JUDITH TSAMBA

and

OLIVIA CHIGUVARE

versus

MR REUBEN MUKAVHI

and

MINISTRY OF NATIONAL HOUSING AND SOCIALANEMITIES

and

THE MESSENGER OF COURT HARARE

HIGH COURT OF ZIMBABWE

ZHOU J

HARARE, 16 & 23 August 2012-08-24

**Urgent Chamber Application**

ZHOU J: This is an urgent chamber application in which the applicants seek in the interim a stay of the proceedings in the Magistrates Court Case No. MC7485/10. The final relief sought is that the first, second and third respondent be interdicted from continuing with “the execution of the default judgment granted by the first respondent under case number MC7485/10.”

The second respondent instituted proceedings against the applicant in the Magistrates’ Court at Harare seeking their eviction from Flat 2, Merrival Flats, Belvedere, Harare together with costs of suit. The first respondent herein is the Magistrate before whom the matter was heard. After evidence had been led on behalf of the parties the first respondent postponed the matter to 20 March 2012, on which date judgment was to be delivered.

On 16 March, 2012, the applicants filed a court application for review in terms of the Rules of Court. The application was filed under Case No. HC3075/12. In that application the applicants ask that the proceedings in case No. M7485/10 (the Magistrates’ court proceedings) be set aside and commenced *de novo* “before a neutral qualified person to be selected by the first applicant, the second applicant and the second respondent.” The latter part of the relief is somewhat startling in that it seeks to give litigants a chance to appoint a judicial officer to hear their case.

The applicants did not take any steps to interdict the second respondent from giving the judgment.

On 20 March, 2012, the Magistrate gave the judgment in MC7485/10. That judgment is extant. The relief sought by the applicants is that that judgment should not be enforced.

As the judgment is extant and is not being challenged by the applicants there is no basis for me to stay its execution. It is clear that the relief which the applicants are seeking in the application for review was overtaken by events when the Magistrate gave his judgment. The applicants did not seek to interdict the Magistrate from giving his judgment after they had filed their application for review. They were aware, having been notified, that judgment was going to be delivered on 20 March 2012.

Further, the applicants became aware of the judgment after it was delivered on 20 March 2012. They did not seek a stay of execution of the judgment then. Instead, they waited for close to five months to make the application. The application was triggered by the service of the Warrant Of Ejectment and Execution Against Property and the Notice of Removal. The urgency in this case is thus self-created.

In the result, the application is dismissed with costs.

*Muza & Nyapadi*, Applicant’s legal practitioners

Civil Division of the Attorney General’s Office, Respondents’ legal practitioners