RITA MARQUE MBATHA
versus
PROVINCIAL MAGISTRATE Y DZUDA

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 2 October 2017 & 18 October 2017

Urgent Chamber Application

Applicant, in person
T Chinopfukutwa, for the 2nd respondent
No appearance, for the 1st respondent

ZHOU J: The applicant instituted the instant application seeking an order interdicting the second respondent or any person acting on his behalf or in furtherance of his interests from interfering with the applicant's occupation of the property described in the papers as 126 Edgmore Road, Park Meadowlands, Hatfield, Harare. The final order seeks the same relief together with an order that the Magistrates' Court had no jurisdiction to determine Case No. MC 39520/16 which involved a dispute between the second respondent and applicant. The applicant also seeks costs of suit. The application is opposed by the second respondent.

In addition to contesting the application on the merits, the second respondent objected *in limine* to the application being heard on the ground that it is fatally defective for failing to state on the face of the chamber application the grounds upon which the application is being made. The respondent further argues that the rules require that there be a certificate of urgency and not, as was filed by the applicant *in casu*, an affidavit of urgency. Rule 242 (2) (b) explicitly states that a certificate of urgency prepared by a legal practitioner is to be filed where the applicant is

represented by a legal practitioner. Where the applicant is not represented by a legal practitioner r 242 (2) (a) states that the grounds of urgency must be set out in the applicant's affidavit. The objection based on the absence of a certificate of urgency is therefore without merit. Regarding the form of the chamber application the proviso to r 241 requires that a chamber application which is to be served upon interested parties be in Form 29 with the appropriate modifications. The requirements for the basis of the application to be stated *ex facie* the chamber application apply to form 29 B. The respondent's complaint is not that the chamber application is not in Form 29 but, rather, that the grounds of the application do not appear *ex facie* the application. That argument is therefore not valid when consideration is given to the fact that the chamber application *in casu* was to be served and was, indeed, served upon the respondent.

On the merits, the applicant alleges that on 26 August 2017 at about 1900 hours a group of persons unknown to her went to her residence and alleged that they had been sent there by the second respondent. Those persons, according to the applicant, "intimated" that the applicant and her family must vacate the premises that she occupies as her residence by end of day on 29 August 2017 on the basis that the Magistrates' Court had issued an order to that effect. The group threatened to break the locks and remove the applicant's property from the premises if she did not vacate the premises as advised. The rest of the applicant's founding affidavit consists of allegations pertaining to other cases involving the applicant and the second respondent. The averments in those paragraphs are very difficult to follow, such that it is not clear what the applicant's cause of action is.

The respondent, through an agent appointed in terms of a power of attorney to represent him, denied that he instructed the persons who allegedly visited the applicant's residence as alleged by the applicant. He stated that he was out of the country during the dates to which the applicant's complaint relates. He further stated that he had obtained an order for the ejectment of the applicant and therefore did not need to resort to self-help to achieve that end.

The applicant has not led evidence to link the second respondent to the persons who allegedly visited her. The facts alleged by the applicant have been disputed by the second respondent. Such a dispute cannot be resolved on the papers. The dispute is material to the determination of this matter as it has a bearing on the relief which is being sought by the applicant. The applicant ought to have foreseen that dispute prior to instituting the application. See

Mashingaidze v *Mashingaidze* 1995 (1) ZKR 219 (H). On the facts which are not in dispute the applicant has failed to establish a case for the interdict which is being sought against the second respondent.

As for costs, while I am not inclined to grant the application, the applicant succeeded in getting the second respondent's points *in limine* dismissed. On that basis, it is fair to order that each party is to bear its own costs.

In the result the application is dismissed with each party bear its own costs.

Kadzere, Hungwe & Mandevere, 2nd respondent's legal practitioners