

T.M.R. (PVT) LTD

Versus

KWEKWE PROPERTIES (PVT) LTD

And

PROVINCIAL MAGISTRATE, KWEKWE N.O.

And

MESSENGER OF COURT, KWEKWE N.O.

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 10 DECEMBER 2012 AND 21 FEBRUARY 2013

*K. Ngwenya for applicant
J. Sibanda for 1st respondent
No appearance from 2nd and 3rd respondents*

Urgent Chamber Application

KAMOCHA J: This application was dismissed after hearing arguments from legal practitioners of the respective parties.

The matter was firstly brought to this court on a certificate of urgency on 3 December 2012. I held the view that the application was not urgent and did not deserve to jump the queue. I accordingly refused to accord it the status of an urgent application.

Seven days later on 10 December the applicant filed it again on another certificate of urgency seeking the same relief as before. The only difference in the circumstances was that execution this time was imminent.

The applicant sought to interdict the respondent from evicting it and its hotel business from the leased premises being Shamwari Hotel, Robert Mugabe Way, Kwekwe pending appeal.

The parties appeared in the Kwekwe Magistrates' Court on 1 August 2012 where the present applicant was ordered to vacate the said premises within 30 days of the court order. Kwekwe Properties (Pvt) Ltd sought and was granted leave to execute pending appeal.

What is clear from the documents filed of record is that the present applicant has no legal right to still occupy the rented premises. It has no defence to the plaintiff's claim. All it was seeking from the plaintiff was an indulgence. It sought to be given 90 days instead of 30 days within which to vacate the leased premises with effect from 23 November 2012 to 24 February 2013. It stated that in the event of it failing to vacate within that period, then plaintiff would be entitled to evict it. Its proposal did not find favour with the plaintiff.

The applicant has brought this application because execution is imminent. The plaintiff is within its rights to have the defendant evicted from the leased premises.

A matter does not become urgent because a court judgment is about to be implemented. There is no reason *in casu* why execution should not be carried out.

This matter, therefore, is not urgent and is *ipso facto* dismissed.

Muhonde Attorneys, applicant's legal practitioners
Job Sibanda & Associates, 1st respondent's legal practitioners