

MERCY JONGA  
versus  
BARRY JAMES WARWICK  
and  
DEPUTY SHERIFF – GURUVE

HIGH COURT OF ZIMBABWE  
MUZENDA J  
HARARE, 2 May 2018 & 4 May 2018

**Urgent Chamber Application for Stay of Execution**

*T Sengwayo*, for the applicant  
*Ms F Mahere*, for the 1<sup>st</sup> respondent

MUZENDA J: On Friday, 27 April 2018, applicant, Mercy Jonga, a resettled farmer at subdivision 4 of Gurungwe Estates, in the district of Guruve, filed an urgent chamber application seeking the following relief:

“TERMS OF FINAL ORDER SOUGHT”

That your show cause to this honourable court why a final order should not be made in the following terms:

1. The execution of the court’s judgment in Case No. HC 4206/15 be and hereby stayed.
2. The notice of removal is declared irregular, unprocedural and invalid.
3. The first respondent is to pay costs of this application on a legal practitioner and client scale.

TERMS OF PROVISIONAL ORDER SOUGHT

Pending the determination of this matter, the applicant is granted the following relief:

1. The respondent be and are hereby interdicted from ejecting the applicant from her plot pursuant to the order in Case No. HC 4206/15 pending hearing of this matter.”

On the date of filing of the urgent chamber CHITAPI J gave the following order:

“IT IS ORDERED THAT:

INTERIM RELIEF ISSUED

Pending the hearing of this matter on 2 May 2018 and a determination thereof the second respondent shall temporarily stay executing the process of removal schedule for 30 April 2018.”

On 2 May 2018 the first respondent filed his opposing papers. When the matter commenced at 9.30 am, Mr *T Sengwayo* requested the matter to be stood down until 2 pm, he indicated that he wanted to file a supplementary affidavit from Mr Mushonga and also to go through the opposing papers for he had only received them in the morning of the set down date Ms *Mahere* opposed the application arguing that since the application was brought on an urgent basis it ought to be treated as such. After the arguments for and against by both counsel it was agreed to stand down the matter to 11.00 am.

When the matter resumed at 11.00 Mr *T Sengwayo* did not attend court. The court directed that we give Mr *T Sengwayo* time to turn up and by 11.35 am, he had not yet turned up and, the matter proceeded in his default. Since the matter came as an urgent chamber application the court decided to proceed even in the absence of Mr *T Sengwayo* and proceed to deal with the point *in limine* raised by the first respondent.

Ms *F Mahere* in her opposing papers argued that the present matter is not urgent. The notice of removal relates to a judgment dated 23 September 2015, the judgment dates back to two and half years, the applicant has no lawful authority or competent basis to remain in occupation of the property. There is no appeal pending against the judgment. Further Ms *Mahere* argued that the order by MATHONSI J gave the applicant seven days from 23 September 2015 to vacate the property, failing which the deputy sheriff, the second respondent, would be authorised to cause her eviction.

The applicant on the other hand, in her certificate of urgency contends submits that the application is urgent because second respondent intends to evict her. She also argues that the second respondent cannot usurp the powers of the court and execute his own extended decision of evicting applicant from the entire plot instead of from the house and hence the illegal eviction of applicant has to be urgently forestalled.

It is common cause that the judgment MATHONSI J is still extant. The applicant filed a notice of appeal against same but failed to abide by the rules of the Supreme Court and the appeal was struck off. On the date she was served with the notice of removal by the deputy sheriff, she filed a chamber application to have the appeal reinstated. No order for reinstatement was given. No appeal is therefore pending. for a period of 2 ½ years the applicant has been in defiance of a judgment lawfully granted and only acted after being notified of the impending eviction by the deputy sheriff. Hence I agree with Ms *Mahere*'s submission that the matter is not urgent if the situation complained of has been in existence for a significant time before the urgent chamber application was made.

*Gwarada v Johnson & Ors* 2009 (2) ZLR 159 (H). *Kuvarega v Registrar General* 1998 (1) ZLR 188 (H).

The applicant has no offer letter no lease nor permit and at law does not have any legal right to remain in occupation, there is no material change of circumstances from the date the judgment was handed down such as would warrant hearing of the matter urgently.

On the basis of the point *in limine* raised by first respondent. I order that the matter be struck off the roll of urgent matters.

*Trust Law Chambers*, applicant's legal practitioners  
*Coglan Welsh & Guest*, 1<sup>st</sup> respondent's legal practitioners