

LOVEMORE CHITSURO
and
WILSON NYAMBONBO
and
RUTH WILLIAM
and
TAURAI NGAVAPFUME
and
SPIWE PHIRI
and
NOMUSA NGWENYA
and
JOSHUA BUSHE
and
SAM CHARUMBIRA
and
TARISAI HONDOYACHEPA
and
PFAVAI ANNA FUNGAI
and
JOHN ZANO
and
FANUEL CHIHAMBA
and
GILBERT MUNETSI
and
PATRICIA KALIYEKA
and
RUDO MUTUNAMI
and
SHELLA CHIKURIRO
and
CHRISTINA CHATURA
and
MUNYARDZI CHWAYA
versus
MASSMORE INVESTMENTS (PRIVATE) LIMITED
and
CHITUNGWIZA MUNICIPALITY
and
SHERIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE
TSANGA J
HARARE; 23 November & 5 December 2023

Urgent Chamber Application

Mr *F Masarirevhu*, for the applicants
Mr *S Kuchena*, for the 1st respondent
No appearance for 2nd & 3rd respondents

TSANGA J: This is an urgent application in which the applicants seek to interdict an order for eviction and demolition of their properties from specified stands in Manyame, Chitungwiza. The provisional order incorporating the final relief to be later sought reads as follows:

“TERMS OF FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms –

1. The Third Respondent be and hereby interdicted from demolishing Applicants’ houses and residential premises being stand number 10998,11557, 11686, 11653, 11538, 11766 , 11692, 11555, 11553, 11767, 11763, 11769, 11531, 11533, 11689, 11689, 11687 and 11558 located in Manyame Chitungwiza on the strength of a court order to which the Applicants were not parties.
2. The Respondents shall bear costs of this application.

INTERIM RELIEF GRANTED

Pending the return date, the Applicants are granted the following relief

1. The Respondents, their agents, employees, assigns and agents be and are hereby interdicted from negatively interfering with the Applicants’ occupation of the stands number 10998,11557, 11686, 11653, 11538, 11766, 11692, 11555, 11553, 11767, 11763, 11769, 11531, 11533, 11689, 11689, 11687 and 11558 located in Manyame Chitungwiza.
2. The First Respondent be and is hereby interdicted from instructing the Third Respondent to demolish the Applicants’ properties on stands numbers outlined above and should such an instruction already been passed, it is hereby set aside pending the return date.”

Their application is on the basis that the order upon which the demolition is premised being HC1730/22 does not relate to them as they were never cited as parties in the matter which then went on appeal to the Supreme Court and an order granted in favour of the first respondent against named persons. Their point is thus a simple one that an order granted against certain specified persons cannot be used to demolish property of the applicants who were not parties to a matter. They say their occupation was also not at all based on those

people mentioned but on lease agreements issued by Chitungwiza Town Council which is the second respondent in this matter. Also core to their application is the averment that the land which they are in danger of being evicted from is the same land that they were allocated by the second respondent and that they have documents to show for it. What spurred them to apply for this urgent interdictory relief was that the Sheriff had come to Manyame Park in pursuance of the order granted to the first respondent under HC1730/22 and had notified them that their properties too would be demolished even though the order does not relate to them but the land covered by the order affects them. They had gone to the offices of the Sheriff, the third respondent herein, who had stated that the order was to the effect that any movable property irrespective of who had erected on it, would be affected as long as it was on that land. The applicants being aware that the property of one person who was not on the order had indeed been demolished, had then rushed to this court. With the ongoing cholera outbreak, applicants also emphasise that they face grave danger if evicted, further pointing to the urgency of the interdict.

Mr Kuchena for the first respondent objected that the matter is at all urgent. He said this is because there is no conduct which is said to be unlawful and that the application does not contain enough facts to sustain the relief sought. He also submitted that the application omit facts known and also intentionally misrepresents some facts. In particular, he pointed to the fact that the application says the order was granted on 2 November 2023, when the High Court order was in fact granted on the second of November 2022. As such it was in 2022 that urgency is said to have arisen. On lawfulness, he argued that both the High court and the Supreme Court orders remain extant and unchallenged and neither is there a matter pending in any court. The Supreme Court matter in particular was heard and disposed of more than 5 months ago in 2023. Mr Kuchena therefore submitted that they cannot interdict that which is lawful. Furthermore their leases relate to commercial premises and what was to be constructed was a commercial shop. The applicants are also said to be in fact seeking a permanent interdict. As for the order relating to different parties, he argued that they ought to have sought joinder as they were aware that the matter affected them. Further, the notice of removal is said to have been served in September 2023 and yet they did nothing about it. In particular the argument is that if they had any issues, they ought to have approached the first respondent's lawyer and yet they did not. The order that the first respondent obtained is said to have been declaratory in nature and it gave real rights. The applicants are said to have attached no pictures at all showing what they had erected.

Analysis

The important point on urgency is that the order that is being used for eviction does not speak to them. This means that it was well within their rights to take action only when they were threatened with eviction and it became clear that the order of eviction might impact on them. As for the point that the High Court and Supreme Court orders are not being challenged, again the issue remains that the orders do not relate to them. I therefore dismiss the preliminary point that the matter is not urgent. On the applicants misrepresenting that the matter was a 2023 judgment when in fact it was a 2022, judgment. I am satisfied that this was indeed an error since the order itself was attached.

It is also important to emphasise that the applicants are only before me for a provisional order. The implications of this are lucidly explained in *Nhende v Zigora SC 102/22* as follows:

“Firstly, in an urgent application, the applicant is usually granted interim relief on the basis of a *prima facie* case as the applicant would not have proved his or her case. The procedure allows a litigant which can show a *prima facie* right to be accorded interim relief that usually protects the status *quo ante* until the return date of the provisional order. See *Kuvarega v Registrar General & Anor 1998 (1) ZLR 188*.

After the grant of interim relief in the form of a provisional order, the matter does not end there. The procedure is that the respondent is allowed to file a full dossier of opposition to the confirmation of the provisional order, which confirmation takes the form of granting the terms of the final order sought in the prescribed form of the provisional order. After the provisional order is granted, the full procedure of a court application, including the filing of a notice of opposition, answering affidavit and heads of argument, kicks in. It is a procedure which allows the applicant to fully prove his or her case and the respondent to disprove it without the pressure of urgency.”

Therefore what is important at this point is whether they have satisfied the requirements for a temporary interdict. Since the applicants aver that they have lease agreements with the local authority they have established a *prima facie* right. They do indeed face imminent harm if their property is demolished without a hearing. Applicants’ counsel has a valid point in relying on *Jean Pierre Dusabe & Another v City of Harare & Ors HH 114/16* for an illustrative point of like circumstances that harm will be suffered if the property is demolished without the applicants being heard. I do not see that they have any other remedy.

On the interim order being sought being the same as the final order, in this case what is important is that the interim relief against demolition and non-interference is sought

pending the return date. It is almost inevitable herein that there would be some similarity between the interim and the final relief since there is no getting away from the issue of demolition. Given that the demolition is sought to be stayed pending the return date, this is where the procedures of a court application following the granting of a provisional order become important. It is on the return date that the final decision on whether there should be no demolition ever will be made. If the applicants do not adhere to the timelines and court processes attendant upon a court application, it is not like the first respondent does not have remedies. What is vital is that cases such as this are heard to their logical conclusion especially in an environment where local authorities have been known to be less than transparent in their land allocations,

In essence, it is for these reasons that I am granting the provisional order sought.

Tendai Biti Law, applicants legal practitioners
L T Muringani Law Practice, respondent legal practitioners