

CLIFFORD CHARERA  
versus  
UNIVERSITY OF ZIMBABWE  
and  
VICE CHANCELLOR OF THE  
UNIVERSITY OF ZIMBABWE LEVI NYAGURA N.O.  
and  
REGISTRAR OF THE UNIVERSITY OF ZIMBABWE

HIGH COURT OF ZIMBABWE  
MUNANGATI-MANONGWA J  
HARARE, 28 June 2017

**Urgent chamber application**

Ms *B Chinowawa* for the applicant  
T Ndoro, for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup>, respondents

MUNANGATI-MANONGWA J: The applicant a student at the University of Zimbabwe approached this court on an urgent basis seeking the suspension of a circular by the University Registrar that had resulted in the removal of all medical students from their halls of residence on and off campus on the 26<sup>th</sup> June 2017. The removal of students came after a purported violent demonstration which led the University to order all medical students to leave their residence on and off campus within 15 minutes. He also sought an order permitting students who had vacated their accommodation to return and re-occupy their rooms and that pending the finalisation of the matter the University be barred from evicting them. All the respondents opposed the application on the basis that the application is not urgent and that it has no merit.

Ms *Chinowawa* for the applicant submitted that the matter was urgent and could not wait as applicant and other students who are in the midst of writing exams had been forcibly removed from their accommodation. The applicant and other students were temporarily sheltering in a church and thus could not prepare for their examinations. Further the conduct of the respondents was unlawful as it was indiscriminate and violated the applicant's rights in so far as he and other students were summarily evicted without being given an opportunity to

be heard. Even if it were to be taken that the conduct was riotous the decision should have been to cause arrest of the riotous students and not met collective punishment on all students even those who were attending classes. She argued that as the students were in peaceful and undisturbed occupation of their accommodation, the respondents had acted unlawfully by resorting to self-help and hence the applicant was entitled to temporary relief sought. Further, the University as a statutory body had acted irrationally. Its discretion was not exercised reasonably and constitutionally.

In response, Mr *Ndoro* for the respondents submitted that the matter is not urgent as consultations on the issues of fees which then led to demonstrations that occurred on campus had been ongoing from February 2017 up till the 15<sup>th</sup> June 2017. The applicant should therefore have known that should the negotiations break down he was not to be allowed to stay on campus. He also submitted that respondents acknowledge the right to demonstrate but because the demonstrations were violent, the respondents decided to ask the students to vacate in their duty to protect property, life and limb. The second respondent had acted as confirmed by his affidavit, upon advice by the Director of Campus Security. In that context there was no time to engage with the students.

Mr *Ndoro* further submitted that applicant could not rely on spoliation as he had not paid his accommodation fees. Further, the applicant had an alternative remedy which constituted in either approaching the respondents and pay the required fees without violent demonstrations or if not in a position to pay, engage the respondents and make a payment plan. The balance of convenience favours the respondents as their accommodation could not be occupied without the students paying for it. The respondents denied that their conduct was irrational and arbitrary.

In considering whether this matter is urgent or not it is trite that a judge has to consider whether the matter can wait and join the queue of the matters to be heard in the ordinary course, or, it is such that if the matter is not dealt with immediately irreparable prejudice will result. It also has to be considered whether the applicant himself has treated the matter as urgent and has acted timeously and not been dilatory in seeking the relief until the arrival of the day of reckoning. See *Dextprint Investments (Pvt) Ltd v Ace Property & Investments (Pvt) Ltd*.<sup>1</sup> The urgency has to be such that if relief is not granted immediately subsequent intervention by the court will not be of any benefit to applicant. I am fortified in

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<sup>1</sup> HH 120/02

these sentiments by MAKARAU JP (as she then was)'s comments in *Document Support Centre (Pvt) Ltd v Mapuvire*<sup>2</sup> to the effect that,

“In my view, urgent applications are those where if the courts fail to act, the applicants may well be within their rights to dismissively suggest to the court that it should not bother to act subsequently as the position would have become irreversible and irreversibly so to the prejudice of the applicant.

It is my further view that the issue of urgency is not tested subjectively. Most litigants would like to see their disputes resolved as soon as they approach the courts. The test to be employed appears to me to be an objective one where the court has to be satisfied that the relief sought is such that it cannot wait without irreparably prejudicing the legal interest concerned.”

I find that this matter is urgent and it cannot wait for if it were to wait, the applicant will not then benefit from any subsequent order as the relief will not relieve of the impact and or effects of the harm complained of, he would have suffered irreparable harm. It is common cause that all medical students, the applicant included, were forced to leave their accommodation on the 26<sup>th</sup> June 2017 and it has not been disputed that the students are in the middle of their examinations. The applicant is from Rusape and he and others have had to seek shelter in a church and they cannot prepare for their ongoing exams. It has not even been disputed that applicant has already missed an examination. The applicant approached this court on the 27<sup>th</sup> June 2017 a day after the eviction. Clearly the applicant is in a dire situation where redress is imminently required and he has acted in a manner consistent with a litigant who appreciates the need to act timeously. That being so, the matter qualifies to be heard on an urgent basis. The issue before the court is not about the payment of fees, the negotiations of which have been ongoing since February 2017 as Mr *Ndoro* submits. The issue pertains to forcible removal of students from their accommodation on the 26<sup>th</sup> June 2017, hence the urgency.

The applicant seeks to re-occupy his previous accommodation, he wants the status *quo ante* restored. Applicant has to satisfy the requirements for spoliation to obtain such relief. GUBBAY CJ in *Botha & Another v Barret*<sup>3</sup> stated the requirements to be as follows:

“It is clear law that in order to obtain a spoliation order two allegations must be made and proved. These are:

- a) That the applicant was in peaceful and undisturbed possession of the property; and
- b) That the respondent deprived him of the possession forcibly or wrongfully against

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<sup>2</sup> 2006(2)ZLR 240 at p244

<sup>3</sup> 1996 (2) ZLR 73 (S) at 79 and see also *Magadzire v Magadzire* SC 196/1998

his consent.

*See Nino Bonino v De Lange* 1906 TS 120, *Kramer v Trustee Christian Coloured Vigilance Council, Grassy Park* 1948 (1) SA 748(C) at 753; *Davis v Davis* 1990 (2) ZLR 136 (H) at 141C.”

He further stated that

“even a squatter is generally regarded to be in peaceful possession of the place he is squatting on and a proper eviction order must be taken against him for his removal.”

The respondents do not deny evicting all the medical students without their consent using security personnel which act was unlawful in that force was used. As the applicant and the rest of the students were in peaceful occupation of their accommodation, their removal without their consent entitle them to spoliation. They have to go back into residence having satisfied the elements on a balance of probabilities. The issue of payment of fees is not relevant as respondents resorted to self-help.

The applicant seeks the suspension of the circular that resulted in the removal of students from campus. This circular constitutes or embodies an administrative decision. As such, it has to meet certain legal standards. In *Telecel Zimbabwe (Pvt) Ltd v POTRAZ & Ors* 2015 (1) ZLR 651 (H) MATHONSI J said;

“The concept of administrative justice is now embedded in our Constitution. It provides the skeletal infrastructure within which official power of all sorts affecting individuals must be exercised. The elements are:

1. Lawfulness, in that official decisions must be authorised by statute, prerogative or the Constitution.
2. Rationality, in that official decisions must comply with the logical framework created by the grant of power under which they are made.
3. Consistency, in that official decisions must apply legal rules consistently to all those to whom the rules apply.
4. Fairness in that official decisions should be arrived at fairly, that is, impartially in fact and appearance giving the affected person an opportunity to be heard.
5. Good faith in the making of decisions in that the official must make the decision honestly and with conscientious attention to the task at hand having regard to how the decision affects those involved.”

The first respondent’s actions are premised on a report from its security department that “a gathering of medical students at the Students Union Building has started throwing stones”. Neither the report, nor the circular complained of, say all medical students had engaged in the alleged behaviour. The circular refers to “a gathering”, with no sufficient identification. It does not state on who or what objects were targeted by the alleged stone

throwers. Neither is there an allegation of any damage caused, if anything this remained an unconfirmed allegation.

To then take action as against all medical students irrespective of whether they participated in the alleged conduct is not only arbitrary but not in accordance with the tenets of justice which include the right to be heard before any punitive measures are taken against an individual. The University of Zimbabwe adopted this drastic measure against a backdrop of the claim that the demonstration was peaceful. In any case, collective punishment was not justified. The Vice Chancellor clearly says in his affidavit there was no way of identifying the particular students who started throwing stones, all students were acting in common purpose. It is his evidence that there was security personnel at the Students Union where the gathering was, and later police presence. These could have arrested the perpetrators of violence as the University was ready to act from as early as 9:00am.

It is not denied that the notice to vacate was given at 1:00pm and students given until 13:15 to vacate halls of residence “on campus and off campus”. No doubt this was irrational both in terms of time and the manner of execution.

The decision was irrational and arbitrary in so far as it had a collective effect on students who had not participated and those who had participated in the demonstration. The time given was ridiculous. Most pertinent, the decision was carried out without affording the individual students the right to be heard, this infringes the right of students to the core.

The balance of convenience favours the applicants’ continued stay. That they should remain in their accommodation and the circular suspended until the return date is justified. The applicant has established a *prima facie* right having been accepted into residence and having been in occupation thereof before the arbitrary evictions. Students were in occupation even if their fees had not been paid and the respondents had no issue with that until the alleged demonstration. If anything, it is the students who are homeless during the crucial time of writing exams.

Clearly, the respondents were at pains to oppose the application in circumstances where they acted in an overzealous manner taking measures which were disproportionate to the alleged actions of the applicant. Resonating within the opposing papers is the issue of fees and payment plans as not only the alternative remedy for the applicant but the case to be taken by all students. This in fact, shows that the respondents missed the whole basis for the application which is that, it resorted to self-help by forcibly removing applicant and the rest of the students from their accommodation without their consent, resorted to collective

punishment, took an arbitrary decision in the face of a demonstration which has not been proven to have been a threat to life and limb, in the process trampling upon the constitutional rights of individuals to real and substantive justice.

It is for these reasons that I grant the interim relief as follows

That pending the determination of this matter on the return day:

1. The operation of the notice issued by the 3<sup>rd</sup> respondent titled: “Registrar’s Circular No. 4/17” be and is hereby suspended.
2. The respondents be and are hereby barred from evicting medical students from halls of residence on and off campus.
3. The respondents be and are hereby ordered to permit students who have already vacated the rooms in the halls of residence to return and re-occupy their rooms, with immediate effect.

*Zimbabwe Lawyers for Human Rights*, applicant’s legal practitioners  
*Ziumbe and Partners*, respondent’s legal practitioners