

SERGEANT MUZHANGIRI 988170 X
versus
THE OFFICER IN CHARGE SUB AQUA UNIT
CHIEF SUPERINTENDENT SIBANDA T
and
THE OFFICER COMMANDING SUPPORT UNIT
CAMPS AND HOSTELS
and
THE BADGER- OFFICER COMMANDING SUPPORT UNIT
and
THE COMMISSIONER GENERAL OF POLICE

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 15, 16 March and 6 April 2016

Urgent Chamber Application

A. Mugiya, for applicant
F. Chigwere, for respondents

TAGU J: The applicant is a sergeant in the Zimbabwe Republic Police. Prior to 29 January 2016 she was stationed at, and residing at No. 614 Chikurubi Support Unit Camp, Harare. This is a government accommodation. She was not paying any rent. On 29 January 2016 she was transferred to Zimbabwe Republic Police Glendale through a radio No. JC 48/16. She immediately assumed duty at Glendale Police Station which is near Bindura. Since then she continued to reside at No. 614 Chikurubi Support Unit in Harare and commuting to and from Glendale Police Station. On 4 March 2016 the third respondent wrote and gave the applicant a notice to vacate house number 614 Chikurubi Support Unit Camp. The applicant reacted by filing a court application on 7 March 2016 in case No. HC 2353/16 against the same respondents seeking among other things a declaratur that the applicants' transfer to Zimbabwe Republic Police Glendale through radio No. JC 48/16 and her eviction from House No. 614 Chikurubi Support Unit Camp through a notice dated 4th March 2016 are unlawful and wrongful. This court application is still pending.

Meanwhile, on 11 March 2016 the applicant filed this urgent chamber application seeking the following relief-

“A.TERMS OF THE FINAL ORDER SOUGHT

That the Respondents show cause if any why a final order should not be made in the following terms;

1. The Respondents are interdicted from evicting the Applicant from No. 614 Chikurubi Support Unit Camp until her application for review under Case No. HC 2353/16 is finalised.
2. The Respondents are barred from harassing and threatening the Applicant and his family (*sic*) with whatever manner of threats.
3. The Respondents are ordered to pay costs of suit on a client – attorney scale.

B.INTERIM RELIEF GRANTED

Pending the confirmation of the provisional order, an interim order is granted on the following terms;

1. The eviction of the Applicant from No. 614 Chikurubi Support Unit Camp be and is hereby held to be illegal and unlawful and the Respondents are hereby ordered to give Applicant and those claiming occupation through her vacant possession of House No. 614 Chikurubi Support Unit Camp.

C.SERVICE OF THIS ORDER

Leave is hereby granted to the Applicant to serve the Respondent with the order.”

The respondents opposed the application and filed their notices of opposition.

Mr A *Mugiya* for the applicant made an application to have the notices of opposition expunged from the record on the basis that the papers were not properly before the court because the affidavits attached to the notices of opposition had been commissioned by one Daniel Mambo who was seated in court. This application was strongly opposed by Mr *Chigwere* who argued that while it is true that Mr Daniel Mambo, a commissioner of oaths was seated in court, it was not Mr Daniel Mambo who was arguing the case. He said he was not aware of any law that says a commissioner of oaths who may have commissioned some documents is not allowed to sit in court and listen to court proceedings.

Mr *Mugiya* on the other hand failed to substantiate his objections. I therefore found no merit in the objection raised by Mr *Mugiya*. I say so because Mr Daniel Mambo was merely one of the members of the public who came to listen to the proceedings and was not actively

participating in any way other than that prior to the hearing of the matter he had commissioned the affidavits which were being used by the respondents.

On the other hand the respondents, before Mr *Mugiya* could address the court on the merits, took a point *in limine*. Their point *in limine* was that this matter was not urgent because the applicant approached this Honourable Court pre-maturely before exhausting internal remedies. According to them the applicant approached very Senior Police Officers in the organisation where she launched a complaint as per para(s) 9 and 10 of her founding affidavit. While the said complaint was being investigated she rushed for relief before this Honourable Court. In addition to that the issues that applicant is burdening this court with are purely administrative. Issues relating to transfer are a prerogative of the employer and applicant's contract does not stipulate that she has to work at a particular station for the rest of her service. Further, once a member is transferred to another police Province the member automatically cede the right to accommodation and must seek accommodation in the respective Province where the member is transferred to if one is not available. Besides issues relating to Police accommodation are not a right but a privilege. According to respondents the applicant still had alternative remedies available to her which she had not exhausted. They urged the court to remove the matter from the roll of urgent matters.

Mr *Mugiya* submitted that what the respondents said did not amount to points *in limine* but that the respondents submitted on the merits through the back door.

What constitutes urgency has been decided in a number of cases, the chief one being *Kuvarega v Registrar General and Anor* 1998 (1) ZLR 188. Some of the requirements raised in the *Kuvarega* case supra are that the matter must be urgent, there is irreparable harm if the relief being sought is not granted and that there is no alternative remedy.

In *casu*, the applicant was transferred to Glendale as far back as the 29th January 2016. She assumed duty at her new place since then. She only sought to challenge her transfer after she received notice to vacate government accommodation in March 2016. She raised several administrative issues with her senior officers and even took them to court. While these have not been exhausted she rushed to this court. I agree with the respondents that the requirements of urgency have not been met. The applicant still has alternative remedies available to her. If indeed she felt that this case was urgent she should not have filed the court application in case HC 2353/16 first wherein she is claiming the same relief. In the circumstances the point *in limine* is upheld and this application will fail.

Wherefore, I make the following order:

IT IS ORDERED THAT:

This matter is not urgent and is struck off the roll.

Mugiya & Macharaga Law Chambers, applicant's legal practitioners.
Civil Division of the Attorney- General's Office, respondents' legal practitioners