

NYIKAVANHU HOUSING COOPERATIVE  
(Represented by Douglas Mushowe)  
versus  
MINISTER OF LOCAL GOVERNMENT PUBLIC  
WORKS AND NATIONAL HOUSING (N.O)  
and  
THE ATTORNEY GENERAL OF ZIMBABWE (N.O)

HIGH COURT OF ZIMBABWE  
MWAYERA J  
HARARE, 17, 18 December 2015 and 18 March 2016

### **Urgent Chamber Application**

MWAYERA J: On 17 December 2015 I struck the application off the urgent roll as I formulated on opinion the matter was not urgent. The reasons why I struck the matter off the urgent roll are outlined herein. The applicant approached the court on urgent basis seeking the following relief:

#### **TERMS OF FINAL ORDER**

1. The 1<sup>st</sup> respondent be and is hereby interdicted from implementing its decision of the 14<sup>th</sup> December 2015 to evict the applicant and its membership from a piece of land called the remainder of subdivision E of Arlington Estate and to destroy building structures on the said piece of land pending determination of the application for review filed under case number HC 12319/15.
2. 1<sup>st</sup> respondent to pay costs of suit.

#### **INTERIM RELIEF GRANTED**

Pending the application for review under case HC 12319/15, the 1<sup>st</sup> respondent be and is hereby interdicted from implementing its decision of the 14<sup>th</sup> December 2015 to evict applicant and its membership from a piece of land called the remainder of subdivision E of Arlington Estate and to destroy building structures on the said piece of land. The facts forming the background to this application are

briefly summarised as follows: The applicant, a duly registered Housing Cooperative approached the court through the urgent chamber book on 16 December 2015 seeking an interlocutory/interdict to stop the first respondent from executing his decision to evict the applicant from a piece of land called the Remainder of subdivision E of Arlington Estate measuring 530,15 hectares as well as his decision to demolish the housing structures situate on the said land, which decision was communicated verbally by the first respondent to the applicant on 14 December 2015. The decision to evict the applicant and to demolish housing structures is an action taken in exercise of the first respondent's administrative function as the Minister in charge of Local Government. The applicant filed the urgent application as a relief pending determination of a review application filed on 15 December 2016.

The requirement of an interlocutory interdict can be summed up as follows:

1. a *prima facie* right, even if it is open to doubt
2. on infringement of such right by the respondent or a well-grounded apprehension of such an infringement.
3. a well-grounded apprehension of irreparable harm to the applicant, if the interlocutory interdict should not be granted and if he should ultimately succeed in establishing his right finally.
4. The absence of any other satisfactory remedy.
5. That the balance of convenience favours the granting of an interlocutory interdict.

The applicants settled on the area in question since 2006 by virtue of being a registered cooperative. The fear that the demolition will occur was real as at time of approaching the court or at least on the 17 of December 2015 the houses had already been demolished. The harm had already been occasioned and the remedy of relocation to Stoneridge *albeit* inadequate or unsatisfactorily according to the applicant had been offered. (p 20 of founding affidavit). In an event since 2013 the applicants were aware any settlements in the area in question were illegal. In HC 43383/13 the court expressly forbade the applicant further allocating stands in Arlington Estate. Continued settling in light of such information would taint the applicant's recourse as self-created urgency. The rules do not cover self-created urgency.

Given these circumstances, approaching the court on urgent basis after the event would not satisfy the requirements of urgency. It is fairly settled that a matter is viewed as urgent if the party sprout to action when the need to act arose and that the party treated the matter as urgent. As way back as 2013 the applicant knew they were illegally settling people. There is no urgency simply because the day of reckoning has arrived. The applicants moved into action immediately after the respondent had already demolished the property as at 17 February 2015. The requirements of urgency have to be looked at cumulatively and wholistically. The cause of action and nature of relief sought have to come into scrutiny. See *Document Support Centre (Pvt) Ltd v Mapuvire* 2006 (2) ZLR 240. It is not sufficient to seek to quickly act after the harm has already been occasioned. The applicant mentioned the offered remedy thus painting the existence of other remedies to the harm occasioned. The cause of action is hinged on dispute over shelter land and thus giving rise to disputes of facts which cannot be redressed on urgent basis.

Accordingly the application is struck off the urgent roll.

*Zvinakovvu Law Chambers*, applicant's legal practitioners  
*Civil Division of the Attorney General's Office*, respondent's legal practitioners