

ALICK GUMEDE

APPLICANT

Versus

**THE MINISTER OF LOCAL GOVERNMENT, RURAL
AND URBAN DEVELOPMENT**

1ST RESPONDENT

And

THE TOWN CLERK, BULAWAYO CITY COUNCIL

2ND RESPONDENT

And

BULAWAYO CITY COUNCIL

3RD RESPONDENT

And

SIPHIWE NCUBE

4TH RESPONDENT

And

GACHA MAZITHULELA

5TH RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO 5 AND 21 MARCH 2013

J. Sibanda for applicant

M. Chimombe for 1st respondent

Ms S. T. Guta for 2nd and 3rd respondents

Judgment

CHEDA AJ: This is an urgent chamber application issued by the applicant who seeks a provisional order to restrain the 4th and 5th respondents permanently from attending any council meetings of the 3rd respondent pending resolution of a court application to be instituted by the applicant within 7 days of the grant of the order and challenging the 1st respondent's appointment of the 4th and 5th respondents.

In his founding affidavit the applicant says he is a resident of number 61047 Pelandaba Township in Bulawayo, is a registered voter and ward chairman of the Bulawayo Progressive Residents Association. He is also a rate payer of the Bulawayo City Council ("the City Council"). He says as such he has *locus standi* to institute this action.

He says he is challenging the appointment of the 4th and 5th respondents to the City Council as Special Interest Councillors, and seeks to interdict them from attending City Council meetings.

He says the appointments are irregular in that they are made when the term of the City Councillors is coming to an end by operation of law in the next month or so, and as such the appointments shall not benefit the City Council, but will instead drain financial resources to which he is a contributor. He says the swearing in of the two respondents was done secretly in a ceremony hidden from the public on 25 February 2013 when the swearing in of councilors is a public matter.

He submitted that the appointment of the two respondents is actuated by a desire other than genuine concern to ensure that the special interest groups are catered for, and the appointment is void *ab initio* for gross unreasonableness. He alleges that the appointments have serious consequences for rate payers like himself. The appointments are regarded as irrational and in defiance of logic that no person at all who has applied his mind to the matter, may act in such a manner.

When the urgent chamber application was placed before me I ordered that it be served on the respondents and that they appear in chambers for the matter. When they so did, the respondent had not had time to file their papers, so that matter was postponed to enable the 1st respondent to do so. When the matter resumed the 1st respondent had not filed any papers but opted to make opposing submissions verbally.

After hearing the applicant's legal practitioner, the 1st respondent's legal practitioner submitted that the 1st respondent acted in terms of section 4(a) of the Urban Councils Act Chapter 29:15 and the appointments were proper. However, he could not explain why the appointments were being made so late and towards the end of the councilors' term of office. He said the Minister could make the appointments at any time.

Indeed the Urban Councils Act, gives the 1st respondent power to appoint Special Interest Councillors in section 4.

The assumption is that these councilors sit in Council and take part in the deliberations of the Council with special concern for special interest groups.

No explanation was given as to why, the 1st respondent, the Minister, who had these powers, did not make the appointments of these special interest councillors for the whole life period of the Council which is 5 years, and only decided to do so when the period of the Council concerned is due to end in a month's time. It is difficult to imagine what interest of the special groups will be served by Councillors who are appointed to the Council for less than a period of about a month.

I am inclined to agree that no purpose will be served by these appointments. It is too late to make them. The unreasonableness of the 1st respondent's action raises questions from any person properly applying his mind to the matter. It is clear that the Council's term will come to an end before the appointees even understand the business of Council, and as such, cannot be in a position to be of any benefit to the special group for which the appointments are made.

In his provisional order the applicant used the words "permanently interdicted". After debating the issue the legal practitioner of the applicant conceded that such wording was inappropriate where a party seeks an order pending the determination of a matter.

Accordingly, the provisional order is amended by the deletion of the word permanently where ever it appears. In the result the order is granted in terms of the amended provisional draft order.

Job Sibanda & Associates, applicant's legal practitioners

Civil Division of the Attorney General's Office, 1st respondent's legal practitioners