

STEWART BHEBHE
ZEKIA ZEKIA
NOBERT YOBE
MARTIN TAKAINDISA
LAINA NHAKWI
JESSI NJEWO
MACHONA SIBANDA
DICKSON NDLOVU
ALECK KATAWU
MICHAEL SIMANGO
LEENRED CHIGUVARE
CHEIDI MLAMBO
SARAH TINOVENGANA
PEARSON MUTIZWA
TAVENGWA SHUMBA
MADORO TOGAREPI
ELISTA DUBE
LYDIA MARECHA
TAONA DAKWA

versus

SMM HOLDINGS (PVT) LTD (UNDER RECONSTRUCTION) t/a SMMH PROPERTIES

and

MESSENGER OF COURT – MASVINGO N.O.

HIGH COURT OF ZIMBABWE
WAMAMBO J
MASVINGO, 29 December 2020, 4 January 2021 and 21st January, 2021

Urgent Chamber Application

T. Mbwachena, for the applicants
J. Chipangura, for the 1st respondents

WAMAMBO J. This matter is an urgent chamber application for stay of execution. The applicants are former employees of the 1st respondent while the 2nd respondent is cited in his official capacity.

The Magistrates Court sitting at Masvingo handed down two judgments in case numbers 712/19 and 713/19 and eviction was granted in 1st respondent's favour. The applicants filed an appeal under case number 712/19 on the same day with the other appellants under case number 713/19 (*SMM v Miriam Kwangwa & 77 Others*). The applicants failed to file heads of argument as per the Rules of Court. The applicants seek to apply for reinstatement of the appeal. In the meantime they pray for execution to be stayed. The application for reinstatement of the appeal had not been filed at the time of this hearing.

The 1st respondent was opposed to the application. He however raised a number of points *in limine*.

Some of the points appeared are rather technical while others appeared on the face of it to have some basis. The points will be examined in some detail hereinafter.

The first point *in limine* raised by 1st respondent is that the reference case cited on the application does not exist. Further that the reference is that of a criminal case CA 37/19 and a number of other references.

Clearly the applicants were sloppy in their citation of the reference cases. As will be seen later it was only the beginning of a number of anomalies and inaccuracies on the part of the applicants. The application appears to have been hastily, right up to the draft order which had to be corrected by counsel during the hearing.

The error appears to have been rectified when proper reference is made to the reference cases in the certificate of urgency and the founding affidavit.

1st respondent surely should read the certificate of urgency and founding affidavit in order to properly respond. I find that this point has no merit and I dismiss it.

It is also contended on behalf of the 1st respondent that the matter is not urgent.

According to 1st respondent applicant seeks to stay of execution of a judgment granted by a competent court, which judgment was on appeal before the High Court under CIV 'A' 37/19 which applicants decided to sit on and wait for the day of reckoning.

The judgment was granted on 2 August 2019 and execution only occurred on 21 December 2020. This application was only filed on 24 December, 2020.

The explanation proffered by the applicant is as follows. The copy of a letter by the Registrar requesting the filing of heads of argument was served on applicants legal practitioners on 26 February, 2020. The receptionist who received it misfiled same. The applicants' legal practitioners were served with the notice that the appeal had been abandoned on 19 March 2020 and it never reached the legal practitioner dealing with the matter.

It does not seem to me that the applicants treated the matter with urgency. They sat on the matter from 2 August, 2019 and did nothing in furtherance of their case. It did not end there. Applicants were invited to file heads of argument by the Registrar and according to them their Secretary misfiled the same. There is another significant submission made that not only did the Registrar alert the applicants of the need to file heads of argument, the Registrar further informed applicants that the appeal had been abandoned.

Unfortunately due to the nature of the papers filed by applicants not being consistent and in order such notice does not form part of the application.

It would appear from *Mr Maboke's* certificate of urgency that the applicants who erroneously are referred to as the respondents are still being evicted. There is an emphasis on the rains and the exposure of young children and vulnerable elders.

This appears to be a result of the inaction of applicants as opposed to establishing a ground of urgency.

It appears that applicants waited for and only acted on the day of reckoning.

The dicta by CHATIKOBO J in *Kuvarega v Registrar General and Another* 1998 (1) ZLR 185 (H) at page 193 is directly relevant to this matter.

“What constitutes urgency is not only the imminent arrival of the day of reckoning. A matter is urgent if at the time the need to act arises, the matter cannot wait. Urgency

which stems from a deliberate careless abstention from action until the deadline draws near is not the type of urgency contemplated by the Rules. It necessarily follows that the certificate of urgency or the supporting affidavit must always contain an explanation of the non-action if there has been any delay.”

I find in the circumstances that the matter is not urgent.

In the light of the finding that the matter is not urgent I will not deal with the other points *in limine* raised.

I therefore make the following order;

1. The matter is not urgent and is removed from the roll of urgent matters.

Ruvengo, Maboke & Company, applicants' legal practitioners
Chuma, Gurajena & Partners, 1st respondent's legal practitioners