

DAVID GOVERE  
and  
NOXON INVESTMENTS (PVT) LTD  
versus  
STANBIC BANK LIMITED  
and  
AMON MURWIRA  
and  
KARIN SIGRID MURWIRA  
and  
ALEXANDER TONDERAI MURWIRA  
and  
SHERIFF OF THE HIGH COURT OF ZIMBABWE  
and  
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE  
FOROMA J  
HARARE, 16 August 2017

### **Ruling**

*F G Gijima*, for the applicants  
*I Chagonda*, for the respondents  
*E. Jera*, for the 2<sup>nd</sup> & 4<sup>th</sup> respondents

FOROMA J: In this application filed as an urgent chamber application the first applicant is director of the second applicant. The application was vouched for as urgent by a certificate of urgency prepared by Ngoni Ruzengwiwe a partner in the firm of legal practitioners representing the applicants.

In the certificate of urgency the contention is made that the applicants are set to be ejected on 16 August 2017 from premises at No. 13975 Plower Avenue Mt Pleasant thereby being made homeless. It is also suggested that the applicants became aware of the ejection on 3 August 2017 and have treated the matter as urgent.

In the founding affidavit the first applicant (the deponent to the founding affidavit) accuses Mr Bvekwa his erstwhile legal practitioner of going on a frolic of his own to his prejudice resulting in his being surprised by the ejection notice when it was served on him.

He claims to have treated the matter with urgency as soon as he became aware of the pending ejectment on 3 August 2017.

He deposed that before engaging his current legal practitioners a number of court battles have been sought on his behalf up to and including an appeal to the Supreme Court. Most of these court battles were engaged in without instructions.

At the hearing the application was opposed by the second, third and fourth respondents represented by Mr Jera of Moyo and Jera and the first respondent represented by Mr Chagonda of Atherstone and Cook.

Both Mr Jera and Mr Chagonda raised a total of 3 points *in limine*. Mr Jera raised a point *in limine* in regard to the issue of urgency and argued that the matter was not urgent at all and that it should be dismissed on that basis. He also argued that there was no property registered under deed of transfer referred to as the said property was now held by his client. He thus argued that the order sought against the respondents was incompetent at law.

Mr Jera noted that the applicants had unsuccessfully challenged the sale and transfer of their property. Thus the application for rescission was totally unrelated to the basis of the transfer and ejectment. Mr Chagonda in addition to associating himself with the points *in limine* raised by Mr Jera raised the objection that the form used by the applicants was incorrect making the application invalid and susceptible to being dismissed as the application did not indicate the dies in which the respondents were required to respond to the urgent application.

At the commencement of the hearing the respondents persisted with the point *in limine* arguing that the applicants have always been aware of the threat of eviction more so when the applicants failed to resist the application for leave to execute pending appeal. The respondents emphasized that after the withdrawal of the appeal there was nothing in the way of the ejectment. At the latest the need to all arose in February 2016 when the High Court granted respondents leave to execute pending appeal. The respondents therefore argued that any urgency was actually self-created.

In response to the point *in limine* raised Mr *F.G Gijima* argued that the matter was urgent for the reason that the applicant did not know of the risk of ejectment until he was served on 3 August 2017 with the writ of ejectment and that the applicant could not have known about the developments in the matter as Mr *Bvekwa* had not kept him posted on the developments from the time he had been taken ill as a result of a diabetes attack which took him away for a considerably long period (from 2015 to about March 2017).

He urged the court to accept that Mr *Bvekwa* had acted without instructions and never kept applicant posted. The applicant therefore argued that the need to act only arose in August 2017 on being served with the notice of ejectment.

The applicant's counsel conceded that his client had not been diligent in his pursuit of his interests which he had entrusted in Mr *Bvekwa*'s hands as at the very least he ought to have approached Mr *Bvekwa* seeking update on the progress of the legal matters he had instructed him to handle for him. Had he done so he would have been advised timeously of all that which he accused him of pursuing without his instructions.

In answer to the applicant's arguments the respondents highlighted that applicants were aware of the sale and transfer of the property in dispute and reference to correspondence dated 4 March 2016 addressed to the Sheriff objecting to the sale on account of too low a price realised. In that letter the applicants advised the Sheriff that they had instructed Mr *Bvekwa*. The said letter signed by first applicant was copied to Mr *Chagonda* and Mr *Bvekwa*.

After the hearing Mr *Jera* also brought to the court's attention letter dated 27 June 2016 addressed to the Registrar of this court in which applicants indicated that they had instructed Mr *Bvekwa* to challenge the sale and transfer. This makes it clear that the applicants are not being truthful in suggesting that Mr *Bvekwa* acted without instructions or that the appellants were in the dark as to what *Bvekwa* was doing on their behalf all the time until the writ of ejectment was served on them. I am satisfied and find that the applicants have always been aware of the risk of ejectment certainly from the date that the second, third and fourth respondents were granted leave to execute pending appeal i.e. on 6 June 2017 at the latest. The applicants did not treat the matter as urgent and any urgency arising on the date applicants were served with the writ of ejectment would be self-created see *Kuvarega v The Registrar General and Anor* 1998 (1) ZLR 188 (H).

In the circumstances the matter is not urgent and is accordingly removed from the roll of urgent applications. In view of the finding I have made that applicants have not been truthful in suggesting that their legal practitioner acted without instructions in all the cases that have been cross referenced, I find it clearly established that this application is an abuse of court process and grant the respondents costs on the scale of legal practitioner and client.

*F.G. Gijima and Associates*, applicants' legal practitioners

*Moyo & Jera*, respondents' legal practitioners

*Atherstone & Cook*, 1<sup>st</sup> respondent's legal practitioners