CHITUNGWIZA RESIDENTS TRUST
versus
CHITUNGWIZA MUNICIPALITY

HIGH COURT OF ZIMBABWE
MWAYERAJ
HARARE, 2 October 2014, 21 January 2015

Urgent Chamber Application

S. Kadzere, for the applicant

MWAYERA J: The application was brought before me through the urgent chamber book on 2 October 2014, I formulated on opinion that the application did not disclose the urgency contemplated by the rules of this court, in that the relief sought before this court appeared to be the same relief that was granted in the Magistrate's Order dated 24 April 2014. The extant Magistrate Order appeared on papers forwarded for the urgent application to be relied on by the applicant and thus to that extent removed the purported urgency.

The applicant's legal practitioners requested for reasons for the decision that the matter was not viewed as urgent. It was apparent from the papers filed of record that the respondent had embarked on an exercise of demolishing properties in Chitungwiza. The applicant approached the court fearing that such demolishing would continue. The founding affidavit by Marvellous Kumalo in particular para 4 outlined that demolitions had occurred to various members of the applicant's properties in the absence of a court order. The applicant feared and anticipated further demolitions. However in para 7 of the founding affidavit the deponent made it clear that there was already an existing order barring the respondents from carrying out the unlawful demolitions. Paragraph 7 of the founding affidavit by Marvellous reads:

> "There is a provisional order granted by Chitungwiza Magistrate Court on 24 April 2014 by magistrate Gofa barring the respondent from demolishing houses without a court order. A copy of the judgment is attached and marked as Annexture "D". It is therefore mischief of the highest order for the respondent to take the law into its own hands. This wanton disregard of the law has left residents in fear that another demolition will be carried out unless this Honourable Court stops the respondent in its

cracks. The balance of convenience favours the granting of an interdict whilst the respondent has the option of following the law".

The impression created from the founding affidavit is that the applicant already had an existing remedy in the form of an extant Magistrate Court Order and what was needed was enforcement of that order. The enforcement would not be actioned by getting further and more court orders to the same effect. The Magistrate's Order barring illegal demolition remained operational and extant. When the applicant approached this court the demolitions had already been effected. This coupled with the fact that the applicant sought to rely on an extant Magistrate Court Order removed the purported urgency contemplated by the rules. The same relief granted by the magistrate in an existing order at the time of approaching this court was being sought, put differently the applicant appeared to seek a relief which the courts had already granted thereby removing the purported urgency. It was for these reasons that I held the view that the application was not urgent warranting the court giving it preferential treatment of not appearing through the ordinary roll. There was an existing remedy put across by the applicant thus changing the complexion of the matter.

The interim relief sought by the applicant was that:

1. The respondent be and is hereby barred from carrying out demolitions in its Municipality without a court order.

The applicant then in the founding affidavit suggest that the order barring had been granted by the magistrate on an earlier date and that the respondent ignored it. The fact that the respondent ignored does not mean there was no order and that the order was invalid as it had not been declared so by a competent court of law. It is against this background that I looked at the circumstances of the matter and requirements of urgency which are fairly settled and came to the conclusion that the matter was not urgent.

The test for urgency is objective and given the certificate of urgency and the founding affidavit in this case it was apparent the respondent had already demolished properties and that the applicant had an existing court order. Given the suggestion by the applicant that there is an existing court order then there is a remedy already available for enforcement by other means and not an urgent application to get the same relief. There already is a remedy available and it would not be justifiable to give preferential treatment to the case affording it an opportunity to jump the queue for no good cause.

Accordingly as there was no justification in the founding affidavit and certificate of

urgency for the application to be treated as urgent, I concluded the application did not meet the requirements of urgency and thus removed it from the urgent roll.

In the premises therefore, IT IS ORDERED THAT:

1. The matter be removed from the urgent roll.

Kadzere, Hungwe & Mandevere, applicant's legal practitioners
Matsikidze and Mucheche, respondent's legal practitioners