BAINVIEW INVESTMENTS (PRIVATE) LIMITED

and

NOEL CHINYUKU

versus

BETA BRICKS

and

THE SHERIFF OF ZIMBABWE

and

REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE

MWAYERA J

HARARE 02 APRIL 2012

**Urgent Chamber Application**

MWAYERA J: The applicants approached the court in chambers by way of urgent chamber application. Basing on the documents filed of record in particular the certificate of urgency the court set the matter down so as to be addressed. On the date of hearing the 29/3/12 the court was served with opposing documents by the respondent at almost time of hearing, for expedience the court requested both counsel for the applicant Mr Sakutukwa and Mr Chivore for the respondent to address the court on urgency and merits. It was clearly spelt out to the parties in the event that the Court made a finding that the matter was urgent it would so pronounce and proceeded to make a determination of the application on merits. The reverse that in the event the count made a finding the matter was not urgent then there would be no need to determine the application on merits but the Court would make apronouncement of the matter not being urgent for want of urgency.

The law on urgent applications is fairly settled. A chamber application may properly be regarded as urgent where the rule states it is urgent and it cannot wait to be resolved through the normal application or action procedures. The Court must be satisfied that if the matter is not heard on urgent basis the applicant will suffer substial injustice in that there will be irrepariable harm occasioned by waiting for the normal procedure of justice to take its course. For the Court to form ulate whether or not the matter is urgent the Court ought to exercise its discretion properly by looking and analysing such factors as the cause of action, the nature of relief sought, the probable delays that might be encountered if normal procedures are followed, consequences of refusal to grant the relief sought and any other good reasons. In general the circumstances of the case must be such that it is different from all other matters and deserves to be treated as urgent so as to ensure justice is achieved. It is my well considered view that the factors alluded above in coming with the conclusion whether the matter is urgent or not have to be considered cumulatively not singly if one is to come up with a just decision.

The history of the case before hand is that the Court granted a default judgment against the applicant. Following that judgment a judicial attachment of the second applicant’s property was effected. The applicant then sought to approach this Court on urgent basis for stay of execution pending finalisation of application of rescission of judgment filed with this Court in December 2011.

I must hasten to point out that the application was opposed by the respondents from papers filed of record and oral submissions. It became apparent that the property in question was attached on 05 January 2012. The question is what is it that is new that prompted the applicants to approach the Court on urgent basis on or about 27 March 2012. The property was attached on 5 January 2012 and obviously the following action would be sale since the property was attached after Responded caused summons for provisional sentence to be issued against both applicants and the applicants did not enter appearance to defend. Even assuming it was procedural to enter application for rescission of judgment the applicants did not seek to prosecute same 21 December 2011, culminating in the Judicial attachment of the second applicant’s house in January 2012.

The applicant was aware of the attachment in January and did not seek redress with the Court. It appears the applicant chose to wait for the day of rekoning thus depicting self created urgency. There was inordinate delay and the certificate of urgent filed does not even seek to explain. Even the founding affidavit does not explain, why the applicant on leaning of the judicial attachment did not approach on urgent basis immediately. The Courts in allowing matters to be heard on urgent basis did not envisage situations were self created urgency would call for the favour of the court for a matter not to follow the normal course of justice. The circumstances of this case are such that the cause of delay does not warrant the court to treat the matter as urgent. I therefore find that the matter is not urgent.

*Gula- Ndebele & Partners* applicant’s legal practitioners

*Sakutukwa & Partners plaintiff’s* legal practitioners