

TEMBWE HOUSING CO-OPERATIVE
versus
CITY OF HARARE
and
EVENTS HOUSING COOPERATIVE SOCIETY LIMITED
and
CHAIRPERSON OF EVENTS HOUSING COOPERATIVE SOCIETY LIMITED
and
SHERIFF OF THE HIGH COURT OF ZIMBABWE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 19 October 2023

Urgent Chamber Application

C Kadye, representing applicant as Chairman
R Zinhema, for the 1st respondent
F Malinga, for the 2nd & 3rd respondent

ZHOU J: This an urgent chamber application for stay of execution of the judgment granted in case number HC 4457/19. The interim relief is being sought pending determination of an application for joinder, which the applicant proposes to file within five days from the date of the provisional order. On the return date the applicant seeks an order for the permanent stay of execution of the order referred to above.

The application is opposed by the first, second and third respondents. All these three respondents filed opposing papers in which they took points *in limine* in addition to opposing the application on the merits. The points *in limine* taken are (a) that the application is not properly before the court because the deponent to the founding affidavit does not have the authority to institute proceedings in the name of the applicant; (b) that the matter is not urgent, and (c) that the relief that is being sought is incompetent. It is necessary to consider the question of urgency first because if it is upheld it is dispositive of the matter at this stage. However, if the objection to the urgent hearing of the matter fails the other two objections *in limine* would then be considered.

The material facts which are largely common cause, are as follows: On 29 January 2020 the first respondent obtained the order in HC 44 57/19 for the eviction of the second

respondent herein and all persons claiming occupation through the second and third respondents herein from the land to which the site plan bearing the particulars TPY/WR/01/14 Budiriro relates. The applicant's case is that the order was being used to evict its own members who were not cited in the case.

Urgency

A matter is urgent if it cannot wait to be solved through a court application, see *Pickering v Zimbabwe Newspapers (1980) Ltd* 1991(1) ZLR 71 (H) at 93E. In the case of *Dilwini investments (Pvt) Ltd t/a Formscaff v Joppa Engineering Company (Pvt) Ltd* HH 116-98 at p 1 the court pointed out that a party who seeks an urgent hearing of a matter is in essence seeking preferential treatment ahead of those other matters that would have been filed earlier. This preferential treatment will be extended where the party concerned has treated the matter urgently when regard is had to when the need to act arose.

In casu the judgment was granted in January 2020. The notice of removal was issued in March 2020, and execution was due to take place on 17 March 2020. The respondents have stated that execution was indeed carried out to completion in 2020. This means that there is nothing to stay any more since the execution that is being sought to be stopped has already taken place. The urgency was lost at the time that the process of execution took place.

The reference in arguments to case number HC 7034/21 as the one that is pending execution is not relevant since the relief being sought *in casu* does not relate to that case.

On costs, it is appropriate that the deponent to the founding affidavit pays, because *ex facie* the document produced, he is not the chairman of the applicant.

In the result. **IT IS ORDERED THAT:**

1. The matter is struck off the roll of urgent matters.
2. Deponent to the founding affidavit, *Caleb Kadye*, shall pay the costs.

Gambe Law Group, first respondent's legal practitioners

Malinga Masango legal practice, second & third respondent's legal practitioners