point *in limine*. The point *in limine* was that the application has since lost its urgency and must be removed

from the roll of urgent matters. According to the respondents the basis of the application has since fallen away, it has been overtaken by events. The application was prompted by the notice to shut down Jeffrey Morton Waterworks due to shortage of chemicals to purify water. However, it was a temporary shut down on the 23rd of September 2019 and water has since been opened on the 25th of September 2019. The current application was filed on the 25th of September 2019 when there was already water running in the tapes and purification was an ongoing process. The counsel for the applicant confirmed that indeed there has been restoration of water by the first respondent but argued that this matter must still be heard on an urgent basis because the application had been prompted by the Notice to shut down. However, he said the water crisis did not originate overnight but has always been there. He said though the respondents have restored water supply this is but just a temporary measure since the respondents do not have the capacity to continue supplying safe, clean and potable water.

What is clear is that the water crisis has been there for some time. The applicant did not take any action when the water crisis was persisting. It was jolted into action by the notice to cut off water due to shortage of chemicals. But from the papers water was restored the very same day that this application was filed. Water was restored not as a response to the application or to defeat the application. The respondents had already on their own taken measures to ensure that residents get water. The urgency of the matter had indeed fallen away. The applicant says there will be no continuous supply of clean, safe and potable water in the future. Whether this will happen is matter of speculation. The court can not speculate that the respondents will not supply clean, safe and potable water in future. What is clear is that when this application was filed water had been restored and is currently running in the tapes. If the respondent will fail to provide continuous safe, clean and potable water to the residents, that will be an argument for another day. As for now the urgency of the matter has been overtaken by events. The application will therefore be removed from the roll of urgent matters.

IT IS ORDERED THAT

1. Point *in limine* is upheld.
2. The application has been overtaken by events and is hereby removed from the roll of urgent matters.

Wintertons, applicant's legal practitioners

Civil Division of the Attorney-General's Office, respondents' legal practitioners