KOPJE PROPERTIES (PVT) LTD

versus

ANNIE BVURERE

and

LAZARUS BVURERE

HIGH COURT OF ZIMBABWE

ZHOU J

HARARE, 21 and 31 August 2012

*F. Girach* for the applicant

*K. Maeresa* for the respondent

ZHOU J: This is an urgent application for an interdict to prevent the respondents from interfering with the applicant’s occupation and use of the immovable property at 76 Kaguvi Street, Harare.

The applicant is the owner of the immovable property at 76 Kaguvi Street, Harare. The property houses, shops, some of which are occupied by tenants who pay rent to the applicant. On 26 July 2012, the respondents wrote a letter to the tenants at the property advising them that with effect from the 31st July 2012 all rentals were to be paid to the respondents and not to the applicant. In the same letter the respondents threatened to lock up the shops occupied by the tenants who would fail to comply with their directive not to pay rent to the applicant.

On 1 August 2012, the respondents locked eight of the shops and prevented the occupiers from accessing them. There is a dispute as to for how long the tenants were prevented from accessing their shops. According to the respondents the shops were locked for an hour. The applicant contends that the period was more than an hour. That dispute is not material to the determination of this case.

Mr Girach who appeared for the applicant urged me to grant default judgment against the second respondent on the ground that he filed no affidavit in opposition to the application. I do not believe that the second respondent is in default. He is legally represented by the legal practitioners who filed the notice of opposition. There is no requirement to file an opposing affidavit if one intends to oppose an urgent chamber application. The legal practitioner was not precluded from representing the respondent by reason of his failure to file an affidavit. The request for a default judgment to be entered against the second respondent must therefore fail.

What is being sought is an interim interdict. The requirements for such an interdict are settled. They are;-

1. That the right which is sought to be protected is clear, or
2. (a) if it is not clear, it is prima facie established, though open to some doubt, and

(b) there is a well grounded apprehension of irreparable harm if interim relief is not

granted and the applicant ultimately succeeds in establishing his right

3) that the balance of convenience favours the granting of interim relief, and

4) the absence of any other satisfactory remedy.

See *Econet (Pvt) Ltd v Minister of Information, Posts & Telecommunications* 1997 (1) ZLR 342 (H) at 344 G-345B; *Watson v Gilson Enterprises & Others* 1997 (2) ZLR 318 (H) at 331D-E; *Philips Electrical (Pvt) Ltd v Gwanzura* 1988 (2) ZLR 117 (HC) at 122 A-B; *Nyika Investments* (*Pvt) Ltd & Others* 2001 (1) ZLR 212 (H) at 213G-214B.

Where a clear right is established the applicant for an interim interdict need not show that he or she will suffer irreparable harm if the interdict is not granted. The applicant merely has to show that an injury has been committed or that there is a reasonable apprehension that an injury will be committed. *Nyika Investments (Pvt) Ltd v ZIMASCO Holdings (Pvt) Ltd supra* at 214 B-D.

The applicant is the owner of the property in dispute. It has a right to the possession of that property and to use any part thereof. The applicant is entitled to lease part of the property. On the other hand the applicant is enjoined to give undisturbed occupation of the premises let to its tenants.

The applicant has established an act of interference with the above rights by the respondents. The respondents admit that they did lock the shops thereby taking the law into their own hands. Whether the interference with the applicant’s rights lasted for an hour or more than that that is immaterial. In any case the respondents have not undertaken not to interfere with the applicant’s rights.

The balance of convenience favours the granting of the interdict. If the respondents effected improvements on the property, as they allege, they may make a claim for those improvements in accordance with the law. It is clear that the respondents are not in occupation of the premises and cannot claim a lien. The premises are occupied by other persons.

The applicant has no alternative remedy by which to stop the interference with its right to occupy, use and let the property in dispute. The interdict being sought is the only appropriate remedy available to the applicant.

Accordingly, relief is granted in terms of the draft provisional order as amended.

*Ahmed & Ziyambi* , Applicant’s legal practitioners

*Maeresa & Partners*, Respondent’s legal practitioners