

**TAURAI NYATSAMBO**

**Versus**

**MTUNGWAZI FAMILY PROPERTIES**

**And**

**DEPUTY SHERIFF**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 23 JUNE 2011

*R Dzete* for applicant  
*P Madzivire* for the 1<sup>st</sup> respondent

Urgent Chamber Application

**NDOU J:** The applicant seeks an interdict preventing the execution of the judgment granted by this court under HC 1210/10.

The pith and marrow of this application is that the default judgment under HC 1210/10 was not properly obtained. At the time of the hearing the applicant had already been evicted. In other words the judgment sought to be arrested by the interdict had been fully executed. To cater for this problem part of the interim relief sought by the applicant is couched in the following terms:

“... if such eviction has taken place, the respondent be and are hereby directed to give the applicant vacant possession of the premises.”

In paragraph 9 of his answering affidavit the applicant evinces that he seek restoration of possession after the eviction. He states:

“...it is the 1<sup>st</sup> respondent who is trying to cling on an unlawful order and who is trying to delay the inevitable as it is just for the applicants to be restored into vacant possession. 1<sup>st</sup> respondent has since gone on to evict applicants ...” (Emphasis added)

The problem here is that the applicant seeks remedy for past invasion of his rights. The applicant has already been evicted. It is trite law that an interdict is an extraordinary remedy, the granting of which is at the discretion of the court hearing the application. An interim interdict is not a remedy for past invasions of rights and will not be granted to a person whose

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rights in a thing have already been taken from him by operation of law at the time he or she makes an application for interim relief – *Stauffer Chemicals vs Monsanto Co* 1988 (1) 805 (T) at 809F-G; *Meyer vs Meyer* 1948 (1) SA 484 (T) and *Airfield Investments (Pvt) Ltd vs Minister of Lands & Ors* 2004 (1) ZLR 511 (S) at 517E-H. There is, therefore, no merit in the application. It is accordingly dismissed with costs.

*Munjanja & Associates*, applicant's legal practitioners

*Joel Pincus, Konson & Wolhuter*, 1<sup>st</sup> respondent's legal practitioners