

Judgment No. HB 108/08  
Case No. HC 1989/08  
Xref HC 1528/07, 1570/07  
1437/07, 1554/07, 1529/07,  
1550/07, 1588/07, 1527/07,  
1594/07, 1596/07, 1549/07

**IGNATIUS NCUBE**

**AND**

**SAMUKELISO SIBANDA**

**AND**

**MANDLA MLOTSHWA**

**AND**

**SIBONGISENI MLOTSHWA**

**AND**

**LUCAS MAFU**

**AND**

**EVELYN GARIDZANI**

**AND**

**NEVER JEKESA**

**AND**

**NKOSIYABO THABETHE**

**AND**

**MACLEANS MZUMARA**

**AND**

**MALUSI NGWENYA**

**AND**

**SHIRLOR NYAKUMBI**

**VERSUS**

**SOLUSI UNIVERSITY**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 9 OCTOBER 2008 AND 13 NOVEMBER 2008

*Mr J Mudenda* for the applicants  
*Mr J Tshuma* for the respondent

Stay of Execution

**CHEDA J:** This is an application for a stay of execution.

Applicants filed an urgent application seeking to prevent their eviction from certain accommodation at respondent's premises.

On the 3<sup>rd</sup> and 4<sup>th</sup> day of October 2008, I granted two provisional orders and these were subsequently opposed by respondent resulting in a hearing on the 9<sup>th</sup> day of October 2008.

At the conclusion I discharged the provisional order and stated that my reasons would follow, these are my reasons.

It is common cause that all applicants were employed by respondent at one time. Due to some industrial action respondent terminated their services on the 14<sup>th</sup> December 2006 and consequently their eviction from the said premises. These parties have been before these courts on several occasions, therefore their antagonism has been in existence for a very long time.

After the termination of their services, respondent on the 19<sup>th</sup> December 2006 notified each one of them to vacate the premises but they refused.

Out of the 13 lecturers 12 of them opposed the application which sought to remove them. Their reason for the refusal was that they considered themselves as employees of respondent.

While they acknowledged that they had been given 30 days within which to

vacate the premises this was not to be as they had appealed the decision to dismiss them. It is further their argument that they were waiting for the confirmation of their dismissal by the Labour Court. The 30 day period expired but they still refused to vacate the premises.

It is common cause that applicants were dismissed by respondent on the 14<sup>th</sup> December 2006. Respondent has since engaged other lecturers whom they would like to accommodate in the staff residences. Effectively applicants no longer render any service to respondent.

On the 11<sup>th</sup> July 2007 respondent filed an application to evict them from the premises which they resisted but subsequently lost in case number HB 53/08 on the 8<sup>th</sup> May 2008.

The present application is for a stay of execution pending the determination of their appeal to the Labour Court.

In their application, some of them failed to comply with the rules of the court with regards to filing documents for example Mr Muzumara, had no authority to represent other applicants, equally so was the 5<sup>th</sup> applicant's wife (Mrs Mafu) who mistakenly thought that she could derive her authority from her South African based husband who gave her a Power of Attorney attested before a member of the Police force.

The correct legal position is that for one to act for and on behalf of the other one must have authority to do so, which Mr Muzumara did not have.

Mrs Mafu was also not properly before the court as the law requires that a document originating from outside Zimbabwe should be executed before a Notary Public, not an attorney or solicitor or some other person styling themselves as a commissioner of oaths.

However, this application affects all of them.

Having listened to submissions by both counsels, I find that:-

- (1) applicants were dismissed by respondent on the 14<sup>th</sup> December 2006.
- (2) that some of them did not support this application.
- (3) some of them are already employed elsewhere.
- (4) respondent has already employed other lecturers.
- (5) applicants accept that their employer-employee relationship has irretrievably broken down.

It is applicants' contention that they should remain in the houses as they have not

been paid their damages.

This argument is with great respect lacks sense. Applicants are of no use to respondent while they remain in occupation either personally or through their dependants. Therefore, to refuse to vacate these premises through illogical reasons as is the case here can not be allowed to obtain. Their arguments are both illegal and immoral.

Applicants contend that they should not be evicted from the respondent's houses as the matter has not been finalized. The matter was put to rest by KAMOCHA J in case no. HB 53/08.

It is noteworthy that some of the applicants' have already left the University and are either employed or looking for employment outside the country. This scenario brings into question the, bona fides of this application particularly when they contend that they intend to remain in occupation when their contracts have already been terminated.

The question that falls for determination is whether or not applicants are entitled to remain in occupation after this court has ordered them to vacate. Their attitude is that, they are entitled to, as they are yet to be paid their damages by the respondent.

In *Chisipite School Trust (Pvt) Ltd v Clarke* 1999(2) ZLR 324(S), where respondent who was a Headmistress had refused to vacate accommodation and surrender a car after the suspension, GUBBAY CJ held that the respondent was not entitled to the continued enjoyment of the benefits comprising the free occupation of the Headmistress' house and the use of the motor vehicle. This ruling is quite instructive.

The fact that applicants are still owed money in the form of damages does not entitle them to hold on to accommodation/property which was accorded them during their employment as that accommodation is part of their conditions of service and ends when the contract is terminated or their service is suspended.

Applicants admit that their contracts have been terminated and therefore, in my opinion there is no reasonable justification to remain in occupation. This matter was argued before KAMOCHA J and the learned Judge ordered their removal after serious consideration of all relevant facts and I am in totally agreement with him in that finding.

The issue of damages which is not disputed by respondent can not be allowed to cloud an otherwise clear legal principle obliging applicants to vacate these premises. In any event respondent has a legal obligation to allocate them to its new lecturers. The issue of damages can be pursued separately. Applicants brought this application merely to frustrate respondent's efforts to run its institution smoothly.

For that reason the court must show its indignation by ordering them to pay costs at a higher scale.

In light of the above the following order is made.

**It is ordered that:-**

1. The provisional orders granted on the 3<sup>rd</sup> and 4<sup>th</sup> of October 2008 be and are hereby discharged.
  
2. Applicants are to pay costs of this application on an attorney and client scale.

*T. Hara and partners*, applicants' legal practitioners  
*Messrs Webb, Low and Barry*, respondent's legal practitioners