ZVIKOMBORERO NYARUMBE
versus
SOLOMON MASHAMBA
and
PURE GOLD HOUSING TRUST
and
CITY OF HARARE
and
THE SHERIFF OF ZIMBABWE N.O

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 28 May 2019 & 29 May 2019

Judgment on points *in limine*

B Ndlovu, for the applicant
M Chimuka, for the 1st respondent
M Machiridza, for the 2nd respondent

ZHOU J: This is an urgent chamber application for an order interdicting the first respondent from evicting the applicant and all persons claiming occupation through him from Stand 232 Eastville, Harare. The ejectment is pursuant to an order granted by this court in Case No. HC 4006/17. The order was granted on 23 November 2017. The instant application is opposed by the first and second respondents.

The respondents have raised two points *in limine*, namely

(1) that the application is fatally defective for non-compliance with the requirements of r 241 on the appropriate form of the application, and

(2) that the application is not urgent.

There is need to consider the question of urgency first as its determination has a bearing on whether or not I can relate to any other aspect of the application on an urgent basis.

A matter is urgent "if it cannot wait to be resolved through a court application", see *Dilwin Investments (Pvt) Ltd t/a Formscaff* v *Jopa Engineering Company (Pvt) Ltd* HH 116-98, at p 1; *Pickering* v *Zimbabwe Newspapers (1980) Ltd* 1991 (1) ZLR 71 (H) at 93E. This court has stressed that a party who seeks to have a matter heard on an urgent basis is seeking preferential treatment from the court given that he is asking to be allowed to jump the queue of other matters waiting to be heard. It is for this reason that the court expects such a party to have treated the matter as urgent by acting expeditiously once the need to act arises. This point has been stressed in many judgments. In the case of *Kuvarega* v *Registrar-General* 1998 (1) ZLR 188 (H) at 193F, CHATIKOBO J expressed it as follows:

> "What constitutes urgency is not only the imminent arrival of the day of reckoning; a matter is urgent, arises, 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."

The judgment the execution of which is being sought to be interdicted was given in November 2017 more than 18 months ago. The applicant ought to have known that once the judgment was granted it would be executed in the absence of an order staying its execution. He did not seek stay of execution them but waited until what CHATIKOBO J in *Kuverega* v *Registrar-General (supra)* referred to as the arrival of the day of reckoning." The applicant proceeded to institute a court application under case no. HC 11159/17 for the setting aside of the order granted in Case No. HC 4006/17. The application for rescission of judgment was dismissed for want of prosecution on 5 February 2019. The order dismissing it was granted pursuant to an application made under Case No. HC 1548/18. The application for dismissal for want of prosecution was served upon the applicant. He did not oppose it. There is a clear history of tardiness in the manner that the applicant has conducted himself which should disentile him to the preferential treatment of being heard on an urgent basis in this matter.

Mr *Ndlovu* for the applicant made the submission that the applicant was not aware of the order in HC 4006/17 until he was served with the Notice of Seizure and Attachment on 21 May 2019. He sought to argue that the applicant was not even aware of, and never gave instructions to legal practitioners to institute, the application for rescission of judgment in Case No. HC 11159/17. That argument cannot stand scrutiny. The applicant has instituted a court application under Case

No. HC 4347/19 in which he is seeking rescission of the order which dismissed the very court application for rescission of judgment which he says he was unaware of and was instituted without his instruction. There is a misconception which is evident from the applicant's papers that urgency arises because he is due to be ejected from the property. His ejectment is an inevitable consequence of the order granted against him. The need to act did not arise when he was served with a writ for his ejectment. It arose when the judgment for his ejectment was granted or, at the very latest, when he became aware of that judgment.

In all the circumstances of this case, the matter is not urgent. Having found that the matter is not urgent there is no need for me to relate to the objection pertaining to the form used.

In the result, the following order is made:

1. The application is struck off the roll of urgent matters.
2. The applicant shall pay the costs.

Bothwell Ndlovu Attorneys, applicant's legal practitioners
Mawere & Sibanda, 1st respondent's legal practitioners