

HANIF BHIKA  
versus  
BIKA BROTHERS GROUP OF COMPANIES

HIGH COURT OF ZIMBABWE  
**DEME J**  
HARARE, 20 September 2024 and 13 November 2024

*Urgent Chamber Application*

DEME J: On 20 September 2024, I struck the present application from the urgent roll. I am now supplying the reasons for the order of 20 September 2024 upon applicant's request.

The applicant approached this court on an urgent basis seeking the following relief under the terms of the final order:

1. "That the respondent to continue (sic) to pay the applicant's monthly stipend as per agreed verbal agreement.
2. That the respondent pay (sic) costs of this application on a legal practitioner and client scale."

The applicant sought the following interim relief:

1. "That the respondent to pay (sic) outstanding 7 months monthly stipend."

It is the applicant's testimony that his late father was one of the Directors of the respondent. He further alleged that the respondent, through the Directors who were in office at the material time, made a verbal undertaking of paying him, his mother and his sister a monthly allowance of US\$200 per month per individual. The monthly allowance was later increased to US\$400. According to the applicant, the arrangement was to continue as long as the respondent was still in existence and had not been liquidated.

The respondent, according to the applicant, unilaterally ceased the payment of his monthly allowance without notice. He further alleged that his mother and his sister are still receiving their monthly allowances. The applicant further affirmed that he was not favoured with the reasons for the cessation of his monthly allowance. He also averred that he wrote to the respondent requesting the reason why the monthly allowance was terminated but failed to get any response therefrom. As a result of the termination of his monthly allowance, the applicant affirmed that he is no longer

able to pay school fees for his daughter. He further alleged that his daughter is no longer going to school as a result of his failure to pay her school fees. It is the applicant's belief, that the matter must be heard on an urgent basis as he had, thereafter, swiftly approached the court.

The applicant additionally asserted that after the death of his father, the respondent's Directors in 2011 sold the respondent's property. The applicant asserted that the sale was fraudulent as, according to the applicant, the Directors had misrepresented the fact that the applicant's father was still alive at the time of the property sale. The applicant maintained that he made a police report of this matter. He also alleged that the Directors in office then reached an out of court settlement with the applicant where he was to be paid US\$25 000. On this basis, the applicant averred that he withdrew the matter.

It is the applicant's testimony that the estate of his late father is registered under DR978/02. The applicant's mother was appointed an *executrix dative* to the applicant's father's estate. The applicant asserted that the directors of the respondent alleged that the applicant's late father resigned from his position as one of the respondent's Directors before his death. According to the applicant, there is no evidence that his late father resigned from his position as one of the respondent's Directors.

The applicant averred that the verbal undertaking for the monthly allowance establishes a *prima facie* right. He also alleged that he is labouring under a reasonable apprehension of suffering irreparable harm as the termination of the monthly allowance has caused him to suffer financially. He further alleged that he is no longer able to support his family financially. Being unemployed, the applicant claimed that the terminated monthly allowance was his sole source of income. He further maintained that the balance of convenience favours the granting of the present application. It is the applicant's firm belief that the respondent will suffer no prejudice if the present application is granted.

The sole question which exercised my mind at the time of considering the application was whether the present application may be considered on an urgent basis.

Our courts have emphasized the key factors to be considered in the urgent chamber application which is brought before the courts. In the case of *Kuvarega v Registrar General and Anor*<sup>1</sup> urgency was comprehensively defined in the following way:

“What constitutes urgency is not only the imminent arrival of the day of reckoning. A matter is urgent if at the time the need to act arise, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules. It necessarily follows that the certificate of urgency or the supporting affidavit must always contain an explanation of the non-timeous action if there has been any delay.”

In the case of *Gwarada v Johnson and Ors*<sup>2</sup> the Court held that time is of the essence in that the applicant must exhibit urgency in the manner in which he has reacted to the event or the threats. See also the case of *Mukwindiza v Sithole and Anor*<sup>3</sup>.

In *casu*, the acts complained of happened in February 2024. The applicant approached this court on an urgent basis nearly seven months later. The applicant failed to act swiftly. There is no explanation, in the founding affidavit and affidavit of urgency, for the delay of nearly seven months. On this basis, I was forced to strike the present application from the urgent roll. Further, In the case of *Seventh Day Adventist Association of Southern Africa v Tshuma*<sup>4</sup>, the court held that:

“It is only in exceptional circumstances that a party should be allowed to jump the queue on the roll and have its matter heard on an urgent basis..... An urgent application amounts to an extraordinary remedy where a party seeks to gain an advantage on other litigants by jumping the queue, and have its matter given preference over other pending matters.....”

In my opinion, the applicant has dismally failed to establish exceptional circumstances warranting this court’s intervention on an urgent basis. The applicant failed to justify why the present application must be prioritized ahead of other litigants.

In addition, the nature of relief and cause of action is very key in determining whether or not the matter is urgent as enunciated in the case of *Document Support Centre (Pvt) Ltd v Mapuvire*<sup>5</sup>. MAKARAU J (as she then was), in making her determination in the case of Document Support Centre (Pvt) Ltd *supra* held that:

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<sup>1</sup> 1998 (1) ZLR 188 (H).

<sup>2</sup> 2009 (2) ZLR 159.

<sup>3</sup> HMT 21-21.

<sup>4</sup> HB213-20.

<sup>5</sup> 2006 (2) ZLR 240

“Without attempting to classify the causes of action that are incapable of redress by way of urgent application, it appears to me that nature of the cause of action and the relief sought are important considerations in granting or denying urgent applications.”

In my view, the relief sought by the applicant is difficult to determine on an urgent basis. The applicant seeks the interim relief for arrears of his allowance for seven months. According to his proposed terms of interim relief, the applicant prayed for an order that:

“1. That the respondent to pay (sic) outstanding 7 months monthly stipend.”

It is difficult to deal with the question of arrears of the monthly allowance in the absence of evidence. What complicates the issue is that the monthly allowance was a result of a verbal agreement between the applicant and the respondent, according to the applicant’s averment. No further evidence was placed before my attention for me to be able to make a determination of the arrears on an urgent basis. This question can only be comprehensively determined on the return day after hearing all the evidence from the parties to the present application. On this basis, I was driven to strike the matter from the urgent roll.

Where the matter is struck from the urgent roll, it automatically joins the queue for ordinary roll. I believe that the present application deserves to be on the ordinary roll as the purported terms of interim relief would be difficult to determine on an urgent basis. For these reasons, I struck the present application from the urgent roll.

**DEME J:** .....