Judgment No. HB 159/04
Case No. HC 3767/04

**DIPAK PATEL**

**And**

**RAYMOND LOUW**

**Versus**

**HAVELOCK COURT (PVT) LTD**

**And**

**KANTORA (PVT) LTD**

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 12 NOVEMBER AND 16 DECEMBER 2004

*Ms H M Moyo* for the applicants
*B Longhurst* for the respondents

Urgent Chamber Application

**NDOU J:** The applicants seek an interdict to prevent the respondents from letting out the disputed properties, namely Havelock Court, Imma Court and Romana Buildings to anyone else other than themselves. They also seek an order barring the respondents from drawing rentals from the said properties. The facts of the case are the following.

On 16 June 1999 the applicants entered into agreements of sale with the respondents, who separately gave the applicants option to purchase the two properties situated in Bulawayo. The agreement with the first respondent was in respect of subdivision A of stand 589 Bulawayo Township and the agreement with the second respondent was in respect of stand 662 Bulawayo Township. The properties consist of blocks of flats and shops occupied by various tenants. Save for the purchase price

for the properties which differs, the rest of the terms for the two agreements are similar.

It is common cause that the option to purchase was exercised timeously in terms of the agreement. Having exercised the option, it then became the obligations of the applicants to effect payment of the purchase price or provide a satisfactory guarantee to the conveyancers, for the payment thereof within three months from the date of the exercise of the option. The applicants failed to do so resulting in the respondents saying that they, as a result thereof, cancelled the agreement in terms of clause 3 of the agreement. It seems that clause 2 makes no reference to interest but simply to an escalation in the option price which is calculated at 43,5% per annum compound daily. The respondent's legal practitioners timeously notified the applicants of the amount which they were required to pay. This was done notwithstanding the fact that it lay within the applicants' own power to do the calculations themselves. The applicants disputed the respondents' calculations stating that they offended the *in duplum* rule. The respondents' position is that the *in duplum* rule has no application since the matter does not involve interest but a method of fixing an option price. The purpose of the *in duplum* rule is to prevent a creditor, who is owed money, from sitting back without instituting action for the recovery of the money in the expectation of receiving additional interest from his debtor. In *casu*, until such time as the applicants had exercised the option, there was no question of any amount being owed by the applicant and no action could have been instituted by the respondents. The respondents further state that the applicants have attempted to take advantage of a technical and spurious argument that the *in duplum* rule applies in order to limit the amount to be paid to the respondents to a fraction of what the parties

had agreed upon and understood. The position of the respondents is fully captured in a minute addressed by their legal practitioners to the applicants' legal practitioners. The respondents submit that the applicants deliberately left out this minute in order to mislead this court. The respondents' position is also that the matter is not urgent.

I will first deal with the issue of urgency. In terms of clause 5 of the agreements the applicants were receiving certain benefits i.e. they were collecting rentals from the various tenants. The effect of the purported cancellation of the agreements by the respondents is that these benefits stopped. The respondents entered into new lease agreement with the tenants resulting in them (i.e. the respondents) receiving the rentals. This is the source of the urgency. It is trite that where a party brings a chamber application for urgent relief, good cause for treating the party in question differently from other litigants must be established– *Dilwin Investments (Pvt) Ltd* v *Jopa Eng Co (Pvt)* Ltd HH-116-98; *General Transport & Engineering P/L & Ors* v *ZIMBANK Corp P/L* 1998(2) ZLR 301(H) and *Kuvarega* v *Registrar General & Anor* 1998(1) ZLR 188(H). Prejudice of loss of rentals i.e. loss of commercial nature, in this case can easily be dealt with when the matter goes to trial. The applicants will not suffer irreparable damage. The contents of the certificate do not at all make this matter urgent. It is no different from other contractual disputes before this court to warrant preferential treatment. Legal practitioners should be careful when issuing certificates of urgency. The legal practitioner must apply his mind and judgment to the circumstances and reach a personal view that the matter is urgent. He must support this judgment with reasons – *General Transport & Engineering (Pvt) Ltd & Ors* v *ZIMBANK, supra*. This is not the case here. There is no case made out for

proceeding under cover of urgency. The certificate of urgency mainly states what is the cause of action. I therefore dismiss the application with costs.

*Joel Pincus, Konson & Wolhuter*, applicants' legal practitioners
*Winterton, c/o Ben Baron & Partners*, respondents' legal practitioners