MISHECK SHOKO
and
COLLEN GWIYO
and
CHITUNGWIZA RESIDENTS AND RATEPAYERS ASSOCIATION
versus
THE MINISTER OF LOCAL GOVERNMENT, PUBLIC WORKS
AND URBAN DEVELOPMENT
and
CHITUNGWIZA MUNICIPALITY

HIGH COURT OF ZIMBABWE
GOWORA J
HARARE, 24 January and 16 February 2006

Urgent Chamber Application

T Biti, for the applicants
Mrs *V Mabhiza*, for the first respondent

GOWORA J: The first applicant is the Executive Mayor for Chitungwiza. He was elected to the post on 11March 2002. He belongs to the political party known as Movement for Democratic Change (MDC). The second applicant is a councilor for Ward 11 in Chitungwiza. He confirms having voted for the first applicant in the said elections. The third applicant comprises of members of the ratepayers and residents of Chitungwiza, where the first applicant is the mayor. In these proceedings it is represented by one Arthur Taderera who describes himself as the chairperson of the third applicant. He states that forty eight thousand members of the applicant voted for the first applicant in the elections at which the first applicant was elected as mayor.

On 29th December 2005, the first respondent, hereinafter referred to as the Minister, suspended the first applicant, hereinafter referred to as the applicant, from duty as mayor, such suspension being without salary and benefits. The applicant has therefore launched these proceedings to have the suspension set aside on several grounds. As the suspension effected by the respondent was without salary and benefits, the applicants has therefore approached this court on a certificate of urgency, for a provisional order in which as temporary relief he seeks an order against the first and second respondents for the payment of all benefits payable in terms of his contract of employment and the setting aside of the decision to withdraw such benefits.

In relation to the factor of urgency, the certificate of urgency drawn up by the legal practitioner, not Mr *Biti*, was to the following effect. The respondent is not empowered in terms of the Urban Councils Act to suspend a mayor without benefits. The decision to take away the benefits, is in the premises clearly unlawful and is not authorized in terms of the Act. The taking away of the salary and benefits including the surrendering of all Council property in the possession of the First Applicant would cause irreparable harm. The first applicant at the present moment is using a Council vehicle a Council mobile phone and other assets. An ordinary court application would take months before it was heard and possibly an even longer period before judgment was handed down and, in the event of an appeal, before such appeal is heard. In the meanwhile the first applicant would be reduced to penury and those dependant upon him financially would be equally prejudiced.

The applicant himself addressed the issue of urgency as follows. He deposed that he had brought the application as an urgent one mainly to deal with the aspect pertaining to the deprivation of his salary and benefits. He stated that he had a large family of eight and the usual extended family. They all depended on his salary from the local authority. In addition, the vehicle and mobile phone allocated to him by the second respondent, was critical to his capacity to reproduce himself. He stated that the actions of the respondent were blatantly unlawful viz a viz this aspect. He stated that the balance of convenience favoured him in this matter.

Before me Mr *Biti* submitted that the old approach by the courts had been that in employment matters, when salary and benefits were removed through an unlawful suspension, the matter was not considered urgent. He argued that courts were now moving away from this approach, the primary consideration being the subjective inflation prevailing within our economy. He further argued that the implicit old approach of the courts ought to be viewed in the light of circumstances existing in 2005 and 2006 and referred to two factors which the court should take into account, namely that the increase in the workload of these courts meant that quick remedies were no longer available and secondly that the effect of depriving the applicant of his salary meant that he was being prejudiced by the daily loss in the value of his dollar earnings due to the galloping inflation prevailing within the country.

It is correct, as submitted by the applicant’s counsel, that the Act does not give the Minister the power to take away the salary and benefits accruing to a

mayor when such mayor is suspended. It is also correct that inflation in this country is at an all time high and incomes are decreasing in value daily. One could say what we have currently is run away inflation. I can well believe that the applicant will stand to be financially prejudiced by the removal of his salary and benefits through the suspension effected on him by the respondent. I am also persuaded that the number of people that are dependant on the first applicant stand to be prejudiced financially by the removal of the salary and benefits. However, in order for a matter to be treated as urgent, an applicant needs to show that there is a reason why he should not be treated like every one else in the same situation and await his turn to have the matter heard in the normal course. In *I L & B W Marco Caterers (Pty) Ltd v Greatermans SA Ltd & Anor; Aroma Inn (Pty) Ltd v Hypermarket (Pty) Ltd & Anor*[1] ; FAGAN J described urgency in the following terms;

> 'Moreover, the fact that a litigant with a claim sounding in money may suffer serious financial consequences by having to wait his turn for the hearing of his claim does not entitle him to preferential treatment. On the other hand, where a person's personal safety or liberty is involved or where a young child is likely to suffer physical or psychological harm, the court will be far more amenable to dispensing with the requirements of the Rules and disposing of the matter with such expedition as the situation warrants. The reason is that the courts are there to serve the public and this service is likely to be seriously disrupted if considerations like those advanced by the applicants in these two matters were allowed to dictate the priority they should receive on the roll. It is, in the nature of things, impossible for all matters to be dealt with as soon as they are ripe for hearing. Considerations of fairness require litigants to wait their turn for the hearing of their matters. To interpose at the top of the queue a matter which does not warrant such treatment automatically results in an additional delay in the hearing of others awaiting their turn, which is both prejudicial and unfair to them. The loss that the applicants might suffer by not being afforded an immediate hearing is not the kind of prejudice that justifies disruption of the roll and the resultant prejudice to other members of the litigating public.'

The first applicant is in my view in the same position as any other litigant approaching this court for relief based on a claim sounding in money. There is the Labour Court which is vested with jurisdiction to determine, at first instance, disputes relating to labour issues. More often than not, litigants are suspended without pay or dismissed resulting in loss of benefits and salaries. In the prevailing economic situation of this country, does the Labour Court then have to deal with all those matters on an urgent basis in order that the financial interests of the

[1] 1981 (4) S A 108 (W) at p 113-4

employees concerned are not prejudiced. Should the Labour Court then consider the issues pertaining to the suspension of the employees on an urgent basis in order to determine whether or not the salary and benefits should be restored pending the determination of the main dispute so as to minimize the harm that could be caused to the employees through the loss of the financial emoluments. Given that the endemic inflation is not selective of its victims, I cannot on the papers before me, conceive of a reason why the first applicant should be treated any different to other litigants who have claims sounding in money pending before this court. I am not satisfied that inflationary conditions are factors that justify having a matter being treated as urgent, even where there are allegations that the deprivation of the benefits might have been done outside the ambit of the Act. The applicant needed to establish that his situation was not the same as that of other litigants and that it warranted preferential treatment thus justifying his matter being heard urgently.

In the circumstances the matter is not urgent, and I will not deal with the merits. The application, should in the circumstances, have been brought as a court application. The matter is therefore dismissed for want of urgency. The first applicant is ordered to pay the first respondent's costs.

Honey & Blanckenberg, the applicant's legal practitioners
Civil Division of the Attorney-General's Office, the 1st respondent's legal practitioners