

MONICA CHIKOORE
versus
J P KADZIYA
and
THE DISTRICT ADMINISTRATOR
KADOMA DISTRICT
and
THE MINISTRY OF LOCAL GOVERNMENT

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 15 March 2012

Urgent Chamber Application

The applicant in person
S Maphosa, for the 1st, 2nd and 3rd respondents

MATHONSI J: This is an urgent application in which the applicant seeks the following relief:

“1. Terms of the Final Order sought

That you should show cause to this Honourable court why an order should not be made in the following terms:

- (a) That the proposed meeting of 10 March be and is hereby set aside.
- (b) Cost of this (sic) to be borne by the first respondent.

2. Interim Relief Granted

Pending finalisation of this matter, the applicant is granted the following relief:

- (a) The respondents are hereby ordered and directed to suspend the meeting to be held on 10 March 2012 pending the outcome of the Anti-Corruption report.”

The applicant has stated in her founding affidavit that she hails from a sub-house of the Benhura chieftainship known as the Wakapiwa clan. A process to select a substantive

chief has commenced and a meeting to select the chief was set for 10 March 2012 at Manewe Business Centre in Kadoma. She stated further that in that process there is some indication that her own sub-house is being excluded from coming up with a possible candidate for the chieftainship because the District Administrator would like to impose a candidate favourable to him.

The applicant submits that her own sub-house and the Chitinhe sub-house, although belonging to the Benhura chieftainship, have been excluded in the past and have not been given an opportunity to also rule in the rotational succession to the chieftainship. She bemoans the fact that documents proving that they have a right to participate in the chieftainship were tampered with at the office of the District Administrator resulting in her and other members of her family reporting the matter to the Anti-Corruption Commission which is now seized with the matter and is investigating it.

No documentation has been produced as proof that the Anti-Corruption Commission is investigating the matter, when such investigations commenced and when they will end. Indeed no affidavit has been elicited from that commission to bolster the applicant's case. More importantly, it has not been shown what difference the commission's investigations will make to the selection process.

The interdict which the applicant is seeking appears perpetual. She wants to stop a selection process pending nothing at all and for an indefinite period. This is inappropriate.

This application was filed on 9 March 2012 when the selection meeting had been pencilled for 10 March 2012. No explanation has been proffered as to why the applicant had to wait until the day of reckoning to make the application. This matter therefore does not pass the test of urgency provided by the rules of court. It is urgency which stems from a deliberate and careless abstention from action until the deadline draws near and is not the urgency contemplated by the rules. *Kuvarega v Registrar General Anor* 1998 (1) ZLR 188 at 193 E-G. In any event the applicant has stated now that the meeting did not occur.

Even if the applicant had satisfied the requirements for urgency, she would still not succeed because the application is without merit. There is no basis for stopping the selection process at all. If anything, the applicant should be asking for inclusion in the selection process so that she and her sub-house can justify their claim to the chieftainship. It is only when the selection process has come up with a flawed outcome that she can have a basis for challenging it.

To seek to stop the process in its tracks because a case of tampering with records at the District Administrator's office has been referred to the Anti-Corruption Commission is unsustainable.

Accordingly the application is dismissed with costs.

Civil Division of Attorney General's Office, 1st, 2nd and 3rd respondents' legal practitioners