

SOLTA GROUP (PRIVATE) LIMITED
and
SOLTA TRADING (PRIVATE) LIMITED
versus
BP ZIMBABWE (PRIVATE) LIMITED
and
THE SHERIFF

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 2 & 7 October 2015

Urgent Chamber Application

C Chinyama, for the applicants
G Gapu, for the first respondent

ZHOU J: This is an urgent chamber application for a provisional order in the following terms:

“TERMS OF FINAL ORDER SOUGHT

1. Execution of order granted under HC 2434/11 by the Honourable Muremba J is hereby stayed.
2. The 1st Respondent shall bear costs of this application at attorney-client scale.

INTERIM RELIEF GRANTED

1. Pending the determination of case no. HC 9274/15 and HC 9280, it is hereby ordered in favour of the 1st and 2nd Applicants that the 1st and 2nd respondents be and are hereby interdicted, barred and restrained from evicting the applicants or anyone claiming right of occupation through the 1st and 2nd applicants from stand no. 10232 Highfield Township, Harare.
2. In the event that the 2nd Respondent has successfully carried out the execution on the above property, then, it is hereby ordered that the 2nd respondent shall restore the 1st and 2nd Applicants or anyone claiming the right of occupation through them full and vacant occupation of stand no. 10232 Highfield Township, Harare.

SERVICE OF PROVISIONAL ORDER

1. This Provisional Order shall be served by a clerk in the employ of Messrs C. Chinyama & Partners or the Sheriff or his Assistant/Deputy.”

The application is opposed by the first respondent. In its opposing affidavit the first respondent objected in *limine* to the hearing of the merits of the matter on at least seven grounds. It is convenient to consider the objection relating to the determination of the matter on an urgent basis first. The first respondent's contention is that the applicant knew as long ago as August 2013 that proceedings for the eviction of Cedar Petroleum (Private) Limited had been instituted but did not seek to obtain the relief which they are seeking now on an urgent basis. The first respondent also points to a letter written on behalf of the second applicant by Masimba Tawengwa who is the deponent to the founding affidavit in the instant case. The letter is dated 19 June 2015. It refers to the eviction proceedings and the appeal which was pending in the Supreme Court in connection with those proceedings. In that letter the applicant raised the very same issues which are raised in the present chamber application.

A matter is urgent if it cannot wait to be resolved through a court application. The case of *Dilwin Investments (Pvt) Ltd t/a Formscaff v Jopa Engineering Co (Pvt) Ltd* HH 116 – 98, at p 1, emphasises the point as follows:

“A party who brings proceedings urgently gains a considerable advantage over persons whose disputes are being dealt with in the normal course of events. This preferential treatment is only extended where good cause can be shown for treating one litigant differently from most litigants. For instance, if it is not afforded, the eventual relief will be hollow because of the delay in obtaining it.”

See also *Pickering v Zimbabwe Newspapers (1980) Ltd* 1991 (1) ZLR 71 (H).

In the case of *Kuvarega v Registrar-General & Anor* 1998 (1) ZLR 188(H) at 193F-G, CHATIKOBO J said:

“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 or careless abstention from action until the dead-line draws near is not the type of urgency contemplated by the rules.”

The present case is a typical case of litigants who waited for the day of reckoning only to approach the court seeking relief on an urgent basis. The applicants knew as long ago as 2013 that the first respondent had instituted eviction proceedings against Cedar Petroleum (Pvt) Ltd. They also knew that an order for the eviction of that company had been granted by this court, and that there was an appeal pending in the Supreme Court in connection with that eviction. The letter of 19 June 2015 clearly proves that fact. The matters which they are raising in the instant application were within their knowledge. The applicants decided to wait until the eviction of Cedar Petroleum was about to take place.

In view of the above facts, I come to the conclusion that this matter cannot be dealt with on an urgent basis.

It is not necessary for me to consider the other objections in *limine* raised by the first respondent given my finding that this matter is not urgent.

In the circumstances, IT IS ORDERED THAT:

1. The matter be and is hereby struck off the roll of urgent matters.
2. The applicants shall pay the first respondent's costs jointly and severally the one paying the other to be absolved.

Chinyama & Partners, applicants' legal practitioners.

Scanlen & Holderness, first respondent's legal practitioners