MUBUSO CHINGUNO	APPLICANT
versus	
MINISTER OF LANDS, AGRICULTURE AND RURAL RESETTLEMENT	1ST RESPONDENT
and	
PROVINCIAL LANDS OFFICER MANICALAND	2ND RESPONDENT
and	
DISTRICT LANDS OFFICER CHIPINGE	3RD RESPONDENT
and	
COLONEL MAKUYANA	4TH RESPONDENT

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 25 & 28 June 2018

Urgent Chamber Application (Interdict Pendente lite)

M Mareyanadzo, for the applicant
1st Respondent in default
2nd Respondent Mr Mukoyi in person
3rd Respondent in default
4th Respondent in person

MWAYERA J: The applicant approached the court through the urgent chamber book seeking for an interdict pendente lite. The order sought seeks to restrain the respondents in particular fourth respondent from evicting and or disrupting the applicant's farming activities at subdivision 11 of Chipinge West Annex pending the finalisation of proceedings under case number HC 52/18.

The order sought by the applicant as discerned from the papers is as follows:

"TERMS OF THE FINAL RELIEF:

(a) That the respondents or anyone acting through them be and are hereby interdicted from implementing the changes made to the applicant's farm and location by the letter dated 7 June 2018 from the 1st respondent pending the determination filed by the applicant under case number HC 52/18
(b) The respondents pay costs of suit on attorney client scale.

INTERIM RELIEF

1. The 4th respondents or anyone acting through him or under his instructions be and are hereby ordered to stop immediately all evictions of the Applicant and removal of his property or farm workers.

2. The 4th respondent or anyone acting through him or under his instructions in particular members of the Zimbabwe National Army be and are hereby interdicted from entering any part of the Applicant's farm where he is presently occupying and staying."

I must mention that the matter which was received on 22 June 2018 was set down for hearing on 25 June 2018 to allow for service to be effected on the parties. On 25 June 2018 Mr Mukoyi who indicated he is a Provincial Lands Officer and thus second respondent indicated that he came in as a representative of the first, and third respondents with instructions to postpone the matter so as to secure legal representation. The applicant's counsel consented and the court acceded to the indulgence for legal representation to be secured.

On 28 June 2018 at the hearing the fourth respondent appeared in person. There was no appearance for the first and third respondents even though Mr Mukoyi the purported he had the mandate to represent the first respondent and third respondent. I must mention I was somewhat taken aback by the non availability of the lawyers as that was the reason for postponement in the first place. I even inquired if the first respondent was not represented by the Civil Division and Mr Mukoyi insisted he had the mandate. Even after it was intimated to him since he was not a lawyer, as he revealed upon being questioned, he could not represent the first and third respondents, he insisted the ministry had made a decision it was not necessary to engage lawyers. Mr Mukoyi then appeared in person for the office of the Provincial Lands Officer.

It is not for this court to force parties to secure legal representation. The court can only conscietise the parties of the constitutionally enshrined right but it cannot represent parties or force them to secure legal representation. Without diverging from presiding over a matter impartially the court can assist self-actors by explaining procedures so that the parties are able to follow. The explanations were given for the benefit of the second and fourth respondents. I must however, mention that the court took judicial notice of the fact that Government Ministries are ordinarily represented by the Attorney General's Civil Division. The unusual stance by Mr Mukoyi that the Ministry had made a decision that he appears on their behalf intrigued the court and this has been brought to the attention of the Attorney General's Office.

For the sake of completeness I shall set out the brief background to the application. Both the applicant and fourth respondents are beneficiaries of the land reform programme. They both were issued with offer letters by the first respondent, the relevant issuing authority. The applicant was issued with an offer letter for subdivision 11 of Chipinge West Annex on 9 May 2011. The applicant has been in situ since then and as at the time of the hearing had been in possession of the land in question for about 7 years. The fourth respondent was issued with an offer letter on 18 June 2018 and the offer letter allocated him subdivision 8 of Chipinge West Annex.

Following the issuance of the fourth respondent's offer letter the fourth respondent sought to take occupation and in so doing conflict arose with the applicant who was already on the ground.

The applicant was aggrieved by the relevant ministry's reallocation of the land on which he was settled and thus approached this court in terms of s 4 (1) of the Administrative Justice Act [*Chapter 10:28*] under HC 52/18. The applicant further sought on an urgent basis an interdict to bar the fourth respondent from moving in and disturbing the applicant and his workers' activities at the farm pending determination of HC52/18.

Both second and fourth respondent had no submissions on urgency. Urgency as contemplated by the rules of this court is fairly settled and well defined in plethora of case law. One can safely summarise circumstances in which a matter can be viewed as urgent as follows:

1. That when the need to act arose, the party concerned sprang into action.
2. That the matter cannot wait, for waiting would render hollow any other remedy to be availed by the court in future.
3. That the party concerned will suffer irreparable harm and that there is no other remedy available.
4. The balance of convenience favours the granting of the application.

The requirements of urgency are ably and succinctly laid out in *Kuvarega v Registrar General and Anor* 1998 (1) ZLR 188, *Document Support Centre v Mapuvire and Another* 2006 (2) ZLR 240. See also the case of *Madzivanzira and 2 Ors v Dexprint Investments (Pvt) Ltd* HH 245-02 which quoted with approval sentiments of PARADZA J (as he then was) in *Dexprint Investments (Pvt) Ltd v Ace Property and Investments (Pvt) Ltd* HH 120/02 wherein the learned Judge stated that:

> "For a court to deal with a matter on urgent basis, it must be satisfied of a number of important aspects. The court has laid down guidelines to be followed. If by its nature the circumstances

> are such that the matter cannot wait in the sense that if not dealt with immediately irreparable prejudice will result, the court can be inclined to deal with that matter on urgent basis."
>
> Further in *Dexprint Investments* (*supra*) the court stated as follows:
>
> "….it must be clear that the applicant did on his own part treat the matter as urgent." (my emphasis)

This same reasoning has been rehashed by the courts with emphasis on the importance of the party seeking redress on urgent basis and not waiting for doomsday or the day of reckoning to arrive. If the applicant in this case swiftly acted in the face of impending irreparable harm in circumstances where the matter cannot wait then there is justification in allowing the matter to jump the ordinary que and be heard on urgent basis.

Given the common cause aspects emanating from submissions by Colonel Makuyana that he was advised by Mr Mukoyi, that he should not move in too soon but give the applicant who was already in situ time to harvest his crop and also given the undisputed evidence by the fourth respondent that he moved in and that he intended to help the applicant with a sheller to shell his maize it became apparent that the applicant on realizing the disruption at his farm had to urgently seek redress by way of an interim interdict. The applicant received notification to vacate and that at more or less the same time the fourth respondent and other people moved and started settling in, in a manner tantamount to evicting the applicant and or his workers.

In reaction to this disruption the applicant who had lodged an application with this court under HC 52/18 also sought a provisional relief on an urgent basis. Mr Mukoyi did not make any submissions as whether or not the application was urgent. This was despite the explanation by the court of the requirements of urgency as contemplated by the rules of the court. He had no submissions to make on urgency and so did Mr Makuyana the fourth respondent. From the circumstances of this matter going by the manner the applicant sought redress from the time of hearing about the intended evictions and disruptions on 18 June 2018, the requirements of urgency appear to have been met. The applicant approached the High Court on 22 June 2018. The applicant treated the matter as urgent and indeed the application is one which qualifies to be heard on urgent basis.

Turning to the merits of the case, the applicant is seeking an interdict pendente lite. The requirements of an interim interdict have been clearly spelt out in several cases, *Setlogelo v Setlogelo* 1914 A 22(a) which was quoted with approval by Malaba JA (as he then was) in *Airfield Investments (Pvt) Ltd v Minister of Lands and Ors* SC 36/04 see also *Boadi v Boadi*

and Anor 1992 (2) ZLR 22 and *Flamelily Investments (Pvt) Ltd v Zimbabwe Salvage (Pvt) Ltd and Another* 1980 (1) ZLR 378. .

The following can be summarised as the requirements of an interim and or temporal interdict.

1. That the applicant has a clear right even though subject to doubt.
2. That there is reasonable harm actually occasioned or reasonably apprehended.
3. That there is no alternative remedy readily available.
4. That the balance of convenience favours the granting of the relief.

In this case the applicant who has been in possession of an offer letter for 7 years and has crop maize, as confirmed by the fourth respondent is likely to suffer prejudice if the fourth respondent moves in to evict and disrupt his farming activities. On the other hand the respondent will not be prejudiced by the interim interdict as it simply seeks to bar him from evicting and disrupting the applicant's activities pending the litigation. The applicant has a clear right emanating from his offer letter. The issue of co-existing given the subdivisions in the same farm would only be an administrative issue to be attended to by the relevant authority. It could suggest boundary or area coverage but that is simply raising doubt not taking away the clear right given by the 7 years old offer letter. The applicant approached the court upon getting notice to vacate and also upon the respondent moving into the farm which would occasion harm. Further the reasonable apprehension of harm given the fourth respondent's evidence of how he moved in with trucks and settled in with some of applicant's workers is not speculative. The applicant has no other remedy other than seek the provisional relief pending final determination of the matter.

In the circumstances of this matter both the requirements of urgency and requirements of an interim interdict have been met. Strictly speaking the second and fourth respondents, other than mentioning that they opposed the application, had no meaningful submissions to make on why the interim relief sought should not be granted. Mr Mukoyi's argument was simply that the Ministry wanted the applicant and respondent to co-exist. The process of moving in and disrupting was attributed to the fourth respondent who confirmed he and his team moved in despite having been warned by Mr Mukoyi to give time for the applicant to harvest. The fourth respondent's offer letter is dated 18 June and by the very day he had moved in with trucks to settle. This fortifies the applicant's claim of him and his workers being evicted or disrupted. The circumstances of the matter and the nature of relief sought require a provisional order on urgent basis to be granted.

Accordingly it is ordered that:

1. The 4th respondent or anyone acting through him or under his instruction be and are hereby ordered to stop immediately all evictions of the applicant and removal of his property or farm workers.
2. The 4th respondent and or anyone acting through him or under his instructions in particular members of the Zimbabwe National Army be and are hereby interdicted from entering any part of the applicant's farm where he is presently occupying and staying.
3. There will be no order as to costs.

Mvere Chikamhi Mareanadzo Legal Practitioners, applicant's legal practitioners
Civil Division of the Attorney General's Office, for your information