MUYARADZI MUTSAI AND 19 ORS
versus
CITY OF HARARE
and
MINISTER OF LOCAL GOVERNMENT, PUBLIC WORKS AND NATIONAL HOUSING
and
MINISTER OF TOURISM, ENVIRONMENT AND HOSPITALITY INDUSTRY
and
ENVIRONMENTAL MANAGEMENT AGENCY
and
MINISTER OF WATER RESOURCES DEVELOPMENT AND CLIMATE
and
ZIMBABWE NATIONAL WATER AUTHORITY

HIGH COURT OF ZIMBABWE
CHATUKUTA J
HARARE, 28 November, 7 & 14 December 2017

L Uriri, for the applicants
F Mahere, for 1st respondent
N M Muzuva, for 2nd, 3rd & 5th respondents
D Muchada, for 4th respondent
E Maphosa, for 6th respondent

Urgent Chamber Application

CHATUKUTA J: The applicants are residents of properties in Hillside and Eastlea suburbs, Harare. The two suburbs neighbour Coronation Park, an open area off Robert Mugabe Avenue and opposite Rhodesville Police Station. The first respondent has commenced the construction of a bus terminus and a people's market on the open area called Rhodesville Holding Bay (the Holding Bay/project).

Aggrieved by the construction of the Holding Bay in their neighbourhood, the applicants have approached this court on a certificate of urgency seeking an order for the suspension of the construction pending the determination of the legality of the project.

The background to the application is as follows: On or about 9 October 2017, one of the residents noticed some construction work at the site. He advised the other residents. Upon inquiring with their councillor, the residents were advised that the first respondent was

constructing the project in order to decongest the termini in the central business district (CBD). The applicants came together as a community, concerned that the first respondent was transferring the congestion and all the ills from the CBD into their neighbourhood. On 20 October 2017 they wrote to the first respondent inquiring on the project and raising concerns that they had not been consulted prior to the commencement of the project and that they intended to object to the construction in their neighbourhood. They further invited the first respondent and their councillors to attend a meeting where their concerns were to be discussed. The letter was also copied to the second respondent.

A meeting was convened by the community on 24 October 2017 and was attended by the first respondent's director of works, Mrs Charumbira. (Although the minutes of the meeting are dated "24 September 2017", the parties were agreed that the meeting was held in October.) The members of the community raised their concerns as regards:

a) The current problems of traffic congestion in the neighbourhood which would be compounded if the Holding Bay is completed and operationalised;
b) Rise in crime as a result of the influx of members of the public at the Holding Bay. The police at Rhodesville Police Station do not have the capacity to police the neighbourhood and the community was assisting them with resources. An influx of people would further constrain the police and the resources donated by the community;
c) Destruction of the ecosystem as it was alleged that the project was being constructed on a wetland;
d) General health hazards because of the increase in garbage, water pollution from activities at the Holding Bay and failure to adequately attend to waste. The area has always suffered from prolonged water outages and a number of the residents rely on borehole water;
e) Noise and air pollution, and
f) Devaluation of their properties.

Mrs Charumbira explained to the residents that the first respondent was exercising its town planning mandate by constructing the Holding Bay to reduce the overburdened CBD. The Holding Bay is going to be state of the art or world class bus terminus housing commuter omnibuses from surrounding townships and suburbs. A bus shuttle service would be established which would transport passengers from the Holding Bay into the CBD and back. She assured the residents that their concerns had been taken on board in coming up with the project.

The applicants and the other residents were not satisfied with the assurance. On 26 October 2017, the 13th applicant sent an e-mail to Mrs Charumbira on behalf of the residents requesting the following information:

a) Plans of the terminus;
b) Project implementation plan with timelines;
c) Budget of the project;
d) The environmental impact study which had been referred to;
e) The council resolution approving the project;
f) Details of the city's plans and strategies for improvement of surrounding infrastructure (roads, lighting, water supply, etc…); and
g) Any studies/papers on the city's post-implementation strategy for maintaining and policing the terminus.

The first respondent did not respond to the request. On 1 November 2017, the applicants' legal practitioners wrote to the first respondent, through the acting Town Clerk, raising more or less the same concerns and requesting the same documents. The letter was copied to the other five respondents and the Attorney General. Again, there was no response from the first respondent. The other respondents did not respond either. The construction work at the site continued after the meeting and the communication leading to the present application.

The first, fourth and sixth respondents opposed the application. The second, third and fifth respondents submitted that they would abide by the order granted by court.

Let me first deal with the fourth and sixth respondent's opposition to the application. Both respondents submitted that they have been wrongly joined to the proceedings as the applicants do not have a cause of action against either of them. Further, no relief is sought against them. I was constrained to understand their opposition.

The fourth respondent is a statutory body established in terms of the Environmental Management Act [*Chapter 10:12*] (EMA). It is mandated in section 10 of EMA to *inter alia* oversee the sustainable management of natural resources, protection of the environment and the prevention of pollution and environmental degradation. In particular, the fourth respondent is enjoined in s 10 (1) (b) (viii) "to make model by-laws to establish measures for the management of the environment within the jurisdiction of the local authorities." Mr Bhasera, who is the Provincial Environmental Manager responsible for monitoring and managing EMA works within Harare Province deposed to the fourth respondent's opposing affidavit. He

concedes in para 6 of the affidavit that the fourth respondent "has an important role in the protection and management of the environment in terms of its founding and related instruments." He has personally visited and inspected the site where the Holding Bay is being constructed. He has further personally directed the first respondent to prepare an environmental plan for the project. It is therefore astounding that the fourth respondent, given its participation in the project through Mr Bhasera and in view of the concerns raised by the applicants that the project will adversely impact on the environment, still believes that it was wrongly joined to these proceedings.

It is also surprising that the sixth respondent wants nothing to do with this application. The sixth respondent is also a statutory body established under the Zimbabwe National Water Authority Act [*Chapter 20:25*]. In terms of s 5 (1) (c) of that Act, the sixth respondent is mandated to "assist and participate in or advise on any matter pertaining to the planning of the development, exploitation, protection and conservation of water". In terms of s 5 (1) (*e*) the respondent is further mandated to "encourage and assist local authorities in the discharge of their functions under the Rural District Councils Act [*Chapter 29:13*] and the Urban Councils Act [*Chapter 29:15*] with regard to the development and management of water resources in areas under their jurisdiction and in particular, the provision of potable water and the disposal of waste water". It is empowered in terms of s 46 of the Water Act [*Chapter 20:24*] to protect wetlands and to issue permits to any person intending to undertake any development which will interfere with a wetland. In the letter by the applicants' lawyers dated 1 November 2017 to the first respondent and copied to the sixth respondent, the applicants were raising the complainant that the first respondent had commenced a development on a wetland that would have adverse effects on the wetland. The sixth respondent accepts in para 6 (c) that it has not issued a permit to the first respondent and none has been sought for the development of the Holding Bay. It further denies that the site is a wetland. It appears none of the sixth respondent's officials have visited the site after the applicants' letter to satisfy themselves that the project is not on a site that would require the first respondent to apply for a permit. It seems the deponent to the opposing affidavit, who is the sixth respondent's Corporate Secretary and Legal Advisor, has relied on the first and fourth respondent's assertions that the area is not a wetland.

The mere fact that no relief is sought against both the fourth and sixth respondents does not mean that they have been wrongly joined. The fourth and sixth respondents are statutorily obliged to regulate and monitor activities of the first respondent and ensure that the activities

are in compliance with the law. They are therefore interested parties to this application and have been properly joined.

Turning to the merits of this application, the requirements of an interim interdict are trite. The applicants must establish:

(a) a *prima facie* right even if it is open to doubt;
(b) an infringement of such right or a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted;
(c) a balance of convenience favouring the grant of the interdict; and
(d) the absence of any other remedy. (*Bozimo Trade and Trading Co (Pvt) Ltd* v *First Merchant Bank of Zimbabwe Ltd & Ors* 2000 (1) ZLR (HC) 9; *Phillips Electrical (Pvt) Ltd* v *Gwanzura* 1988 (2) ZLR 1117 (HC); *Telecel Zimbabwe (Pvt) Ltd* v *Postal and Telecommunication Regulatory Authority of Zimbabwe & Ors* 2015 (1) ZLR 651.)

The applicant and the first respondent made extensive submissions on issues that I believe are better reserved for the determination of the final relief sought. I have found it not necessary to consider those submissions and I have consequently not referred to the same as they cloud the issues for determination in an application of this nature.

Mr *Uriri* submitted that the applicants had the following rights which the first respondent had infringed:

a) Right to fair and reasonable administrative justice in terms of section 68 of the Constitution and section 3 of the Administrative Justice Act [*Chapter 10:28*] in that the applicants were not given notice of the construction of the Holding Bay and an opportunity to object before the commencement of the construction.
b) Right to an environment that is not harmful to health and well-being, and protection of the environment for the benefit of future generations as enshrined in section 73 (1) of the Constitution. The same right is provided for under section 4 of the Environmental Management Act [*Chapter 20:27*].
c) Right to safe, clean and potable water in terms of section 77 of the Constitution.

The first respondent submitted that the first respondent in coming up with the project had taken into account the above rights. In this regard, Ms *Mahere* referred to a report prepared by Mrs Charumbira headed "Environmental Impact Assessment Public Consultation for Proposed Rhodesville Commuter Bus Terminus". The report was addressed to the fourth respondent. In that report, Mrs Charumbira identified the positive impacts and the negative

impacts of the project. The report further identified the measures that will be undertaken to mitigate the negative impacts of the project. Attached to the report is an Environmental Management Plan for the implementation of the mitigating measures. Miss *Mahere* further submitted that rights are not absolute and are limited in the interest of town planning as permitted in terms of section 86 of the Constitution. The first respondent was constructing the Holding Bay in the interest of town planning. The town planning interest therefore had an overriding effect on the applicants' rights. She further downplayed the concerns of the resident as merely aesthetic.

Mr *Muchada* submitted that the applicants did not have any rights as the Holding Bay was not being constructed on wetland. Mr *Maphosa* conceded that the applicants have a constitutional right to safe, clean water and potable water.

It is necessary from the onset to make reference to Mrs Charumbira's report as I believe that it provides answers as to whether or not the applicants have met the requirements for an interdict and I will continually be referring to that report. Of particular importance in the report are the negative impacts of the project identified by the first respondent. The following are the negative impacts of the project:

"1. Spillages and wash away or percolation of oils and other chemicals during construction and operation phases may lead to contamination of the receiving surface and ground water.
2. Dust generation and greenhouse gases emissions during construction and operation phases will contribute to the deterioration of air quality.
3. There will be generation of noise and vibration from machinery, equipment and touts during construction and operation phases.
4. There will be loss of vegetation due to clearance which will result in reduction of local biodiversity and loss of heat and carbon sinks.
5. Wastewater generated from the fore court washing and run-off at operation stage may contaminate surface and underground water with oily wastewater.
6. There will be generation of construction and building waste due to destruction of existing infrastructure.
7. Dumping of waste will give rise to the breeding of rodents, cockroaches, flies mosquitoes and create unhealthy environment to the community."

Despite the spirited opposition by the first respondent, the import of Miss *Mahere*'s submissions and the above report is an acknowledgment that the applicants do have prima facie rights as submitted by Mr *Uriri*. I will address the rights in turn.

Right to fair and reasonable administrative justice

The right to fair and reasonable administrative action is enshrined in section 68 of the Constitution. The section provides that:

"68 Right to administrative justice

(1) Every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair.
(2) Any person whose right, freedom, interest or legitimate expectation has been adversely affected by administrative conduct has the right to be given promptly and in writing the reasons for the conduct."

The Administrative Justice Act [*Chapter 10:28*], also provides for the same right. Section 3of that Act provides that:

"**3 Duty of administrative authority**
(1) An administrative authority which has the responsibility or power to take any administrative action which may affect the rights, interests or legitimate expectations of any person shall—
(*a*) act lawfully, reasonably and in a fair manner; and
(*b*) act within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to take the action by the person concerned;
(2) In order for an administrative action to be taken in a fair manner as required by paragraph (*a*) of subsection (1), an administrative authority shall give a person referred to in subsection 1) -
(*a*) adequate notice of the nature and purpose of the proposed action; and
(*b*) a reasonable opportunity to make adequate representations; and
(*c*) adequate notice of any right of review or appeal where applicable"

Section 265 (1) of the Constitution further obliges local authorities, and in this case, the first respondent to "ensure good governance by being effective, transparent, accountable and institutionally coherent."

In terms of sections 17 of the Regional, Town and Country Planning Act [*Chapter 29:12*], a local authority is enjoined to come up with a local plan of any development it proposes to undertake. An approved scheme plan is provided for in terms of s 75. In either case, the authority is required under that Act to adequately consult interested persons and publish the plans for the proposed development.

The right to fair and reasonable administrative action, and the first respondent's obligations highlighted above incorporate tenets of natural justice and particularly the *audi alterum partem* principle that one must be heard before a decision affecting his/her rights is taken. (See **Planning Law,** Jeannie van Wyk, 2nd Ed 2012 pp 169-180.) The right to information as enshrined in s 62 of the Constitution, though a stand-alone right, is another facet of the right to fair administrative action. Section 62 provides as follows:

"62 Access to information
(1) Every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level**, in so far as the information is required in the interests of public accountability.**

(2) Every person, including the Zimbabwean media, has the right of access to any information held by any person, including the State, in so far as the information is required for the exercise or protection of a right."

In discussing s 32 of the South African Constitution which is similar to s 62, Jeannie van Wyk in **Planning Law (*supra*)** at p181 observed

> "This provision is of equal significance to planning law as the right to just administrative action, as it should also ensure accountability, openness and transparency in government."

It is common cause that the applicants are residents within the vicinity of the project. They will be affected directly by the development in question. It is also common cause that the first respondent did not give the applicants notice of the planned project. In order for the first respondent to meet its constitutional obligation to be transparent and accountable, and to observe the applicants' right to be heard, it ought to have given the applicants notice of the intended development and to consider any objections by the applicants before commencing the project. The communication between the applicants and the first respondent over the project was only initiated after the project had commenced and at the behest of the applicants.

Following the meeting with Mrs Charumbira, and by email on 26 October 2017, and letter of 1 November 2017, the applicants sought to hold the first respondent accountable for its actions by requesting that they be furnished with the documents that the first respondent would have relied on in coming up with and implementing the project. The first respondent has not provided the applicants with the documents to date despite the applicants having advised Mrs Charumbira that they wanted to object to the project. The applicants are constitutionally entitled to the documents that they, as a constituent of the public, require in ensuring that the respondents are accountable to them and they would require for the exercise or protection of their rights.

It appears from the minutes of the meeting on 24 October 2017 that Mrs Charumbira is aware of the applicants' right to be heard. During the meeting and in response to a query by one of the residents on the procedure for consideration of petitions, she confirmed that any interested party has a right to raise objections to any proposed development. She explained that upon receiving an objections/petition, the relevant heads of department at first respondent will submit the objections/petitions to the relevant committees of first respondent. The committees will deliberate and communicate their decision to the resident/s. (See pp 33-43 of the applicants' answering affidavit to the first respondent's opposing affidavit.)

Right to a clean environment and protection of the environment

The right to a clean environment is provided for in section 73 of the Constitution which provides:

> "**73 Environmental rights**
> (1) Every person has the right—
> (*a*) to an environment that is not harmful to their health or well-being; and
> (*b*) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that—
> (i) prevent pollution and ecological degradation;
> (ii) promote conservation; and
> (iii) secure ecologically sustainable development and use of natural resources while promoting economic and social development."

Section 4(1) of EMA draws from the above constitutional provision and is worded similarly. It states that:

> **"4 Environmental rights and principles of environmental management**
> (1) Every person shall have a right to—
> (*a*) a clean environment that is not harmful to health; and
> (*b*) access to environmental information; and
> (*c*) protect the environment for the benefit of present and future generations and to participate in the implementation of the promulgation of reasonable legislative policy and other measures that—
> (i) prevent pollution and environmental degradation; and
> (ii) secure ecologically sustainable management and use of natural resources while promoting justifiable economic and social development.
> (2) Subject to this Act, the following principles of environmental management shall apply to the actions of all persons and all government agencies, where those actions significantly affect the environment—
> (*a* all elements of the environment are linked and inter-related, therefore environmental management must be integrated and the best practicable environmental option pursued;
> (*b*) **environmental management must place people and their needs at the forefront of its concern**;
> (*c*) **the participation of all interested and affected parties in environmental governance must be promoted and all people must be given an opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation**;
> (*d*) environmental education, environmental awareness and the sharing of knowledge and experience must be promoted in order to increase the capacity of communities to address environmental issues and engender values, attitudes, skills and behaviour consistent with environmental management;
> (*e*) **development must be socially, environmentally and economically sustainable**.
> (*f*) **anticipated negative impact on the environment and on people's environmental rights shall be prevented, and where they cannot be altogether prevented be minimised and remedied**;
> (*g*) any person who causes pollution or environmental degradation shall meet the cost of remedying such pollution or environmental degradation and any resultant adverse health effects, as well as the cost of preventing, controlling or minimising further pollution, environmental damage or adverse health effects;

(*h*) global and international responsibilities relating to the environment must be discharged in the national interest;
(*i*) **sensitive, vulnerable and highly dynamic or stressed ecosystems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure**;
(*j*) waste generated shall be controlled from the point of inception to final disposal in a manner that prevents and minimises pollution."

Section 4 provides for a number of rights. First is the right to a clean environment, being an environment free from pollution. Second is the right to participate in environmental governance. Third is the right to the protection of the environment. The rights entail that affected persons must be notified of any issue that would require their participation. These rights and the obligations of a local authority and environmental management agencies mandated to protect the environmental rights are discussed in *Fuel Retailers Association of Southern Africa* v *Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province & Ors* 2007 ZACC 13. As already alluded to, the applicants are interested persons as they would be affected by the development.

The environmental rights have been raised by the applicants from two perspectives. The first perspective is that the operations of the holding bay when completed will pose health challenges arising from dumping of waste, which challenges are acknowledged by the first respondent in Mrs Charumbira's report. Poor dumping of waste will result in breeding of rodents, cockroaches, flies, mosquitoes. In fact, Mrs Charumbira's report further refers to the harmful effects of waste generated during the construction work. The second perspective and most important is that the project is being constructed on a wetland.

The applicants have contended that the project is being constructed on a wetland. The wetland is a catchment for Lake Chivero. Lake Chivero is the source of water for the Greater Harare, Chitungwiza and Norton. The project will therefore have adverse effects on the entire ecosystem along the catchment area. It will result in flooding around the site thereby reducing the water flow into Lake Chivero. Poor waste management will result in the pollution of both surface and underground water feeding into Lake Chivero

The first respondent and the fourth respondents have simply denied that the project is on a wetland. Both submit that the project is near the Mukuvisi wetland but not within the wetland. Let me hasten to observe that despite stating that the project is not on a wetland, the 4th respondent is still concerned about the effects of the project on the Mukuvisi wetland which

he considers to be adjacent to the site. In para 7 of the opposing affidavit, Mr Bhasera deposed as follows:

> "As of fact, I respectively clarify from personal knowledge and inspection that the bus stop in question is not being established within the wetland. In meetings with the first respondent and other parties involved at the site, EMA has advised the first respondent to ensure the wetland nearby is not compromised and has monitored its work to ensure this. The first respondent will confirm that it is the Environmental Management Agency which directed that the first Respondent should prepare an Environmental Management Plan (EMP) which was considered appropriate as part of the monitoring."

It would have been expected that the fourth respondent, being technically the custodian of the environment, would be expected to have empirical proof that the site is indeed not a wetland. It is unfortunate that Mr Bhasera does not explain the basis for his personal knowledge that the site is not wetland, neither does he explain why he is concerned about the effect of the project on an adjacent wetland. It can only be assumed that the fourth respondent's concern is an indicator that the project is likely to have adverse effects on the adjacent wetland. The request and subsequent preparation of the report cannot therefore be said to have been a futile exercise.

In comparison, the applicants filed the following documents in support of their contention that the construction is on wetland:

a) A letter written on 2 November 2017 by the Chairperson of the Harare Wetlands Trust stating that the project is being constructed on a wetland within the Chiraura River wetland ecosystem. Chiraura River is a tributary of the Mukuvisi River which lies within the Mukuvisi wetland ecosystem. He further indicates that the wetland is marked as MK1 on the 4th respondent's wetland map of Harare. Any construction of on the wetland will affect the wetland ecosystem and "contribute to the decline of water provisioning function of the City of Harare (1st respondent)." ;
b) Environmental Management Agency Wetland map of Harare. The site for the project appears to be on the area shaded on the map light blue on MKI. According to the index of the map, the light blue colour signifies wetlands and MKI is the Mukuvisi wetland.
c) Report prepared by K Lannas (BSc Hons Ecology, Botany, Zoology; MSc Zoology) and S Worsley (BSc Hons Botany & Zoology; MSc Ecology) and dated 19 November 2017. The report identifies the site to be the Rhodesville wetland which forms part of the Mukuvisi I (MK 1) wetland. The report was based on a site visit and describes the site, its location, the types of soil, the plants typically found in wetlands.

In addition to these documents, the applicants also annexed the Zimbabwe's Fifth National Report to the Convention of Biodiversity prepared by the Ministry of Environment, Water and Climate. At p 11-13 of the report it is observed that:

> "Urban wetlands in particular are threatened by development, although some conservation initiatives by local communities have helped conserve urban wetlands like Manavale Vlei. In Harare and other urban centres, deterioration of wetland ecosystems is becoming more apparent, mainly due to housing construction, infrastructure development and informal agriculture. The situation in an environment that is not harmful to their health or well-being Harare and Chitungwiza is particularly critical, as the conurbation is located in the headwaters of the Upper Manyame river catchment with these wetland ecosystems being the primary source of water feeding the supply impounds, lakes Chivero and Manyame. The ongoing destruction of these wetlands will result in the reduced availability of water to this conurbation. Widespread urban agriculture has led to severe siltation of the rivers and streams in the catchment as well as lakes Chivero and Manyame. Excessive use of fertilizer and discharge of industrial effluent and untreated sewage have contributed significantly to the high pollution levels. Rapid demand for urban housing has led to increase in demand for bricks and sand, which has resulted in increased scarring and clearing of land in peri-urban locations of Harare. In the countryside there are moderate levels of wetland degradation. The Environmental Management Agency (EMA) is doing a countrywide review of ecological state of wetlands of Zimbabwe."

With the production of these documents, the applicants have in my view placed the site on a wetland and indicated the negative impact of the project.

Right to clean water

It is equally not in issue that the applicants are entitled to safe clean and portable water in terms of s 77 of the Constitution. Mr *Maphosa* conceded that the applicants are so entitled. (See *Forbes & Thompson (Bulawayo) (Pvt) Ltd* v *The Zimbabwe National Water Authority* HB 147/17, *Hopcik Investment (Private) Limited* v *Minister of Environment Water and Climate* HH 137/16.)

Going back to Mrs Charumbira's report, the negative impacts of the project indicated in the report require the corresponding mitigating measures. Those negative impacts correspond with the concerns of the applicants. The environmental management plan however does not inform on the various stages of the project and when the proposed mitigating measures are supposed to be undertaken and this is a cause for concern. As is, the project has commenced. None of the respondents, and more particularly the first and fourth respondents has been able to shed light on the measures so far taken (if at all) to deal with the air pollution and the noise emanating from the work which is underway. The concerns and fears of the applicants are therefore not merely aesthetic as suggested by the first respondent.

In conclusion, the applicants have both a statutory right to be able to object and a right to be heard before commencement of the project. They have the constitutional right to clean environment, safe and clean water, and health. They have a right to access information. The project is underway and directly impacts on the applicants' environmental rights. The applicants' rights seem not to have been seriously considered by the first, fourth and sixth respondents when in fact the project is likely to have adverse effects on the water supply into Lake Chivero and on the ecosystem in general. Most importantly, the first respondent recognises the adverse effects of their action when one has regard to Mrs Charumbira's report.

As rightly submitted by Miss *Mahere*, the Constitution in s 86 (1) (b) would permit the limitation of the applicants' rights in the interest of town planning. However the limitation is permissible "to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom, taking into account all relevant factors….". The fact that the Constitution permits the limitation in a bid to strike a balance between the individual rights and town planning interests and public interest in general does not detract from the fact that the applicants have constitutional rights. What needs to be considered is whether the limitation complies with the dictates of the Constitution. That is an issue, in my view, for consideration during the determination of the final relief sought.

Do the applicants, faced with the above, have an alternative remedy that will provide adequate protection? The first respondent submitted that there are provisions in the Regional Planning Act, Water Act, Urban Councils Act and in other relevant acts that provide for an appeal in the Administrative Court against administrative action. In fact, the applicants can bring an administrative decision on review in terms of the High Court Act. However, such remedy, as rightly submitted by Mr *Uriri.* is not effective to deal with the issues raised by the applicant urgently as the process may be protracted. The remedy would be *brutum fulmen*.

As regards the question of hardship, Miss *Mahere* submitted that the first respondent has heavily invested in the project. Resources have already been spent in the work that has commenced. The first respondent has assumed obligations under contracts that it has entered for the implementation of the project.

If the interdict is denied, the construction will continue and it will continue where it may later be found to be unlawful. The damage to the ecosystem could be colossal and irreversible. The wetland will be damaged as feared by the applicants and the fourth respondent, whether the Holding Bay is being constructed on wetland or adjacent to wetland.

The first respondent intends to put up a world class terminus. The Infrastructure cannot be brought down without further damage to the environment and to the rate-payers pocket. The balance of convenience therefore favours the applicants.

In the absence of any scientific certainty that the Holding Bay is not being constructed on a wetland, and the absence of cogent environmental impact assessment research or plan, it is prudent to err on the side of caution by granting the provisional order.

In the result, it is accordingly ordered that:

1. The provisional order be and is hereby granted with the interim order in the following terms:

"Pending the determination of this matter, the 1st respondent be and is hereby interdicted from continuing with all the construction work on the Rhodesville Holding Bay, at Coronation Park, opposite Rhodesville Police Station off Robert Mugabe Road, Harare, being the proposed bus terminus and people's market,."

Zimbabwe Lawyers for Human Rights, applicant's legal practitioners
Mbidzo, Muchadehama & Makoni, 1st respondent's legal practitioners
Attorney General of Zimbabwe, 2nd, 3rd & 5th respondents' legal practitioners
Dube Manikai & Hwacha, 4th respondent's legal practitioners
Chirenje Partners, 6th respondent's legal practitioners