

LOREEN SVOSVE
versus
HAMUNYARI P MUCHAKA
and
GINNY MUCHAKA
and
DEPUTY SHERIFF

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 28 June 2019

Opposed Application

Miss *P Msipa*, for the applicant
P Makuwaza, for the 1st & 2nd respondents

ZHOU J: This is an urgent chamber application for stay of execution of a judgment of this court granted in Case No. HC 3348/19. The judgment was granted on 5 June 2019 pursuant to an application instituted by the first and second respondents for the ejection of the applicant from Stand 8510 Budiriro 5B, Harare. A writ of ejection was issued on 18 June 2019. The service of the writ prompted the applicant to institute a court application for rescission of judgment and the instant application on 26 June 2019.

First and second respondents have opposed the instant application. This judgment is in respect of the objections *in limine* taken by the respondents on two grounds, namely

- (a) That the matter is not urgent and;
- (b) That the application is fatally defective for non-compliance with the proviso to r 24 (1) which enjoins that where a chamber application is to be served on an interested party it shall be in Form No. 29 with appropriate modifications. A concession was made in respect

of this latter ground of objection Ms *Msipa* moved the court to exercise its powers to condone the non-compliance with the rules in the interests of justice.

On the question of urgency, a matter is urgent if it cannot wait to be dealt with as a court application. This court has said that a party seeking to have a matter dealt with on an urgent basis is in essence seeking the preferential treatment to jump the queue of other cases waiting to be heard. Such a party must therefore show that she or he treated the matter urgently by acting expeditiously when the need to act arose. Urgency which emanates from deliberate inaction until the arrival of the day of reckoning is not the urgency which is contemplated by the rules of court. In the present case the question of urgency must be determined by reference to the totality of the facts and circumstances of this case and not simply by reference to the date that the applicant was served with the notice of ejectment. This is so because the need to act did not arise when the applicant was served with the writ of ejectment but many years before that.

The property in question used to belong to the applicant's mother and father. In 2005 the respondents instituted proceedings under Case No. HC 1440/05 for the ejectment of the applicant's parents who were cited as the defendants. The order also sought registration of ownership in the property. The order was granted on 8 February 2010. The property was duly transferred into the names of the first and second respondents in 2007. The order for ejectment was also executed, which means that the respondents were given vacant possession of the property. Applicant's mother died on 2 March 2010 after she had already been evicted from the property. Applicant only moved onto the property in April 2019 hence the proceedings for her ejectment were instituted.

From the above facts, it is clear that the need to act arose in 2007 when the property was registered in the name of the respondents or at the very latest when applicant's mother died which death occurred after she had already been evicted from the property. The applicant would have known then that the property belonged to the respondents. She could not create urgency by unlawfully taking occupation of the property and waiting for proceedings for her eviction to be instituted and a writ of ejectment issued. This is what is known as self-created urgency.

The founding affidavit and the certificate of urgency do not disclose any grounds of urgency. As for the certificate of urgency, it is largely a comment on the perceived merits of the application for rescission of judgment. The founding affidavit alleges that the applicant will suffer irreparable harm if she is evicted from the property. That on its own does not create urgency. After

all, as noted above, the undisputed evidence is that the applicant only imposed herself on the property in April 2019. Her ejection from the property cannot therefore cause irreparable prejudice.

Having found that the matter is not urgent, it is unnecessary for me to consider the issue of condoning the non-compliance with the requirements of r 241 (1).

In the result, IT IS ORDERED THAT:

1. The matter be and is hereby struck off the roll of urgent chamber applications.
2. Applicant shall pay the costs.

Mushonga Mutsvairo & Associates, applicant's legal practitioners
Messrs Makuwadza & Magogo Attorneys, 1st & 2nd respondents' legal practitioners