

METROPOLITAN PROPERTY (PVT) LTD  
versus  
PADANGARE BOOK SUPPLIES (PVT) LTD  
and  
MESSENGER OF COURT, RUSAPE

HIGH COURT OF ZIMBABWE  
MWAYERA J  
HARARE, 19 October 2017

### **Urgent Chamber Application**

*T Z Zvobgo*, for the applicant  
*T Maanda*, for the respondents

MWAYERA J: The applicants approached this court through the urgent chamber book seeking an order in the following terms:

#### **TERMS OF FINAL ORDER SOUGHT**

1. That the warrant of execution issued by the Rusape Magistrates Court under case number 57/14 be and is hereby suspended and rendered wholly ineffective pending the final and definitive determination of the High Court application proceeding instituted.
2. That the first respondent shall pay costs on a legal practitioner client scale.

Interim relief granted

Pending the final determination of this matter on the return date, the applicant is granted the following relief

1. The first and second respondent be and are hereby ordered and directed to refrain from any attempts whatsoever to give effect to or otherwise enforce warrant of execution issued by Rusape Magistrates Court under case number 57/14.
2. The second respondent be and is hereby ordered and directed to release forthwith goods that had been removed and taken into his custody on the basis of the warrant of execution referred to above and shall recover from the first respondent any costs attendant upon the release of some goods.
3. The first respondent shall pay costs of suit on a legal practitioner and client scale.

In brief the applicant sought stay of execution pending determination of an application filed with this court. When I heard the matter I directed counsels to address me orally on urgency. I then considered the written and oral submissions on urgency and declined to hear the matter on urgent basis. I delivered reasons for my disposition *ex temporae* and ordered that the matter be struck off the urgent roll with costs.

The applicant counsel sought to make an oral application for leave to appeal to the Supreme Court since the declination of urgency is on interlocutory order. I directed that the applicant makes a written application for leave to appeal and submit the chamber application for consideration. That application will be entertained when filed. For the main application which I declined to deal with on urgent basis and gave reasons *ex temporae* I have reduced my reasons into writing herein.

The brief background of the matter is that the respondents obtained a court order in their favour against the applicant. Consequent to that order a writ of execution was issued. The court order which occasioned execution was issued by Rusape Magistrates Court sometime in 2015. It is common cause that in the absence of an order setting aside that original court order the order remains extant. The parties negotiations and interactions do not extinguish the court order. A writ of execution was issued pursuant to the court order and unlike a magistrate court judgment the writ does not superannuate. The execution of that writ in enforcement of the judgment is what has occasioned this urgent chamber application.

What falls for determination is whether or not the application meets the requirements of urgency as envisaged by the rules of this court. A matter is viewed as urgent if it meets the requirements of urgency warranting it to be given preferential treatment of skipping or jumping the queue of ordinary set down. Whether or not a matter is urgent is a matter which requires the court in the exercise of its discretion to consider all factors which constitute urgency cumulatively and holistically. The cause of action and nature of relief sought is quite central in deciding whether or not a matter is urgent. See *Document Support Centre (Pvt) Ltd v Mapuvire* 2006 (2) ZLR 240. It is not sufficient to seek to quickly act after harm has already been occasioned. Action after the event more so in circumstances where the history of the matter shows clear disregard of treating the matter as urgent, leaving a situation to deteriorate to the level of removal and quickly seeking redress does not paint self-created urgency as genuine urgency.

In this case the applicant waited for the day of reckoning. The test for urgency has been over and over again spelt out. A matter is urgent if, when the need to act arises, the matter

cannot wait. See *Kuvarega v Registrar General and Another* 1998 (1) ZLR 188. See also *Telecel Zimbabwe Private Limited v Postal and Telecommunications Regulatory Authority of Zimbabwe and Others* HH 446-15.

The sentiments of MATHONSI J in *Turnstead Investments (Pvt) Ltd and Others v Trust Bank Corporation Limited and Another* HH 843/15 ring true in respect of the present case. The Honourable Judge stated on page 3 of the cyclostyled judgment;

“There can be no worse case of self-created urgency, that urgency stemming from a deliberate inaction until the day of reckoning is nigh”.

In this case the applicant was aware of the writ and attachment on 30 June 2017. The applicant sought recourse by way of an interpleader and when this failed appealed. When execution was imminent the applicant then sought a declarator and the present urgent application to stay execution.

The applicant only sprang to action when the respondent sought to enforce the writ. The need to act, given the history of the matter, arose when the writ was issued. To wait for enforcement to be put in motion and seek to clothe self-created urgency as urgent is not covered under the umbrella of cases qualifying for preferential treatment. It would be an abuse of court process to accord every stay of execution the urgency status. In circumstances where the urgency is self-created and certainly no irreparable harm will be occasioned it would be an improper exercise of discretion to accord the matter the urgency status. I am alive to the fact that economic relief in warranted circumstances, when viewed in conjunction with all the other requirements of urgency can be entertained on urgent basis. In the circumstances of the present case no irreparable harm will be occasioned for the obvious reason that there are other remedies available. The parties can come up with a reconciliation to determine what is genuinely due. The saying, figures do not lie, has not been proved to be a fallacy.

The applicant appears to have created problems by living an extant court order unsatisfied, waiting till enforcement to seek redress an urgent basis. Given that part payment is accepted to have been made by the applicant to then seek redress an urgent basis to quantify exact quantum due and not due by urgent stay of execution amounts to abuse of court process in the face of other clear remedies readily available.

This is moreso when one considers the sit back stance adopted by the applicant in circumstances where a court order was issued following which a writ was issued and there was no indication of abandonment of the court order given negotiations worked for some payments to be made. The circumstances of this matter do not show that the applicant treated the matter

as urgent but rather waited till the day of reckoning was nigh. The argument of negotiations and part payments being made or over payment likely to occur all point to other remedies being available. The route of coming to court for stay of execution in this matter is being pursued in a move bordering on abuse of court process. The application does not meet the requirements of urgency and for those reasons I decline to deal with the application on urgent basis.

The application is accordingly struck of the urgent roll with costs.

*Dube, Manikai & Hwacha*, applicant's legal practitioners

*Maunga, Maanda & Associates*, first respondent's legal practitioners