CITIZENS COALITION FOR CHANGE
and
YOUNGERSON MATETE
versus
MINISTER OF JUSTICE, LEGAL AND
PARLIAMENTARY AFFAIRS N.O.
and
MINISTER OF FINANCE, ECONOMIC DEVELOPMENT
AND INVESTMENT PROMOTION N.O.
and
SENGEZO TSHABANGU
and
CITIZENS COALITION FOR CHANGE
and
WELSHMAN NCUBE

HIGH COURT OF ZIMBABWE
MUSHURE J
HARARE, 7 & 16 October 2024

Urgent Chamber Application for an interdict

A Muchadehama with *A. Gumbo,* for the applicants
L Muradzikwa for the first and second respondents
N Sithole with *K. Ngwenya* for the third respondent
M Ndlovu for the fourth and fifth respondents

MUSHURE J:

Introduction

[1] This is an urgent chamber application filed, in the main, by a political party operating under the name the Citizens Coalition for Change ('CCC') for an interdict prohibiting the first and second respondents from disbursing funds to the third respondent in terms of the Political Parties (Finance) Act [*Chapter 2:11*] ('the Act'). The applicants approached the court on a certificate of urgency on 27 September 2024 seeking the following relief:

"**TERMS OF THE FINAL ORDER SOUGHT.**

1. Pending the outcome of case numbers HC 7321/23 and HCH 6872/23 pitting 1st Applicant and 3rd Respondent, 1st and 2nd Respondents be and are hereby interdicted from disbursing the sum of ZiG 22 116 500.00 or any portion therefore or any other sums of money due to the Citizens Coalition for Change (CCC) to 3rd Respondent or to any one acting on his behalf or to anyone else.
2. Costs to be borne by a party who opposes this application.

INTERIM RELIEF GRANTED

Pending determination of this matter, the Applicants are granted the following relief:

Pending confirmation or discharge of this provisional order, the 1st and 2nd Respondents be and are hereby interdicted from disbursing ZiG 22 116 500,00 due to the Citizens Coalition for Change (CCC) in terms of the Political Parties (Finance) Act as gazetted on 6 September 2024 to 3rd Respondent or to anyone acting on his behalf or to anyone else.

SERVICE OF PROVISIONAL ORDER

Services of this order shall be effected by the Sheriff or his/her Lawful Deputy or by Applicants' Legal Practitioners."

[2] The application was placed before me on 30 September 2024. Upon considering the papers, I formed the opinion that the matter was not urgent. In turn, the applicants sought an audience with me to argue on the urgency of the matter. It was within their right to do so. I accordingly directed that the parties appear before me on 3 October 2024 for oral arguments on the urgency of the matter.

[3] Pending the hearing of the matter on 3 October 2024, the fourth and fifth respondents wrote a letter informing the Registrar that they had not been cited as parties in the urgent chamber application. They claimed they had a real and substantial interest in the matter and intended to file a court application for them to be joined in the application. The intended application for joinder was filed on 2 October 2024 under case number HCH4307/24.

[4] All the parties appeared before me on 3 October 2024. By consent, they agreed that the court application for joinder would be placed before me for disposal first before the arguments on the urgency of the instant application. With respect to that application for joinder, the respondents were not opposed to it. Accordingly, an order by consent was issued on 4 October 2024 joining the fourth and the fifth respondents as parties to this application.

[5] On 7 October 2024, all the parties then appeared to argue the question of urgency. After considering the additional pleadings filed and hearing oral arguments, I still hold that the application is not urgent for the reasons that follow.

Factual background

[6] The facts forming the background of the application can briefly be summarised as follows: The first applicant, a political party, and the third respondent are currently embroiled in a legal wrangle emanating from the latter's claims that he is the first applicant's interim Secretary General. It is stated that the claims started soon after the 23 August 2023 harmonised elections in which the first applicant had fielded Advocate Nelson Chamisa as its presidential candidate and its other members as candidates for election to the National Assembly and local authorities. The third respondent is said to have counter-fielded candidates who performed dismally in the same election.

[7] It is common cause that the parties' disputes have spilt into the courts. In fact, two matters are currently pending before this court. One is an action filed under HC6872/23. The other is an urgent chamber application filed under HC7321/23. With respect to the second case, a provisional order for an interdict granted under HC7321/23 on 6 December 2023 was issued. The provisional order is pending the determination of the first case, HC6872/23.

[8] Following the most recent harmonised elections, and on 6 September 2024, the first respondent, acting in terms of the Act, published a notice in the Government Gazette stating that two political parties, namely, the ZANU –PF and the CCC were going to receive sums of money due them in terms of the Act. Per that notice, ZiG 22 116 500, 00 was allocated to the CCC.

[9] It is alleged that the third respondent has laid claim to funds as gazetted. On the contrary, the first applicant avers that it is entitled to the allocation. It is contended that the first applicant has always disputed the third respondent's claim to represent it in any capacity whatsoever. As such, neither the third respondent nor his imagined or self-created version of the first applicant can lawfully lay a claim to the allocation.

[10] In its submissions on the 'facts germane to the application', the first applicant states that it has been asserting its entitlement to the money due to it in terms of the Act. The first applicant sets out the chronology of how it has been doing so thus:

i. On 16 October 2023, the first applicant's former president and leader wrote to the first respondent advising that Senator Jameson Timba would be the one communicating with him for purposes of the allocation due to the first applicant in terms of the Act.

ii. On the same day, Senator Jameson Timba wrote to the first respondent requesting that the first applicant be allocated those funds. Both letters were delivered to and acknowledged by the first respondent's officials.

iii. On 23 May 2024, the first applicant, through Clifford Hlathwayo, wrote a follow-up letter to the first respondent requesting the release of the funds due to it under the Act. Again, that letter was delivered and acknowledged by the first respondent's officials.

iv. Notwithstanding this, the first respondent did not respond to all the letters written by the first applicant through its representatives, and neither did he dispute the first applicant's assertion that it was the only entity entitled to the allocation.

v. After this, the first applicant became aware of media reports that the funds due to it would be given to the third respondent or someone else.

vi. Cognisant of the conflicting claims to the allocations as reported by the media and in light of the pending cases, the first applicant wrote to the first respondent on 17 September 2024 requesting that the funds gazetted on 6 September 2024 should not be disbursed to the third respondent or anyone else pending a resolution of the court cases. That letter was delivered on 19 September 2024.

vii. In the letter, the first applicant specifically requested the first respondent to respond to its letter assuring it that he would not be disbursing the funds due to the CCC in terms of the Act. If the first respondent failed to respond to the letter, the first applicant would take it that he intended to disburse the funds to the third respondent or someone else.

viii. The first respondent did not respond to the letter within the timelines he had been given by the first applicant, prompting the first applicant to approach this court on an urgent basis.

ix. The first applicant fears that the first and second respondents intend to disburse the funds due to the CCC to the third respondent or someone else in circumstances where the first applicant is laying claim to those funds. The first applicant argues that there are real disputes as to who should get the money and the disbursement must be interdicted.

[11] For his part, the second applicant brings the application as a voter and taxpayer. He associates himself with the first applicant's submissions on urgency.

[12] All the respondents submitted that the matter is not urgent.

Issue arising for determination

[13] The sole issue that falls for determination is whether or not the application is urgent.

Whether or not the application is urgent

[14] The urgency of an application is determined by an objective consideration of two aspects, namely time and consequence. See *Mushore* v *Mbanga* HH–382–16.

[15] A litigant who approaches the court on an urgent basis essentially seeks an indulgence and to be afforded preferential treatment. See *General Transport & Engineering (Pvt) Ltd & Ors* v *Zimbabwe Banking Corporation Ltd* 1998 (2) ZLR 301 (H). However, urgency is not there for the asking.

[16] For any claim of urgency to be sustained, the court assesses the averment that the matter is urgent against several settled factors. One such factor is that an applicant must have acted promptly, as soon as he or she acquired knowledge of the respondent's prejudicial conduct. It is, therefore, settled that urgent relief will not be granted in circumstances where the urgency is self-created. See *Kuvarega* v *Registrar-General & Anor* 1998 (1) ZLR 188 (HC) and *Gwarada* v *Johnson & Ors* 2009 (2) ZLR 159 (H).

Analysis

[17] From the facts placed before me, the first applicant wrote two letters to the first respondent on 16 October 2023. The first letter was referenced '*APPLICATION FOR PAYMENT OF MONEYS UNDER THE POLITICAL PARTIES (FINANCE) ACT'*. In that letter, the applicant formally requested to receive from the State the sums of money payable to CCC in terms of s 3 of the Act. The basis of the request was that the first applicant had garnered at least five *per centum* of the total number of votes cast in the August 2023 elections. The first applicant gave the details of the bank account into which the funds were supposed to be deposited.

[18] In the second letter, the first applicant was advising the first respondent that Jameson Timba was its point person for purposes the Act. The letter contained a paragraph to the effect that:

> 'By way of emphasis, no other person has authority, outside the mandate of the party, to liaise with your Ministry and good offices for the purposes of the Act.'

This paragraph is telling. It showed an awareness by its author of the possibility of another person, other than a person acting on the mandate of the first applicant, liaising with the first respondent on the allocation of funds in terms of the Act.

[19] Thus, it is not surprising that on 31 January 2024, the first applicant wrote another letter to the first respondent, advising the first respondent of the appointment of Jameson Timba as its acting leader and chief administrator. The letter stated that any communication relating to the first Applicant's entitlements under the Act would come to and from his office. That letter was not responded to.

[20] On 23 May 2024, the first applicant wrote yet another letter following up on the letters of 16 October 2023 and 31 January 2024. The letter was referenced '*APPLICATION FOR DISBURSEMENT OF FUNDS UNDER THE POLITICAL PARTIES (FINANCE) ACT*.' The letter restated the bank account details the first applicant had given to the first respondent in the 16 October 2023 letter. That letter was again not responded to.

[21] Cognisance is made of the fact that the applicants annexed eight media reports which form the crux of their allegations. For completeness, they are listed as follows:- (i) '*Govt Will Be Guided By The Law On Political Parties Funds- Ziyambi*' dated 22 January 2024; (ii) '*Four CCC factions tussle for political party funds'* made on 24 March 2024; (iii) '*Tshabangu poised to collect CCC windfall*' dated 24 April 2024; (iv) '*Funds will go to Tshabangu, says Minister*' dated 1 June 2024; (v) '*Ncube-led CCC Faction Secures Political Parties Act Funding*' published on 2 June 2024 (vi) '*ZANU PF Govt Accused of 'Weaponising' Law To Undermine Opposition*' made on 7 June 2024 (vii) '*US$1.6M windfall for Tshabangu*' of 13 September 2024; and (viii) '*The bloodletting in CCC worsens….as Ncube faction tries to snuff out Tshabangu*' published on 24 September 2024.

[22] The common thread in all these communications is that the first applicant's claim to the allocation under the Act started almost a year ago. The first respondent has not responded to those claims since October 2023. Similarly, the media reports on who was to get the allocation in terms of the Act started as far back as January 2024. Yet, the applicants did not take any action to assert their rights.

[23] The applicants' argument in their heads of arguments that they only knew that funds due to political parties would be given to ZANU-PF and CCC when the first respondent published that information in the Government Gazette on 6 September 2024 is simply misleading. The first applicant's letter of 16 October 2023 shows it knew it had an

entitlement. This knowledge is what informed the 16 October 2023 letters and all the other subsequent letters to the first respondent.

[24] To put the matter into proper perspective, it is important to refer to the Act. From my reading of the Act and the papers filed of record, when the first applicant wrote those letters, it was acting in terms of s 4 (1) of the Act. Section 4(2) of the Act is clear on what ought to be done upon receipt of that application. It provides that:

> '(2) On receipt of an application in terms of subsection (1), the Minister shall, if he is satisfied that the political party concerned qualifies to be paid moneys in terms of this Act; notify the political party in writing that it qualifies to be paid moneys in terms of this Act, and if he is not so satisfied, he shall reject the application and forthwith notify the political party giving the reasons for his decision.'

[25] The provisions of s 4(2) of the Act are couched in peremptory terms. The first respondent was obliged to respond to the application. He did not. Contrary to the applicants' averments that they could not act before the gazettement of the funds to be allocated in terms of the Act, the first applicant's right to response was triggered by the lodgement of an application for funds in terms of the Act and not the gazettement of the intended allocation. See s 4(1) of the Act. Despite this, the first applicant did not do anything to assert its right to that response from the first respondent from 16 October 2023 until 27 September 2024 when they filed the current application.

[26] In light of the above, the applicants cannot now argue that the cause of action arose on 19 September 2024 when the first respondent did not respond to their letter. This was not the first time that the first respondent had not responded to their letter. For close to a year, the first respondent had not responded to their letters. The applicants could afford to wait for the first respondent's response for three or four months, then follow up with another letter. At the very last minute, they then decided to give the first respondent an ultimatum to respond within 48 hours, failing which they would approach the court.

[27] I am not persuaded by the first applicant's submission that they did not know to whom the first and second respondents would allocate moneys due to CCC until the first respondent failed to respond to their letter of 17 September 2024. The tenor of their first letter to the first respondent speaks otherwise. The media reports from January 2024 speak otherwise. The applicants cannot, in my view, now turn around and argue that because the first respondent did not respond to their latest letter, their application ought to jump the queue and be heard on an urgent basis.

[28] The applicants also argue that they could not approach the court without knowing what the first and second respondents' attitudes were. They submitted that where a party has a duty

to respond to something, he or she cannot just keep quiet. I agree. The point of departure is, however, that to the extent to which the applicants base their case on media reports, the media reports that they rely on were first released at the beginning of the year. The reports have been so consistent in their message that there is simply no reason why the applicants decided to wait until the eleventh hour. Similarly, for close to a year there was no response to their applications. Surely, the applicants cannot attribute urgency to conduct which commenced nearly a year ago, for which they did nothing to arrest.

[29] On the facts placed before me, there was an undue delay and laxity on the part of the applicants in bringing this application to court. The factual circumstances giving rise to this urgent application were known to the applicant and have been ongoing since at least 16 October 2023. The applicant took no steps for a considerable period to prevent the irreparable harm it now perceives. An applicant is expected to have acted with the same urgency it wishes that the matter be accorded. The expectation is that, faced with the alleged failure to respond from the first respondent and the conflicting media reports, the applicant would have reacted immediately to remedy the irreparable harm, rather than standing back and doing nothing until it was too late. This is what the applicants in *casu* precisely did.

[30] Regarding the question of the harm that may be occasioned upon the applicants, in *Document Support Centre (Pvt) Ltd* v *Mapuvire* 2006 (2) ZLR 240 (H) at p243C the court stated that:

> "In my view, urgent applications are those where if the courts fail to act, the applicants may well be within their rights to dismissively suggest to the court that it should not bother to act subsequently as the position would have become irreversible and irreversibly so to the prejudice of the applicant. It is my further view that, the issue of urgency is not tested subjectively. Most litigants would like to see their disputes resolved as soon as they approach the courts. The test to be employed appears to me to be an objective one where the court has to be satisfied that the relief sought is such that it cannot wait without irreparably prejudicing the legal interest concerned."

[31] The applicants allege that if the application is not determined now, they will suffer irreparable harm. They argue that if the funds are disbursed to anyone other than the first applicant, there is no way of recovering them. They further argue that the amount is substantial and that the third respondent cannot pay it back. The applicants do not give cogent reasons for holding these views. They simply make bare allegations.

[32] In my view, if the application is not determined now, the first applicant does not irretrievably lose its right to recover the money. Neither will the first applicant lose its right to the money. The first applicant's right to the money remains open, even if the matter is not dealt with urgently. Having regard to the probable consequences on the first applicant if

the application is not dealt with without further delay, I consider that the application must also fail on the aspect of consequence. The perceived irreparable harm that the first applicant will suffer is not properly substantiated.

[33] For completeness, I must comment on the decision in the matter of *Movement of Democratic Change Alliance (MDC)* v *Minister of Justice, Legal and Parliamentary Affairs & 2 Ors* HC2199/20 ('the *MDC* matter') which the applicants have motivated that I follow. I find the case distinguishable because in the matter, the first respondent published a notice under the Act on 28 February 2020. There were assurances that the money had been deposited into the applicant's account in March 2020. Again, during the course of April 2020, the applicant alleged it had been assured by the first respondent's officials that the money was to be processed and paid. To the contrary, on 26 April 2020 a local newspaper, *The Daily News*, carried an article alleging that the first respondent intended to disburse the funds due to the applicant to a different entity. Following the publication, the applicant wrote to the first respondent requesting written confirmation that it did not intend to pay the money to anyone. The applicant gave the first respondent the 29th of April 2020 as the deadline for responding to the letter. The first respondent neither responded nor acknowledged the communication. On 5 May 2020, the applicants filed the application.

[34] It cannot be said that *MDC* matter is on all fours with this application. The applicants in the *MDC* matter acted with due haste. The offending newspaper report was published on 26 April 2020. The applicant immediately reacted and wrote a letter seeking confirmation by the 29th of April 2020. After receiving no response, the applicant launched the application on 5 May 2020. They did not wait for a period in excess of nine months after the newspaper publications as happened in this case.

[35] I, therefore, find that the applicants have not made a case for urgency. If anything, the urgency of the applicants' claim is self-created. It follows that the application stands to face the fate prescribed in the Rules of this Court. Rule 60(18) of the High Court Rules, 2021 provides that:

> "(18) Where upon hearing an application, which is supported by a certificate from a legal practitioner in terms of subrule (6) the Judge is of the view that the application is not urgent within the meaning of this rule; the Judge shall strike the application from the roll of urgent applications."

[36] In terms of the above rule, once a Judge forms the view that an application is not urgent within the meaning of r 60 of the Rules, he or she has no discretion in the matter. The Judge ought to strike the matter from the roll of urgent matters. The instant application, therefore, stands to be struck off the roll.

[37] Accordingly, I make the following order:

> "The urgent chamber application for an interdict be and is hereby struck off the roll of urgent matters for lack of urgency with costs."

MUSHURE J: ……

Mbidzo, Muchadehama & Makoni applicants' legal practitioners
Civil Division of the Attorney-General's Office, first and second respondents' legal practitioners
Ncube Attorneys, third respondent's legal practitioners
Mathonsi Ncube Law Chambers, fourth and fifth respondents' legal practitioners