LANGTON NKOMO

versus

THE COMMISSIONER GENERAL OF POLICE

and

PROPOL MATABELELAND SOUTH

SENIOR ASSISTANT COMMISSIONER C. NCUBE

and

THE OFFICER IN CHARGE CAMPS AND HOSTELS

INSPECTOR MABHUGU

HIGH COURT OF ZIMBABWE

TAGU J

HARARE 18 January and 15 February 2017

**Urgent Chamber Application**

*A Mugiya*, for the applicant

*E Mukucha* with *P Sibanda*, for the respondents

TAGU J: The applicant is a member of the Zimbabwe Republic Police currently stationed at BULAWAYO TRAFFIC WEST on Highway Patrol. Sometime in January 2001 he was allocated a five roomed house at Gwanda New Police Camp where he was then based as accommodation. Sometime in September 2014 he was transferred to Bulawayo Traffic West where he is currently based. He was not offered accommodation in Bulawayo. He then sought one roomed lodgings outside of the Police Camp. His family remained occupying the Gwanda house. During the festive holiday he was in Harare and his family visited his mother who is based in Ntabazinduna. When the family returned to Gwanda on 9 January 2017 they found all the applicant’s property inside the house at Gwanda locked inside and locks and keys having been changed. He spoke to the third respondent over the phone and was advised that his eviction from the house had been instigated by the second respondent. He approached this court on an urgent basis arguing that the second and third respondents evicted him without due notice in violation of ss 28 and 74 of the Constitution in that the eviction was carried out without a court order, notice of eviction and no alternative accommodation having been sought for him. He is now seeking the following order-

 **“TERMS OF THE FINAL ORDER SOUGHT**

1. The Respondents are interdicted from evicting Applicant from his allocated house in Gwanda Zimbabwe Republic Police Camp.
2. The Respondents are ordered to pay costs on a higher scale.

**INTERIM RELIEF GRANTED**

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

1. Respondents are ordered to grant the Applicant access and occupation to his allocated house at Gwanda Zimbabwe Republic Police Camp with immediate effect.
2. Respondents are ordered not to interfere in any way or manner with Applicant’s occupation to his allocated house at Zimbabwe Republic Police New Camp, Gwanda.
3. Should the Respondents refuse or fail to comply with this order the Sheriff of Zimbabwe or his lawful deputy be ordered to ensure that Applicant has access and occupation of his allocated house at Zimbabwe Republic Police New Camp, Gwanda.

**SERVICE OF THE PROVISIONAL ORDER**

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

The application was opposed by the respondents.

 Mr *Mugiya* argued that the applicant should have been given notice to vacate the house after three months which notice was not given. He submitted that while it is appreciated that this is not the applicant’s house, the manner they evicted the applicant through a radio communication was unlawful.

Mr *Mukucha* submitted that they were curtailed in their submissions because this application was not served on the other respondents hence they failed to get their input timeously. Be that as it may he submitted that there is a radio dated 15 December 2016 where the applicant was told to vacate the house but for some reasons known to him the applicant decided to stay put. He said that it was automatic that once a member is transferred the member is given three months to rap- up before leaving. He submitted that the applicant was not honest with the court since the applicant is an officer who holds the rank of sergeant and knows the procedures once a member has been transferred. He submitted a Police radio dated 15 December 2016 which reads as follows-

**“SUBJECT: VACATION OF ACCOMMODATION AT GWANDA NEW CAMP STOP**

NUMBER 044356M SGT NKOMO L STATIONED AT BULAWAYO TRAFFIC WEST COMONAGE IS BEING INSTRUCTED BY MY OFFICE TO COME AND REMOVE HIS PROPERTY FROM GWANDA NEW CAMP HOSTELS STOP PROPERTY SHOULD BE REMOVED BY THE(NOT CLEAR) OF DECEMBER 2016 WITHOUT FAIL STOP DISPOL TRAFFIC WEST COMONAGE ADVISE MEMBER STOP STOP STOP”

Mr *Mugiya* submitted a second radio from the second respondent addressed to the applicant and dated 13 January 2017 which he said found its way to the applicant on the 17January 2017 which is an order that by 19 January 2017 the applicant should have removed his property.

Mr *Mukucha* submitted that the house is required to accommodate other officers. He urged the court to only grant part of para 1 only of the provision order and that paras 2 and 3 should be dismissed.

Having read the documents filed of record and hearing counsels i agree with Mr *Mugiya*’s observations that the house in question is not the applicant’s house. To that extent the provisions of s 74 of the Constitution are not applicable in this case. Further, the applicant gave an impression that he was not given any notice before he was evicted. The correct position is that radios were sent to the applicant to vacate the house in question but for reasons known to himself he defied the radios. It must be note that the applicant was transferred to Bulawayo sometime in September 2014. But for more than two years he remained clinging to the house in question. If the relief being sought is granted this will create a wrong precedent such that any other officer who is transferred would cling to the house he/she is occupying at the detriment of other incoming officers. I therefore agree with Mr *Mukucha* that part of the first relief sought in the provisional order ought to be granted to allow the applicant immediate access to the house for the sole purpose of removing his property. The other relief sought is dismissed.

In the result I order an amended relief as follows-

**“TERMS OF THE FINAL ORDER SOUGHT**

1. The Respondents are interdicted from evicting Applicant from his allocated house in Gwanda Zimbabwe Republic Police Camp.
2. The Respondents are ordered to pay costs on a higher scale

**INTERIM RELIEF GRANTED**

Pending the confirmation or discharge of the provisional order, an interim relief is granted on the following terms:

1. Respondents are ordered to grant the Applicant access to his allocated house at Gwanda Zimbabwe Republic Police New Camp with immediate effect for purposes of collecting his property.

**SERVICE OF THE PROVISIONAL ORDER**

Leave is hereby granted to the Applicant’s legal practitioners to serve the Respondents with the order.”

*Mugiya and Macharaga Law Chambers*, applicant’s legal practitioners

*Attorney-General Civil Division*, respondents’ legal practitioners