TRIANGLE LIMITED
and
HIPPO VALLEY ESTATES LIMITED
and
MKWASINE ESTATE
and
THE ZIMBABWE SUGAR ASSOCIATION
EXPERIMENT STATION (PRIVATE) LIMITED
versus
ZIMBABWE SUGAR MILLING INDUSTRY
WORKERS UNION
and
THE MINISTER OF PUBLIC SERVICE
LABOUR & SOCIAL WELFARE
and
THE PROVISIONAL ADMINISTRATOR
OF ZSMIWU MR P.Z. DZVITI
and
SUGAR PRODUCTION AND MILLING INDUSTRY
WORKER' UNION OF ZIMBABWE

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 30 November 2015

**Urgent Chamber Application**

*A. Rutangira,* for the applicant
*T.R. Madzingira*, for the 1st respondent
No appearance for the other respondents

MATANDA-MOYO J: The applicants approached this court on an urgent basis for the following relief:

"TERMS OF FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms:

1. The 1st Respondent, its members or any of the employees of the applicants be and are hereby interdicted from continuing on an unlawful collective job action pending the finalisation of the show cause and Disposal Order applications by the Applicants.

2. That the 1st Respondent shall pay costs of this application on a legal practitioner and client scale.

INTERIM RELIEF

1. The 1st Respondent, its members or any of the employees of the Applicants shall refrain from continuing on a collective job action.

2. That leave be is hereby granted to the Applicants' Legal Practitioners or the Deputy Sheriff to attend to the service of this Order forthwith upon the Respondents in accordance with the Rules of the High Court.

……."

At the onset of the proceedings counsel for the first respondent took issue with the urgency of this matter. The events which took place pertaining to this matter are as follows: On 10 November 2015 the first respondent served a notice upon the applicants of its member's intention to go on a collective jog action. The 10th of November 2015 was a Tuesday. On 16 November 2015 the applicants filed an urgent application before the second respondent for a show cause order and Disposal Order in terms of s 106 of the Labour Act [*Chapter 28:01*].

On 18 November 2015 the applicants through its legal practitioners of record wrote a letter to the second respondent. In that letter they advised the Minister that the negotiations which had taken place were a nullity as the executive of the first respondent lacked the requisite authority to negotiate the said CBA. This they explained was in view of the fact that the second respondent had appointed a Provisional administrator to run the affairs of the first respondent. The applicants sought clarification from the second respondent. It also looked like a request was made to the Minister to liase with the Labour Officer for Chiredzi and the Provisional Administrator so as to stop what they termed a "defective threatened collective job action". The applicants requested the second respondent to resolve a membership fight between the first respondent and another union SPMAWUZ.

As a conclusion to the letter the applicants advised the Minister that they would approach the courts for an urgent relief should the above concerns not be dealt with by the 25 November 2015. The importance of that date is not clear from the reading of the letter.

On 26 November 2015 the applicants filed this urgent application. Counsel for the first respondent argued that the applicant did not treat the matter as urgent and consequently the matter should join the queue of cases to be heard on the ordinary roll.

Counsel for the applicants insisted the applicants treated the matter urgently and that the applicants have satisfied the requirements for urgency.

Urgent applications are governed by r 244 of this court's rules which require a certificate from a legal practitioner in terms of subrule 2 of r 242 to the effect that the matter is urgent. Reasons for the urgency should be apparent from a reading of the certificate of urgency. The applicant should set out the circumstances giving rise to the urgency and why he or she believes her or she could not be afforded substantial redress at a hearing in due course. These two requirements ought to be satisfied before a matter can be heard on an urgent basis.

Firstly it is my view that the applicants did not treat the matter as urgent. Upon being served with the notice to go on a collective job action on 10 November 2015, it took applicants 5 days to file an application for a show of cause order. Considering that the notice period is 14 days, surely filing of the show cause order after 5 days constituted inordinate delay. In *Mathias Madzivanzira and 2 Ors* v *Dexprint Investments (Pvt) Ltd and Anor* HH 145/02 court said;

> "It must be clear that the applicant did on his own part treat the matter as urgent. In other words if the applicant does not act immediately and waits for doomsday to arrive and does not give a reasonable explanation for that delay in taking action, he cannot expect to convince that court that the matter is indeed one that warrants to be dealt on an urgent basis."

Clearly the need to act arose on 10 November 2015. There is no reasonable explanation contained in the affidavit why the applicants waited 5 days before filing a show cause order, and even after filing the show cause order no pursuit of the matter was done with the Minister. Counsel for applicants tried to give an explanation from the bar which explanation the court would ignore. It is therefore my conclusion that the urgency herein is self-created.

I am also of the view that the other requirements for urgency have not been met. The applicants should show that there is no other satisfactory alternative remedy. By exercising their right in terms of the Labour Act through the filing of the show cause order the applicants concede that there is an alternative remedy. The applicants can seek an order compelling the Minister to act on its application.

The applicants also failed to show that irreparable prejudice will result if the matter is not dealt with. The applicants only showed that financial prejudice would result but by allowing the right to collective job action, such prejudice was foreseeable. That is not the sought of prejudice contemplated by the rules.

In the result it is my considered view that the matter is not urgent.

*Scanlen & Holderness Legal Practitioners*, applicants' legal practitioners
*Mangwana & Partners*, 1st respondent's legal practitioners