DANNY MUSUKUMA
versus
CONSTITUTION PARLIAMENTARY COMMITTEE (COPAC)
and
MINISTER PATRICK CHINAMASA (N.O)
and
MINISTER NICHOLAS GOCHE (N.O)
and
HONOURABLE PAUL MANGWANA
and
MINISTER ELTON MANGOMA(N.O)
and
HONOURABLE DOUGLAS MWONZORA
and
MINISTER TENDAI BITI (N.O)
and
MINISTER WELSHMAN NCUBE (N.O)
and
HONOURABLE EDWARD MKHOSI
and
MINISTER PRISCILLA MISIHAIRAMBWI MUSHONGA (N.O)

HIGH COURT OF ZIMBABWE
MUTEMA J (in chambers)
HARARE, 14 DECEMBER 2012

MUTEMA J: On 17 October 2012 the applicant, a self actor, filed an urgent chamber application under case No. HC12128/12 seeking to interdict the first respondent from convening the 2nd All-Stakeholders Conference regarding the constitution making process pending publication of the National Statistical Report in the Local media. On 18 October 2012 HLATSHWAYO J issued an order by consent that:-

1. the second all Stakeholders Conference shall proceed as scheduled on 21 October 2012.
2. the first respondent shall release a press statement informing the public through the national and other local media that the authenticated national statistical report is accessible on its website *www.copac*. *org.zw* by 10 oclock in the morning of 19 October, 2012.

3. the applicant be given his copy of the authenticated report forthwith.
4. the first respondent shall make available 10 hard copies of the authenticated report to the provincial administrator's offices of the country's 10 provinces by midday on 20 October, 2012.

When the respondents in that case allegedly failed to fully comply with the court order, the applicant filed another urgent chamber application on 19 October, 2012 under HC 12272/12 contending that the second all stakeholders conference be deferred until the court order was fully complied with. The matter was heard by DUBE J on 20 October, 2012 who ruled that there was substantial compliance therefore the conference should go ahead as scheduled, on 22 and 23 October, 2012.

The applicant was an accredited delegate and attended the conference on the given dates.

At the conference, according to the applicant, "it became evidently clear that the documents issued by the first respondent to:

i) the country's 10 provinces,
ii) the applicant and' (sic)
iii) published on its website purportedly in compliance with the Court Order are (sic) materially different from the ones issued and used at the second All Stakeholders' Conference mainly in the following characters;
    a) Appearance
    b) General structure and content,
    c) Size and,
    d) Quantity."

It is pertinent to note here that this anomally complained of was noted on 22/23 October 2012, for this will be material in determining whether the matter is urgent or not.

On 13 December, 2012 the applicant filed the present urgent chamber application seeking a provisional order with the interim relief being that "the respondents be and are

hereby interdicted from presenting to Parliament the report on the Second All Stakeholders Conference held on 21 to 23 October, 2012."

He wanted the interim relief granted pending determination that:-

1. the documents distributed by the first respondent purporting to be complying with the court order in HC 12128/2012 were not authentic, false and fraudulent.
2. the first respondent did not comply with HLATSHWAYO J's order and that it be ordered to comply forthwith.
3. The respondents be ordered to reconvene the second all stakeholders conference "pending finalisation of this matter. (sic)."

After perusing the papers on 14 October, 2012, I came to the conclusion that the matter was not urgent and the applicant was accordingly advised by the registrar. He has now requested for the reasons therefor. Here are they:-

The *locus classicus* on the meaning of urgency as contemplated by the rules of this court is the often quoted case of *Kuvarega v Registrar-General* & Another 1998 (1) ZLR 188.

What constitutes urgency is not the imminent arrival of the day of reckoning - *in casu* the averment by the applicant that the first respondent is going to submit its report to Parliament any time this month. A matter is urgent if at the time the need to act arises it cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline draws closer is not the type of urgency contemplated by the rules.

Where there has been a delay in acting (i.e filing the urgent chamber application), the applicant must, in the founding affidavit, profer a reasonable explanation for such delay in order that his dilatoriness is condoned.

In the instant case the applicant knew on 22/23 October, 2012 during the second all stakeholders conference that the documents issued by the first respondent to the country's 10 provinces, to him and published on the first respondent's website were materially different from the ones issued and used at the conference in the manner alleged. That is the time/date the need to act arose. The applicant, however, did not act until 13 December, 2012 when he filed this present application – a delay of more than 1½ months.

In his founding affidavit the applicant did not give any explanation, let alone a reasonable one, for the delay. It is on that basis that the matter was ruled not urgent.