JEAN PIERRE DUSABE
and
JOHN PETER MUTOKAMBALI
versus
CITY OF HARARE
and
MINISTER OF LOCAL GOVERNMENT PUBLIC WORKS AND NATIONAL HOUSING
and
MINISTER OF LANDS AND RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE
CHIGUMBA J
HARARE, 1, 2, & 10 February 2016

Urgent Chamber Application

Ms. B. Chinowawa, for the applicants
J.P. Mutizwa, for the 1st respondent
E. Mukucha, for the 2nd & 3rd respondents

CHIGUMBA J: This is an urgent chamber application in which the applicants seek an interim order that the first respondent be barred from threatening and harassing them and be prohibited from destroying their household property. The applicants also seek an interim order that the respondents provide them with emergency alternative accommodation, together with their families. The final order sought is a declaratur that the demolitions of the applicants' houses in Subdivision E of Arlington Estate, Hatfield, in the absence of a court order was unlawful, an order of adequate restitution on a scale to be determined by an independent evaluator, and costs on a legal practitioner and client scale.

Every citizen of this country has the right to administrative justice which is enshrined in s 68 of the Constitution. This means that administrative conduct must be lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair. It is a

disgrace for two government departments to admit that houses which had been built without the requisite planning authority were demolished and razed to the ground without a court order, without notice in writing being given to all those likely to be affected. The process was not procedurally fair. What is shocking and of great concern is the apparent misapprehension by these government departments, of their duty to uphold the Constitution, by ensuring that their conduct is not only lawful, it must be procedurally fair. Under no circumstances are government departments at liberty to unilaterally and arbitrarily demolish any structures in the absence of a court order authorizing them to do so, whether the structures were built without approval of building plans, or layout plans or without complying with any other legal requirement. Even if the structures are an eyesore, they cannot just be razed to the ground at the drop of a hat, or on a whim. This is a democratic society in which such conduct, especially on the part of government department whose operations are funded by taxpayers' money, is not justifiable.

The applicants are members of Nyikavanhu housing cooperative. They constructed houses on Subdivision E of Arlington Estate. The first respondent is a local authority, the City of Harare. The second respondent is the Minister of Local Government, Public Works and National Housing (Minister of Local Government), cited in his capacity as the public official responsible for the administration of the *Urban Council's Act [chapter 29;15]*. The third respondent is the Minister of Lands and Rural Resettlement (Minister of Lands), cited in his capacity as the public official responsible for the allocation of state land. The basis on which this application was brought on an urgent basis is that the first respondent demolished the applicants' homes on 21 January 2016 without notice or a court order, and is currently threatening to destroy their household property and forcibly evict them. The applicants assert a constitutionally guaranteed protection from arbitrary eviction, property rights, and lawful administrative conduct. The applicants seek the urgent protection of the court because they are living in the open, in the rubble of their houses, and subject to health challenges.

At the hearing of the matter, which was delayed because counsel for the second and third respondents needed to take his client's instructions as he had been served with the application at the eleventh hour, parties agreed that the matter was inherently urgent. The first applicant in his founding affidavit averred that;- on 15 June 2013 he purchased plot 1101 Arlington Estate, Hatfield from Nyikavanhu Housing Cooperative which is registered properly in terms of the

Cooperative Society Act [Chapter 24:05], certificate of registration number 4504. On 31 January 2005, the Ministry of Youth Development and Employment creation confirmed that Nyikavanhu Housing Cooperative was registered. The registrar of Cooperatives confirmed the same, on 26 January 2011. On 23 November 2010 the cooperative was recognized by the office of the District Administrator, Harare Metropolitan Province, by the Governor and resident minister. On 4 April 2013. Mr. A. S. Tome, of the office of the Provincial Administrator, confirmed that Nyikavanhu housing cooperative had been offered subdivision E of Arlington estate for housing development purposes.

In terms of the agreement of sale of stand 1101 of Arlington estate, measuring 2000 square metres, the first applicant paid the purchase price in full. The property, a vacant stand, was sold *voetstoots.* In clause 2.1 the first applicant acknowledged that he had made himself fully acquainted with the property, and with all the terms imposed by the Town Planning Authority or vested in Government or any other authority, statutory or otherwise. On 15 January 2006, the Ministry of Local Government offered Nyikavanhu Housing Cooperative 530.25 hectares of the remainder of Arlington for development. The offer was subject to the following conditions; - that a subdivisional plan be approved by the department of physical planning, that they obtain City of Harare approval for engineering drawings for water, sewage reticulation and roads as well as inspection and certification of civil works, that they meet the cost of compensating the original owner in order to finalise the acquisition process. Subsequently, on 16 July 2010 the remainder of Arlington Estate was gazetted and acquired by the third respondent in terms of the *Land Acquisition Act [Chapter 20:10]*. Mr. P. F. Mawire, Director of Airports, on 26 October 2011, wrote a letter from the office of the Director of Airports, Civil Aviation Authority of Zimbabwe, in which he gave clearance to the subdivisional proposal of the remainder of Arlington Estate. In the letter he advised that, although the Civil Aviation Authority of Zimbabwe had cleared the subdivisional proposal, the developments should be carried out according to the requirements listed by the Harare City Council Combination Master Plan. On 4 April 2012, the Administrative Court confirmed the acquisition in terms of s 7 of the Act.

On 20 February 2013, Mr. N. Mutsonziwa, a director of the Civil Division of the Attorney General's office wrote a letter to the secretary for national housing and social amenities, on behalf of the Nyikavanhu housing Cooperative, in which he berated and castigated

them for refusing to approve the layout plan. He reiterated that according to the documents given to his office, the cooperative was in lawful occupation and had the requisite government permission to develop the piece of land into residential stands. The first applicant has been living on this property together with his family since early 2015. The house that he built was valued at USD$75 000-00 and the stand at USD$35 000-00, on 19 January 2016. No meaningful challenge was lodged to put in issue the first applicant's averments that he was living in this property with a large extended family which includes a seven month pregnant wife with a broken leg, minor children one of whom suffers from Bronchitis, and a teenager with a chest condition. It is accepted that the first applicant and his family are currently living in the rubble of their former home, with no toilet or ablution facilities, and that they are at the mercy of the weather in this rain season and at considerable health risk.

The first applicant averred that he read about plans to demolish properties in Arlington Township in the newspaper around November 2015. He assumed that only unlawful settlers would be affected. In early December 2015, the second respondent's secretary advised him and other residents of Arlington Estate that his ministry had no plans to evict them. On 21 January 2016, at 3pm armed municipal police officers came to his house without a court order and demolished it. The photographs of the demolished houses which were attached to the application as evidence were not disputed or challenged by any of the respondents. Attempts to rescue household property were futile. Attempts to make a police report were unsuccessful as the police refused to open a docket or to assist. The first applicant lost movable property worth USD$8 000-00 in valuables which were damaged or destroyed in the demolition. Since the demolitions, he and his family have been sleeping outside in the rubble, or in his car for shelter, as they have no alternative accommodation. His minor children now all have the flu; his pregnant wife is experiencing stomach pains. He himself cannot go to work as he has nowhere to bathe. He has no savings, and nowhere to go with his family.

Mr. John Peter Mutokambali deposed to a supporting affidavit on 28 January 2016, in which he confirms having authorized the first applicant to speak on his behalf, and associates himself with the contents of the founding affidavit. He averred that; - he purchased 1100 Arlington Estate Hatfield, from Nyikavanhu housing cooperative on 3 July 2015. The terms and conditions of his agreement of sale are exactly the same as those of the first applicant. He built a

house valued at USD$1 00 000-00 on 19 January 2016. He lives on that property with his minor children and various extended family members. His house was demolished on the same date as that of the first applicant, without notice and without a court order. He lost property worth USD$10 000-00 during the demolition. Since the demolition he has been sleeping at the site in his car, while his family is staying with friends. He has remained on the site in order to protect his property, and, like the first applicant, has been unable to go to work for want of bathing facilities.

The second respondent's Mr. George Sifihlapi Mlilo, deposed to an opposing affidavit on 2 February 2016, in which he averred that;- state land in urban areas is allocated by his ministry, not by the third respondent. He disputed that housing cooperatives are mandated to sell state land, and averred that they may be mandated to distribute state land only. The land may be paid for at state offices only after the cooperative has fulfilled certain development conditions such as servicing and obtaining approved lay outs. He averred that subdivision A of Arlington Estate is state land, and that, according the second respondent's records plot 1101 of Arlington Estate does not exist. He confirmed that Nyikavanhu Housing Cooperative was offered land on 15 June 2006 and that the offer came with development conditions which the cooperative has not met, to date. He advised that the Civil Aviation Authority has no authority over the development of state land. As proof of this, he pointed out that the letter from the Civil Aviation Authority which the applicants seek to rely on clearly states that any development was subject to the requirements of the first respondent and it's Combination Masterplan. He denied that the letter from the Civil Division of the Attorney General's Office approved of the development in question instead it was a query as to the non approval of the layout plan. Engineer Mlilo averred that the layout plan was not approved because the cooperative had not complied with the development conditions set out in the 2006 offer letter.

He denied that the Surveyor General had duly approved any stand numbers at Arlington Estate. Stand numbers are allocated by the first respondent after receiving instruction from the second respondent's planning department. This can only be done after the approval of the layout plan which approval has not been granted. This makes the applicants' structures, which they built on the land, illegal and unauthorized. The developments are illegal for having been done without the requisite permit for development as there is no layout plan. Engineer Mlilo denied that any

officials from his ministry gave assurances to the applicants that they would not be evicted. He said that several meetings were convened with the leadership of Nyikavanhu housing cooperative which was advised of the pending evictions. Verbal notices of intention to evict were given during those meetings. Minutes of such a meeting held on 30 November 2015 were attached as proof of this assertion, as well as proof that the second respondent offered Stoneridge Farm as an alternative. Over 3000 residents of Arlington Farm attended the meeting. He stated that the leaders of Nyikavanhu Housing Cooperative have been resisting the move to Stoneridge farm since 2013.

Engineer Mlilo averred that in 2013 the second respondent approved of a layout plan for the relocation of Arlington Farm beneficiaries to Stoneridge farm. He accused the applicants of constructing illegal structures knowing full well that Arlington Estate had been reserved for airport related industry. He said the cooperative was fully aware of this, and fully aware that layout plan for Arlington estate would never be approved for that reason. He said that the applicants ignored the notices for eviction and that they should direct their claims for compensation o the cooperative which allocated the stands to them. It was denied that s 71 of the Constitution applied to the applicant's circumstances because the applicants illegally constructed structures on state land without the requisite development permits or approval from the first respondent. He reiterated that applicants were informed, through the housing cooperative, as far back as 2013, of the need to move to Stoneridge farm. It was denied that the second respondent was obliged by the Constitution to provide the applicants with alternative accommodation.

Section 74 of the Constitution of Zimbabwe (Amendment number 20) Act 2013 provides that;- 'No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances'. It was submitted on behalf of the applicants, that in the absence of an order of court, the demolition of their homes was unlawful. The respondents, accepted, at the hearing of the matter, that they did not have a court order authorizing them to demolish the applicant's properties. They accepted, that they did not give the applicants notice in writing, of their intention to demolish their houses. They clearly violated s 74 of the Constitution. Section 71 of the Constitution protects property rights, and provides that no person may be compulsorily deprived of their property unless the deprivation is in terms of a law of general application, in the interests of defence, public order, public safety,

public health, town and country planning that property for a purpose beneficial to the community, or in order to develop or use (s 71) (3) (a) (b) (i) and (ii). Such a law requires that the acquiring authority gives reasonable notice to everyone who would be affected and provides fair and adequate compensation for the acquisition within a reasonable time, to apply for an order confirming the acquisition (s 71 (3) (c) (i)-(iii).

It is my view that the reference in s 71 (3) (a) to deprivation in terms of a law of general application does not entrench in the Constitution, a right to fair compensation (s 71 (3) (c) (iii) to just anyone 'deprived of their property'. My interpretation of s 71 (3) of the Constitution is that it allows land to be compulsorily acquired only in very strict circumstances. Certain conditions have to be satisfied, the most important being that the compulsory acquisition must be done in terms of a law of general application, such as the Land Acquisition Act. A careful reading of s 71 (3) (a), (b), (c), (d), and (e), and s 71 (4) will show that the procedure set out for the acquisition of land in the Land Acquisition Act has been enshrined in the Constitution. It is my considered view that, except for the general right to hold and alienate land enshrined in s 71 (2) of the Constitution, s 71 (3), and 71 (4) have no application to the applicants' circumstances. The applicants were not compulsorily deprived of their property in the sense of it being gazetted by the government for urban development or for agricultural use. Although property is defined as 'property of any description and any right or interest in property, in s 71, in my opinion, that section enshrines the procedure for compulsory acquisition of land set out in the Land Acquisition Act and does not apply to the demolition of the applicants' property (houses) without a court order. Surely demolition cannot be equated with 'compulsory acquisition'.

The court accepts that Nyikavanhu Housing Cooperative was given the mandate to distribute state land on Arlington Estate in 2006. The cooperative did not act outside its mandate until it accepted cash from home seekers, knowing full well that it could not obtain the development permit and get confirmation of a layout plan, which was a condition of its offer of state land to distribute in 2006. The first applicant was allocated his stand in 2013, the second applicant in 2015. The court accepts that in 2013 Nyikavanhu Housing Cooperative already knew that Arlington Estate had been reserved for airport industry and that a layout plan for that purpose had been approved by the first and second respondents. Nyikavanhu Housing

Cooperative knew and had been given notice by the respondents that the people allocated state land at Arlington would be offered alternative land at Stoneridge.

The problem arises from the cooperative having accepted cash for the state land that it allocated to the applicants when it had no mandate, permission or authority to itself accept charge or receive the cash. The applicants were led to believe that they had acquired rights in the allocated stands. They were allowed to believe that they could construct housing structures. The confirmation that Nyikavanhu Housing Cooperative had been offered Arlington Estate for distribution of state land had the unfortunate effect of duping innocent home seekers into parting with their hard earned money under false pretences. In future it is suggested that only the three respondents, and the ministry responsible for regulating the conduct of cooperatives wade into any disputes or confirm anything for the avoidance of a situation where the left hand does not know what the right hand is doing, to the prejudice of members of the public. The court accepts that title to Arlington Estate vests in the second respondent and that Nyikavanhu Housing Cooperative cannot alienate the land in favour of the applicants for that reason. The court also accepts the averment made by the second respondent that the stand numbers allocated to the applicants do not exist. The plan from the Surveyor General's Office which the applicants attached to their papers was not authenticated by that office.

During the hearing of the matter it was submitted on behalf of the third respondent that Nyikavanhu Housing Cooperative in a matter which came before this court in 2012, HC 43383/13, had an order against it in which the court expressly forbade it from further allocating any more stands on Arlington Estate. The court invalidated the 2006 offer letter on 17 October 2013. Clearly, the applicants were allocated their stands in direct and deliberate violation of this court order by Nyikavanhu Housing Cooperative. The culture of impunity that has pervaded and corroded our government departments should be roundly condemned. Housing Cooperatives are registered and supervised by a government ministry. It is the responsibility of that ministry to disseminate information to members of the public about the mandate and authority of housing cooperatives. How many members of the public know that housing cooperatives do not have title to the land that they distribute? That such land remains vested in the second respondent in urban areas until the cooperative complies with certain development conditions?

How many people know that even if the stand is allocated by a housing cooperative they should pay their money to purchase the stand to the second respondent and that this can only be done after the cooperative has complied with the conditions required for the issue of a development permit and layout plan? The blame lies squarely on the relevant government departments for not supervising housing cooperatives as they should, and for failing to take action against the cooperatives when it becomes clear that they have exceeded their mandate.

Why should these government departments wait until structures have been put up to demolish them? Why not hold meetings periodically in which the cooperatives should be reigned in and put on strict terms? After all, officials of the second respondent did not just wake up and find that houses had been constructed at Arlington Estates. All the relevant government departments knew, from 2013 when this court made its order, to 2013 when layout plans for airport development were approved by the respondents, that Nyikavanhu Housing Cooperative no longer had the mandate to continue to allocate stands. All three respondents were aware of the fact that they had no court order to evict the applicants, much less to demolish their houses. Despite this knowledge, letters were written to the first respondent by the second respondent requesting the use of 'demolition equipment'. It appears that the second respondent suffers from the misfortune of not possessing any demolition equipment of its own. The first respondent, when called to arms, did not inquire as to whether a court order had been obtained. Instead, as a responsible corporate citizen which is law abiding, it dispatched equipment to Arlington as requested and asked Engineer Mlilo, the second respondent's permanent secretary, to 'kindly ensure that staff Ministry is on the ground to led the exercise… and to 'also ensure that Zimbabwe Republic police is available to provide security'.

Such conduct is a direct contravention of the right to administrative justice which is enshrined in s 68 of the Constitution as follows;-

> **"68 Right to administrative justice**
> (1) Every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair.
> (2) Any person whose right, freedom, interest or legitimate expectation has been adversely affected by administrative conduct has the right to be given promptly and in writing the reasons for the conduct.
> (3) An Act of Parliament must give effect to these rights, and must—
> (*a*) provide for the review of administrative conduct by a court or, where appropriate, by an independent and impartial tribunal;

(*b*) impose a duty on the State to give effect to the rights in subsections (1) and (2);
(*c*) promote an efficient administration".

It has been held that;-

> "…in many cases, the legislation expressly stipulates that certain formalities must be complied with and certain procedures followed when the power is exercised. As a general principle if these are not observed, the action taken will be invalid…where a statutory provision has the effect of depriving an individual of his rights and liberties, the courts render a strict interpretation of the provisions in favor of safeguarding the individual rights and freedoms as enshrined in the Constitution". See *Tengwe Estates (Pvt) Ltd* v *Minister of Lands & Anor*[1] .

Section 3 of the *Administrative Justice Act* provides as follows[2]. Section 2 provides for Interpretation and application[3]. It is common cause that all three respondents are administrative authorities. My reading of the interpretation section of the *Administrative Justice Act* is that any action taken by the respondents or any of their employees, is administrative action, and that in exercising discretion in any administrative action, their conduct must be reasonable, and substantively and procedurally fair. *Francis Bennion* in his book Statutory Interpretation @ p 21-22 writes as follows:

> "Where a duty arises under a statute, the court, charged with the task of enforcing the statute, needs to decide what consequences Parliament intended should follow from breach of the duty. This is an area where legislative drafting has been markedly deficient. Draftsmen find it easy to use the language of command. They say that a thing 'shall' be done. Too often they fail to consider the consequences when it is not done…" See *Chiroodza* v *Chitungwiza Town Council & Anor.*[4]

In the Affretair case, *(Affretair (Pvt) Ltd & Anor* v *M K Airlines (Pvt) Ltd)*[5], at p 21, the court said that:-

> "It seems to me, to put it in simple terms, that the role of the court in reviewing administrative decisions is to act as an umpire to ensure fairness and transparency.' Fair' was Lord Denning's favorite word in his decisions on administrative matters. 'Transparency' is a more modern but

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[1] 2002 (2) ZLR 137(H)

[2] [*Chapter 10:28*] Duty of Administrative Authority.

1. An administrative authority which has the responsibility or power to take any administrative action which may affect the rights, interests or legitimate expectations of any person shall-
   (a) Act lawfully, reasonably, and in a fair manner

[3] 'administrative action' means any action taken or decision made by an administrative authority
'administrative authority' means any person who is an officer, employee, member, committee, council, or board of state or a local authority or parastatal

[4] 1992 (1) ZLR 77(H)

[5] 1996 (2) ZLR 15 (S)

> equally valuable word which, I venture to suggest, could usefully be used in such decisions to connote openness, frankness, honesty and the absence of bias, collusion, favoritism, bribery and corruption, and underhand dealings and considerations of any sort.
>
> The duty of the courts is not to dismiss the authority and take over its functions, but to ensure, as far as humanly possible, that it carries out its functions fairly and transparently. If we are satisfied it has done that, we cannot interfere just because we do not approve of its conclusion. But at the other end of the scale, if the conclusion is hopelessly wrong, the courts may say that it could only have been arrived at by reference to improper considerations or by failure to refer to proper considerations. In these cases we reason backwards from the effect to the cause. We say 'the result is so bizarre that the process by which it was reached must have been unfair or lacking in transparency'." See also *Silver Trucks (Pvt) Ltd & Anor* v *Director of Customs & Excise*[6].

Clearly the applicants' right to lawful, prompt, efficient, reasonable, proportionate, impartial, substantive and procedurally fair administrative conduct was violated. Notice of the impending evictions was not given to the applicants in writing, in violation of s 68 (2) of the Constitution. The first and second respondents did not act fairly, or transparently. They failed to refer to proper considerations, such as the need to get authority from the court to demolish the applicants' properties, and the need to give notice in writing to the applicants and all those likely to be affected by the demolitions. There was no openness, frankness, or honesty with the residents of Arlington Estates. The respondents' position that there was no privity between them and the residents smacks of bias, and collusion and underhand dealings with Nyikavanhu Housing Cooperative.

It is not good enough for the second respondent to point out to meetings held between it and Nyikavanhu Housing Cooperative as being adequate notice. The constitutionally protected right to administrative justice demands that the applicants be given notice of the intended eviction, in writing, as people whose rights, freedom, interest or legitimate expectation were likely to be adversely affected by the demolitions which constitute administrative conduct. Even the first respondent who only provided the equipment to the second respondent is duty bound by s 68 and ought to have refused to loan its equipment to the second respondent in the absence of a court order. The first respondent acted in concert with the second respondent, in contravention of s 68(1) and (2) of the Constitution. Both the first and second respondents' conduct was unlawful and procedurally unfair. It is arguable that the demolition of structures built illegally was

[6] 1999(2) ZLR 88(H)

procedurally fair, but the absence of a court order authorizing the demolitions makes the administrative conduct unlawful.

Having made this finding I now turn to the question of whether the unconstitutional and unlawful conduct of the first and second respondent in demolishing the applicants' houses gives rise to a constitutionally guaranteed duty to provide alternative accommodation. I am unable to follow the submissions made on behalf of the applicants, and find myself constrained from making a finding that our Constitution provides a person evicted without notice and without a court order, with the right to be provided with alternative accommodation. I accept that s 71 of the Constitution enshrines the freedom from arbitrary evictions. I have already made a finding that s 74 has no application in these circumstances, as it is designed to regulate the compulsory acquisition of land by the government. The applicants do not have legitimate entitlement or title to the stands that they were allocated by Nyikavanhu Housing Cooperative. The land is vested in the second respondent. It cannot be said that the demolition of the applicants' houses is compulsory acquisition of their land in the sense intended to be regulated by s 74. I am unable to accept that, even though the first and second respondents' conduct of demolishing the applicant's property without notice and without a court order was unlawful, the applicants should be given alternative accommodation by the respondents when it is common cause that the applicants themselves do not have legitimate title to the land, Nyikavanhu Housing Cooperative did not have any legitimate title to pass to the applicants.

Nyikavanhu Housing Cooperative;-

(a) Was only mandated to distribute state land belonging to the second respondent
(b) When it was offered the land in 2006 the offer was subject to certain conditions which have not been met to date
(c) The remainder of Arlington state is still state land and the cooperative had no right to accept money for the 'purchase'of the stands from the applicants
(d) As early as 2013 this court barred it from allocating or selling any more stands at Arlington Estate
(e) The second respondent advised it that a layout plan had been approved which reserved the remainder of Arlington estate for airport industry.

(f) Both the applicants 'purchased' their stands well after the cooperative had been advised that it would never acquire title because its layout plan would not be approved after a layout plan had already been approved in favour of the airport industries.

(g) Acted illegally in continuing to 'sell' state land to the applicants in light of these circumstances

The unlawful conduct of the respondents of demolishing the applicants' houses without notice and without a court order was deplorable and not justifiable in a democratic society. For the avoidance of doubt, and in the spirit of guiding future conduct by these government departments, the notice of intention to evict must be in writing, not given verbally at a meeting held under a tree. The notice must give those likely to be affected sufficient time within which to relocate. If this requirement is not complied with, then the demolitions and eviction will be unconstitutional and unlawful. Under no circumstances are the government departments at liberty to demolish any structures in the absence of a court order authorizing them to do so, whether the structures are illegal, or an eyesore.

Certain remedies may be available to the applicants flowing from the unconstitutionality of such conduct. Applicants may have remedies against the negligence of certain government departments in failing to protect them from the actions or omissions of Nyikavanhu Housing Cooperative, when they knew that the cooperative was continuing to allocate and take cash from the members of the public, for stands on Arlington estate when it no longer had the mandate to do so. Being given alternative accommodation by the respondents is with all due respect to the plight of the applicants, not one of those remedies which they are entitled to, in an application procedure, and on an urgent certificate. The application procedure is not suited to such a claim which involves the quantification of damages and the placing of evidence before the court as to the value of their properties and their entitlement to other damages such as compensation for pain and suffering.

The applicants should also look at Nyikavanhu Housing Cooperative for recourse. I have no problem acceding to the request for an order barring the respondents from threatening or harassing the applicants or further destroying their property without a court order. The second part of the interim relief sought is not supported by the evidence on the papers filed of record, and in the circumstances before me, cannot found a claim in terms of s 71 and 74 of the

Constitution. As a mark of its displeasure at the unlawful conduct of the first and second respondents, a punitive order as to costs will be made against them to discourage such blatant disregard of the law, in future. For these reasons, it be and is hereby ordered that;-

1. The 1st and 2nd respondent be and are hereby barred from threatening or harassing the applicants.
2. The 1st and 2nd respondent be and are hereby prohibited from further destruction of the applicants' property without a court order.
3. The 1st and 2nd respondents shall pay the costs of suit on a legal practitioner-client scale.

Messrs Zimbabwe lawyers for Human Rights, applicants' legal practitioners
Messrs Mutizwa & Partners, 1st respondent's legal practitioners
Civil Division of the Attorney General's Office, 2nd & 3rd respondent's legal practitioners