ADWOA ADOMA RENNER
and
ADWOA ADOMA RENNER N.O
versus
CECIL MADONDO N.O
and
PERGIREN (PRIVATE) LIMITED
(UNDER JUDICIAL MANAGEMENT)
and
GOLDEN REEF MINING (PRIVATE) LIMITED
and
MASTER OF THE HIGH COURT
and
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 31 October 2018

Urgent Chamber Application

R. Jambo, for the applicants
Mrs S. Evans, for the 1st and 2nd respondents
W. Ncube, for the third respondent

ZHOU J: This is an urgent chamber application for an order interdicting the first, second, fourth and fifth respondents from effecting transfer into the name of the third respondent of rights, title and interest in the immovable property known as certain piece of land situate in the District of Salisbury called stand 11 Comet Rise Township 2 of Comet Rise A measuring 4 540 square metres and held under deed of transfer no. 6678/97. The property belongs to and is registered in the name of the second respondent, a company under judicial management. The first respondent is the judicial manager of the second respondent. The first applicant is a shareholder of the second

respondent. The other shareholder is her deceased husband whose Estate she is the duly appointed Executrix Dative of, hence her citation *nomino officio* as the second applicant in this matter.

The application is opposed by the first, second and third respondents, the third respondent being the purchaser of the property in contention. The respondents have objected *in limine* to the determination of the matter on the merits on two grounds, namely (a) that the matter is not urgent, and (b) that the applicants have no *locus standi* to institute the instant application seeking the relief which is set out in the draft provisional order. My determination on the question of urgency will determine whether there will be need to consider the second point *in limine*. That is so because of the matter is not urgent then there would be no need to inquire into the *locus standi* of the parties. On the other hand, if l find that the matter is urgent then l will proceed to determine the second ground of objection.

The brief facts which are relevant to the question of urgency are as follows. An order was granted by this court in case no. HC 7120/18 authorising the second respondent to dispose of the immovable property referred to above and to apply the proceeds thereof as provided in terms of s 307 (2) of the Companies Act [*Chapter 24:03*]. The order was granted on 29 August 2018. The applicants state that the disposal of the property was motivated by them because the first applicant needed a smaller and more manageable property, an allegation that is disputed by the respondents. As pointed out, the order of this court does not refer to the interests of the first applicant at all. Be that as it may, nothing turns on the reason for the disposal of the property for the purpose of inquiry into the urgency of this application. What is common ground is that after the order was granted the first respondent notified the applicants of that fact and intimated that he intended to sell the property to the third respondent for the sum of $450 000, that being the value as per the valuation report which was prepared in February 2018. The communication by the first respondent also invited comments from the applicants regarding the proposed sale. The applicants complain that although the invitation was for them to give their reaction to the proposed sale within 48 hours the first respondent proceeded to sign the agreement of sale before the expiry of that period, a fact which the applicants became aware of on 3 September 2018. The applicants state that the first respondent gave them to believe that he was engaging the third respondent with a view to reconsidering some aspects of the agreement of sale. It was only on 10 October 2018 that they got the first respondent's unequivocal positon that the sale would be proceeded with. The applicants

released the deed of transfer for the property to the first respondent on 19 October 2018 although delivery thereof had been demanded many days before that. The release of the title deed was accompanied by a letter demanding an undertaking from the first respondent that transfer of the property would not be proceeded with pending determination of the court application which they (the applicants) had filed on 17 October 2018, case no. HC 9549/18, seeking the setting aside of the agreement of sale of the property to the third respondent.

A matter is urgent if it cannot wait to be dealt with as an ordinary court application. The circumstances which might give rise to urgency vary, and include the potentiality of irreparable prejudice to the applicants or the risk of perverse conduct which could defeat the rights sought to be asserted if the interim relief being sought is not granted. This court has held in a welter of cases, that the hearing of a matter on an urgent basis is preferential treatment to an applicant who is allowed to jump the queue of other pending matters. It is for this reason that it has been held in many judgments of this court that urgency which emanates from a deliberate inaction until the arrival of the day of reckoning is not the sort of urgency which is contemplated by the rules of court. Put in other words, a party who seeks to persuade the court to grant him the preferential treatment of an urgent hearing must show that he by his action treated the matter as urgent. Self-created urgency or procrastination until the eleventh hour will not clothe a matter with urgency.

In the present case, at the very latest by 3 September 2018 the applicants were aware that the first respondent had already sold the property to the third respondent. The statement that they were lulled into inaction by a promise to engage the third respondent for the purposes of revisiting the terms of the agreement of sale does not take away the fact that that was the date on which the need to act arose, especially when regard is had to the following. Firstly, an engagement with the third respondent was not a guarantee that the sale would not be proceeded with as that depended on the attitude of the third respondent. The response of the third respondent was not a foregone conclusion. Secondly, and more significantly, as at 3rd September 2018 the applicants already believed that the first respondent had not acted properly by signing the agreement before the expiry of the 48 hours which they had been given to comment on the agreement. Their conduct of not acting to protect their interests then is inexplicable by reference to a sense of trust in the proposed engagement with the third respondent. Thirdly, it does not make sense that the applicant would wait for more than a month up to the 10th October 2018 to get an unequivocal position that the sale

would not be revoked. On account of the above facts alone, the matter does not pass the test of urgency.

The applicants state that the urgency arose only after 10 October 2018 or as seems to be suggested in their papers, after the passing of the 72 hours which they gave in their letter to the respondent demanding assurance that transfer would not be passed. The latter position is a clear case of self-created urgency. It is clear that the letter of 19 October 2018 was a self-serving exercise to create a ground of urgency, otherwise why would the applicant not file their application simultaneously with the application to set aside the sale on 17 October 2018. As regards the 10th October, there is no explanation why it took the applicants some 16 days to file the urgent application after the positon of the first respondent had been made understandable to them if at all they had not realised it prior to that day. Clearly, even after the 10th October the applicants did not treat the matter as urgent.

Before l conclude, I need to comment on the language of Mr *Jambo* for the applicants and Mrs *Evans* for the first and second respondents. There was repeated reference to opposing counsel as "trying to mislead" or "to misrepresent". These are very serious allegations when they are directed against a fellow legal practitioner who is an officer of this court. The use of temperate or measured language is the hallmark of the legal profession. The court does not take kindly to the use of that kind of language in relation to a fellow legal practitioner unless there is evidence that beyond prosecuting the case of his or her client the legal practitioner is now misconducting himself. Part of that unacceptable language seems to be attributable to personal (as distinct from professional) involvement in identifying with a client's cause. Both counsel were involved in negotiations relevant to this dispute and in some instances could not resist the temptation to give evidence of their involvement, more or less leading evidence from the bar. The proper and ethical thing to do where a legal practitioner has been so actively involved in the negotiations in such a way is to brief counsel or another legal practitioner to act in the matter for the purpose of the hearing.

In all the circumstances of this case, the matter is not urgent.

In the result, the matter is struck off the roll of urgent matters with costs.

Jambo Legal Practitioners, applicant's legal practitioners
Mabuye Zvarevashe-Evans, 1st & 2nd respondent's legal practitioners
Thompson Stevenson & Associates, 3rd respondent's legal practitioners