

MARTIN C GROBBLER
versus
SHORAI KUDZAYI MUCHEMWA
and
EDWIN ZIMUTO
and
THE OFFICER IN CHARGE
(ZRP EPWORTH)
and
THE COMMISSIONER-GENERAL OF POLICE

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 12, 26 February 2016 and 2 March 2016

Urgent Chamber Application

N Mugiya, for the applicant
T Zhuwarara, for the 1st respondent
E Hunyanyiswa, for the 3rd and 4th respondents

MWAYERA J: The applicant approached the court through the urgent chamber book seeking the following relief:

A. TERMS OF THE FINAL ORDER SOUGHT

1. The first and second respondent and their agents are ordered to comply with the order of this court on HC 10031/15 notwithstanding that the first respondent has appealed against it.
2. The first and second respondents and their agents are interdicted from going to Lot 1 Buena Vista Farm Goromonzi unless with the consent of the applicant.
3. The first and second respondent and their agents' conduct of invading the applicant's farm at Lot 1 Buena Vista Farm Goromonzi be held to be unlawful and wrongful.

4. The third and fourth respondents' failure to arrest the first and second respondents for violating the applicant's rights be declared to be wrongful and unlawful.
5. The first and second respondents and their agents are ordered to pay costs of suit on a client and attorney scale.

B. PROVISIONAL RELIEF GRANTED

Pending the confirmation of the provisional order, an interim order is granted on the following terms:

1. The first and second respondents and their agents are barred from torturing, harassing and disturbing the applicant's peace and stay of Lot X of Buena Vista Farm Goromonzi.
2. The first and second respondents and their agents are ordered to return the meat of the beast which they slaughtered and took from the applicant's farm or to return the monetary value of the beast which is US\$1 300-00.
3. The third and fourth respondents are ordered to investigate and arrest the first and the second respondents on the basis of allegations constituting this application in terms of the law urgently and report to the registrar of the High Court on progress of their investigations within seven days of this order.
4. The first and second respondents and their agents be ordered to vacate Lot 1 of Buena Vista Farm Goromonzi forthwith.
5. The first and second respondents and all their agents are prohibited from barring the applicants access and use of his curing barn and any other facility at the farm.
6. The third and fourth respondents are ordered to provide security to the applicant where the applicant's life and welfare is in danger and where the applicant calls for help and protection from the police.

The facts forming the brief background to this application as discerned from papers filed and oral submission may be summarised as follows. The land in question was acquired by the state under the Land Acquisition Programme in terms of The Land Acquisition Act, [*Chapter 20:10*]. The applicant by virtue of Mashonaland East Allocation Schedule 55 – June 2013 was

recommended to stay on Lot 1 of Buena Vista. Allocation recommendation marked as Annexure 'B'. The Ministry of Lands and Land Resettlement issued an offer letter to the first respondent Annexure 1 R 1 p15 of the respondent's bundle. The first respondent Shorai Muchemwa was offered Lot 1 of Buena vista per the offer letter dated 28 July 2015. The applicant issued process in HC 7924/15 challenging the first respondent's offer letter. If the applicant had been despoiled then there was need for action on urgent basis. That application is still to be prosecuted to finality. The applicant filed an urgent application HC 7924/15 which was dismissed. The applicant filed yet another urgent application on HC 10031/15 which was granted but the respondent appealed on the basis among others that the order given had the effect of a final nature. The applicant mounted an application for execution pending appeal on 20 November 2015 in HC 11362/15. The respondent opposed the application which is yet to be prosecuted to finality. On 10 February 2016, the applicant filed the current urgent chamber application which reveals that the parties are entangled in a land dispute emanating from being at the same farm.

Urgency as contemplated by the rules of this court is fairly settled and well defined in plethora case law inclusive of *Kuvarega v Registrar – General and Anor* 1998 (1) ZLR 188 (H) *Silver's Trucks (Pvt) Ltd and Anor v Director of Customs and Exercise* 1999 (1) ZLR *Madzivanzira and 2 Ors v Dexprint investment (Pvt) Ltd* and Another HH 245 – 02 *Dexprint Investments (Pvt) Ltd v Ace Property and Investments (Pvt) Ltd* HH 120-02 and *Document Support Centre (Pvt) Ltd v Mapuvire* 2006 (2) ZLR 240 H. The requirements of urgency as discerned from the cases above can be summed up as follows. A matter is viewed as urgent if when the need to act arise the party arose to action. Further a matter is viewed as urgent if the party treated the matter with urgency and also central to urgency is the cause of action and the nature of relief sought. I agree with the observation made by Makarau J (as she then was) in *Document Support Centre (supra)* wherein she remarked in relation to what constitutes urgency:

“without attempting to classify the causes of action that are capable of redress by way of urgent application. It appears to me that the nature of cause of action and relief sought are important considerations in granting or denying an urgent application”.

It follows therefore that there is need to look at the requirements of urgency cumulatively and not individually in order to determine whether or not a matter is urgent. It is

not every legal interest that is capable of protection by way of an urgent application. The cause of action and relief sought must be competent for one to grant the relief on urgent basis. Thus even if it is accepted as a general rule that if when the need to act arises, the applicant sprout to action for redress one cannot pay a blind eye to the cause of action and nature of relief sought.

A close look at the applicant's papers and submissions reveal that the applicant under the umbrella of alleged liberty being at stake approached the court for redress of that threat. Clearly the order sought given the third and fourth respondent's position that a report was made with a CR reference and investigations in progress shows the existence of other remedies at the applicant's disposal. The applicant's counsel in oral submissions actually confirmed the third and fourth respondents' position that the matter of alleged threat has received attention and is under investigation by the Criminal Investigation Department and that the minister of Home Affairs was alive to the matter.

The applicant further sought for compensation in the form of a beast or \$1 300-00 such a relief with the effect of final nature, in the wake of material disputes of facts as evidenced by the respondents' denial of allegations cannot be competently redressed on urgent basis.

The applicant further sought eviction of the respondent on urgent basis in the face of material disputes of facts even per the applicant's own affidavits. The circumstances of the case given the land dispute is certainly one which would not entail relief on urgent basis. The courts generally detest issuing a final order on urgent application, moreso in circumstances such as the present case where there are inherent material disputes of fact. In the circumstances of this case, eviction on urgent basis cannot be sustained. It is also worth noting that the applicant has pending application for execution pending appeal and has a pending application challenging the respondent's offer letter. That clearly shows the applicant has other remedies. A matter is viewed as urgent if the relief sought is such that if the applicant were to wait for ordinary set down then irreparable harm will be occasioned. The existence of other remedies given the nature of relief sought further shows the application does not meet the requirements of urgency contemplated by the rules of this court.

The applicant also seeks the third and fourth respondents to be ordered to investigate and arrest the first and second respondents and report progress of their investigation to the Registrar of this court. I must hasten to say it is the police mandate as ensconced in the constitution to

maintain law and order and to protect lives and property. In the face of submissions that the third and fourth respondents have received complaints from the applicant and actioned them there appears to be a contradiction in the applicant's assertion on the inaction of the police in the face of reports and complaints from the applicant. This alleged inaction would require substantiation in evidence before ordering the police to without discretion arrest and report progress to the Registrar of the High Court. In the absence of such substantiation the relief sought in the circumstances of this case would occasion unnecessary interference at the expense of the doctrine of separation of power. It is generally not desirable to issue an interim relief affecting the rights of another on urgent basis. However, the circumstances of each case fall for scrutiny.

The factors for consideration have to be viewed cumulatively, in exercising discretion to grant or not grant an urgent application. It appears in this case that the applicant approached the court on an urgent basis seeking a relief which in the main is of a final nature. There are clear material disputes of facts anchored on the land and also on the alleged inaction by the police. There are also numerous remedies available to the applicant as discussed above. In the circumstances of the case the nature of relief sought and cause of action are not sustainable on urgent basis. I decline to deal with the matter on urgent basis as it does not meet the requirements of urgency.

Accordingly the matter is struck off the urgent roll.

Mugiya & Macharaga Law Chambers, applicant's legal practitioners
Hussein Ranchihod & Co, 1st respondent's legal practitioners