PHOEBE KUDZURUNGA
and
HAMUNAKWADI, NYANDORO & NYAMBUYA
versus
COVERLINK INSURANCE BROKERS (PVT) LTD
and
ABEL MUNHANDE
and
REGISTRAR OF DEEDS
and
THE SHERIFF

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 9 December 2016 & 18 January 2017

Urgent Chamber Application

T Zhuwarara, for the applicant
T Uriri, for the 1st and 2nd respondents

MATANDA-MOYO J: Initially my sister CHIGUMBA J after going through the papers filed opined that this application failed to meet the requirements of urgency and consequently ordered that the matter be removed from the roll of urgent matters. The applicants thereafter sought indulgence to be heard by this court as they believed the court would come to a different view upon hearing submissions from the parties on urgency. Such indulgence was granted as it is common cause that this court does not become *functus officio* by making a *prima* observation on urgency before hearing parties.

The applicant's counsel submitted that there are basically two aspects which are considered by a court in deciding whether a matter is urgent or not. The first aspect deals with the time factor; did the applicant act immediately upon the occurance of the act. The second deals with the consequences of failing to afford the urgent relief, will the matter be subsequently rendered hollow should the court fail to grant the relief sought. The applicant referred me to the cases of *Document Support Centre (Pvt) Ltd* v *Mapuvire* 2006 (2) ZLR 240 (H), *Muza* v*Ratchat Inv (Pvt) Ltd and Another* HH 314/14.

Counsel for the respondent submitted that the applicant failed to act timeously when the need to act arose. The order which was granted stemmed from the issuance of a provisional order. That order directed the applicants to file their opposition to confirmation of that provisional order within ten days. Such ten days expired on 20 October 2016. The applicants did not file any such opposition. The order was subsequently confirmed. Such is the urgency which is self-created as enunciated in *Kuvarega* v *Registrar and Another* 1998 (1) ZLR at 193 F-G where the court held:

> "Urgency which stems from a deliberate or careless abstention from action until the deadline draws near is not the type or urgency contemplated by the rules"

The need to act arose when the provisional order was granted in the presence of applicants' lawyers. The applicants failed to act then and has not provided any explanation on why they failed to file opposition to the confirmation of the provisional order.

The applicants mistakenly believe that the need to act arose when they found out that default judgment had been entered against them on 2 November 2016. I agree with the respondents contentions that the need to act arose on 20 October 2016 when the applicants were aware of the need to oppose confirmation of the provisional order. Once no such opposition was filed there was no obligation upon the respondents to informing the applicants of the set down on the unopposed roll. The applicants therefore fail to meet the requirements on the time factor.

The applicants argued that they fear that the respondents would execute upon the order and such execution may cause permanent deprivation of the property to the applicants. Should the applicants succeed in the main case they argued that they may fail to recover the property. Restitution may be rendered nugatory.

Counsel for the respondent agreed with the legal principle that a matter is urgent if the consequences of a belated hearing would cause irreversible and hazardous consequences upon the applicants – see *General Transport and Engineering (Pvt) Ltd and Ors* v *Zimbabwe Banking Corporation Ltd* 1998 (2) ZLR 301 (H) case of *Document Support Centre (Pvt) Ltd* v *Mapuvire* 2006 (2) ZLR 240 (H) where the court held that:

> "Urgent applications are those where, if the court fails to act, applicants may well be within their rights to suggest dismissively to the court that it should not bother to act subsequently, as the position would have become irreversible to the prejudice of the applicant. The issue of urgency is not rested subjectively. It is an objective one, where the court has to be satisfied that the relief sought is such that irreparable prejudicing the legal interests concerned."

Herein the applicants speculate that should stay not be issued the respondents may sell property to a third party which sale would render the application for rescission academic. The applicants have not suggested that there is no alternative remedy to safeguard the property against such fears. As rightly pointed out by the respondents the applicants can place a caveat over the property.

It is y finding that the applicants' apprehension is not justified in the circumstances as adjudged by the reasonable man's standard test. The applicants have failed to lay a basis why their matter should be allowed preferential treatment ahead of all other matters pending before this court.

On the issue of costs I do believe costs should follow the cause on the normal scale.

Accordingly I find as follows:

The matter is not urgent and is hereby removed from the roll of urgent matters with costs.

Mukwewa & Ngwerume Law Chambers, applicants' legal practitioners
Uriri Attorneys at Law, 1st & 2nd respondents' legal practitioners