

CHITUNGWIZA MUNICIPALITY

versus

MR CHIGONA

and

TUNGAMIRAI MADUDISE

and

LORRAINE CHIRENGA

HIGH COURT OF ZIMBABWE

ZHOU J

HARARE, 20 July 2017

**Opposed Matter**

*T J Mafongoya*, for the applicant

*B Mupwanyiwa*, for the respondents

ZHOU J: This is an application for confirmation of the provincial order granted by this court on 6 September 2016. The respondents contest the confirmation of the provisional order.

The brief facts of the matter are as follows. The three respondents took occupation of land under the jurisdiction of the applicant. No offer was made to them by the applicant to occupy the said land which, according to the applicant, is designated for commercial use. The second respondent was given a document entitled “temporary registration” in May 2015. The document stipulates that he is to pay for services rendered by the applicant because the property which he occupies is within the applicant’s jurisdiction. The document explicitly states that it does not constitute regularization of the structure/premises occupied. It further states that: “Regularization will be effected after all due processes have been followed and completed. It is common cause that no such regularization has taken place.

As for the first and third respondents, there is no document at all to show that the applicant even recognized their occupation of the land. No evidence has been adduced to show how they came to occupy the property in question. The court has no difficulty coming to the conclusion that they cannot even contest their eviction from the property and the demolition of the illegal structures which they have put up.

As for the second respondent, his occupation was equally not authorized by the applicant. The structures which he has put up at the property have not been approved by the applicant in terms of the relevant regulations. His submission is that he had a legitimate expectation that his occupation would be regularized. The reckless promise by the applicant to regularize the occupation does not in my view, ground a legitimate expectation. Legitimate expectation must be under-pinned by a legal relationship between the parties. The second respondent, just like the other two respondents, does not show how he came to occupy the land in question. He has not shown that any of the structures which he put up were authorized by the applicant. The court cannot turn a blind eye to a breach of the law, and condone what are clearly illegal structures which the applicant seeks to have demolished. For those reasons, too, the second respondent has not advanced any grounds of opposition which are valid at law.

As regard the question of costs, there is no doubt that the applicant has been very careless in its handling of the illegal occupation of the property in question as well as the putting up of structures at the property. It even went to the extent of charging for services rendered. How a Municipality can render a service, let alone charge for that service, to someone breaching the law is a matter that is of serious concern to the court. By its conduct the applicant clearly misleads members of the public into violating the law, and the respondents cannot be blamed for thinking that their illegal conduct had the blessings of the applicant. For those reasons, the applicant should be penalized by being denied the costs of this application.

In the result, the provisional order is confirmed subject to the deletion of paragraph (d) of the terms of final order sought and the substitution thereof with an order that each party is to pay its own costs.