THOMAS MLAZIE

And

ROMANA TSHUMA

And

ANGELBETA NDLOVU

And

CHARLES NCUBE

And

SITHABILE NCUBE

And

JOSTINA TSHUMA

Versus

FR MARKO MKANDLA

And

GIFT F MOYO

And

THE ROMAN CATHOLIC ARCHIDIOCE – BULAWAYO

And

AOB FARM BOARD

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 21 AND 27 SEPTEMBER 2007

K I Phulu, for applicants

Urgent Chamber Application

BERE J: This matter was placed before me as an urgent chamber application with the applicants seeking interim relief couched in the following terms:

"Interim order sought
Be and it is hereby ordered that:

1. That the respondents be and are hereby ordered to grant access to water and grazing land to the applicants and members of the community until this matter is finalised.
2. That the respondents be and are hereby interdicted from interfering with applicants and members of the community's access to water and grazing land until this matter is finalised.
3. That the respondents be and are hereby interdicted from evicting the applicants or any member of the community until this matter is finalized…."

From the papers presented before me it is clear that the applicants are part of a larger community occupying land owned by Regina Mundi Mission in Lupane, in Matabeleland North Province.

It is trite that any application that is brought to court as an urgent chamber application must satisfy the basic test of urgency as provided for in order 32 rules 243 and 244 of our High Court Rules, 1971 as amended from time to time and also as clarified through precedent. See the case of *Kuvarega* v *Registrar General and Anor* 1998 (1) ZLR 188 for further guidance.

It will be noted that whilst it is a requirement that where an applicant is legally represented an urgent chamber application be supported by a certificate from a legal practitioner to the effect that the matter is urgent, giving reasons for its urgency, that *per se* does not entitle the court to make a finding that the matter is indeed urgent. The certificate from a legal practitioner is merely meant to assist the court in appreciating the urgency or otherwise of the matter.

It will also be noted that in terms of rule 244 (*supra*) upon being furnished with an urgent chamber application, the judge has a discretion to either call for or not to call any interested party to make representations to justify the urgency or non-urgency of the matter.

In the instant case, the papers presented to me were so detailed that I deemed it

unnecessary to call for further representations. I was more than satisfied that the matter could safely be determined on the papers.

A perusal of the first applicant's founding affidavit as supported by the affidavits of his co-applicants clearly chronicle the historical background of this case. The conflicts between the applicants and the respondents represented by Fr Marko Mkandla started showing teeth in 2001 (see para 10 of first applicant's affidavit).

The respondent's position was re-affirmed on 13 May 2006 when a resolution was passed requiring that the affected families vacate the mission farm within three months (see para 13 of first applicant's affidavit). There was subsequent written communication as confirmed by the Provincial Administrator, Matabeleland North Province in his letter dated 17 August 2006.

Paragraph 17 of the same founding affidavit further show clearly that in early October 2006, the applicants and the other members of the community were denied access to water. This was more than five months after the applicants were informed of their impending eviction.

The first applicant's founding affidavit goes on to show that there were further meetings and correspondence which were aimed at preventing deprivation of the applicants and the community at large access to water and grazing land by the respondents. The respondents remained resolute and this culminated in a letter of 13 June 2007 which was actioned on 14 June 2007. The effect of this was that the applicants and the other community members were denied access to both water and grazing land to their livestock.

Two months after this incident and to be precise on 30 August 2007 the applicants reacted by filing this urgent chamber application.

In my view this is a classic case which represents self-created urgency. With their eyes wide open the applicants could see as far back as 2001 that they were loosing grip on the respondents farm. The discussions which followed from 2001 up to the applicant's eviction on 14 June 2007 cannot be said to have taken the applicants by surprise to the extent that they would be justified in bringing this urgent application.

It is irresponsible for a litigant to nurse a conflict or misunderstanding for so long in order to subsequently deal with it as an urgent matter and thus dislodging other matters in the queue for the court's attention.

It is for these reasons that I came to the conclusion that this matter be dismissed as an urgent chamber application.

Accordingly, I decline to grant the order sought. The application is dismissed.

Coghlan & Welsh, applicant's legal practitioners