CHRISTOPHER MUSHONGA
and
PETER CHIKWATI
and
SHINGIRAYI KONDO
and
LAST MAENGAHAMA
and
BETTY SUKA
and
PETER KARIMAKWENDA
and
TAPFUMANEYI BANGAJENA
and
WENDY DEHWA
and
TICHANZII GANDANGA
and
ELIJAH MANJEYA
and
WELLINGTON MADZIVANYIKA
and
LINUS PAUL MUSHONGA
and
OSWEL BADZA
versus
THE MINISTER OF LOCAL GOVERNMENT,
PUBLIC WORKS AND NATIONAL HOUSING
and
SEKESAYI MAKWAVARARA
and
THE MINISTER OF HOME AFFAIRS
and
THE COMMISSIONER OF POLICE

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 14 June 2004 and 23rd June 2004

Urgent Application

BHUNU J: The 13 applicants are councillors for the City of Harare whereas

the 1st respondent is the Minister of Public Works and National Housing responsible for Urban Councils.

The 2nd respondent is a councillor and deputy mayor as well as acting mayor of the City of Harare.

The 3rd respondent is the Minister of Home Affairs responsible for police operations whereas the 4th respondent is the police commissioner responsible for the day to day police operations.

On the 31st May 2004 the first respondent hereinafter referred to as the Minister purported to issue a directive to the Harare City Council through a letter written by his permanent secretary Mr DC Munyoro. The letter addressed to the town clerk reads:

> "RE : CONDUCT OF COUNCIL ELECTIONS
> This letter serves to advise that the Minister has directed that all internal elections be deferred until further notice. This is to allow the Kurasha led monitoring team to commence its activities in relation to turning around the local authority for the benefit of the Harare residents.
>
> Signed:
> DC Munyoro
> SECRETARY FOR LOCAL GOVERNMENT,
> PUBLIC WORKS AND NATIONAL HOUSING
>
> c.c. The Honour Minister
> c.c. Acting Mayor"

Aggrieved by this and a series of other directives issued by the Minister before it the applicants lodged an urgent chamber application with this court on the 24th May 2004.

The application sought to interdict the respondents from disrupting and interfering with the day to day running (of) the City of Harare and of the affairs of council. In addition they also sought to prevent the respondents from disrupting council meetings.

The provisional order sought was crafted as follows:-

"TERMS OF THE FINAL ORDER SOUGHT

1. That first and second respondents be interdicted from interfering in the running of the City of Harare by refraining from giving directives on non policy issues.
2. ……

3. that the 1st, 2nd and 3rd respondents be and are hereby interdicted from stopping, postponing or interfering with the elections of the deputy mayor, chairpersons and other members of the council committees as and when they are scheduled and/or held.
4. That 3rd respondent be interdicted from implementing 1st and 2nd respondent's directives without approval of full council.(my emphasis)
5. ……

INTERIM RELIEF GRANTED
Pending the confirmation or discharge of this provisional order, the applicants are granted the following relief:

1. That 1st and 2nd respondents be and are hereby interdicted from interfering in the running of the City of Harare by giving directives.
2. That 1st, 2nd and 3rd respondents be and are hereby interdicted from stopping cancelling or postponing council meetings.
3. That the 1st, 2nd and 3rd respondents be an are hereby interdicted from stopping, postponing or interfering with the election of the deputy mayor, chairpersons and other members of council committees as and when they are scheduled and or held."

The urgent application was placed before OMERJEE J who determined that the matter was not urgent and directed that the matter proceed as an ordinary application.

Despite that initial huddle the applicants proceeded to hold a full council meeting on the 31st of May 2004. At that meeting it was proposed during deliberations that elections for deputy mayor, chairpersons and other members of council committees should go ahead.

At that stage the 2nd respondent who was chairing the meeting produced the ministerial directive barring any such elections. The issue of the ministerial directive was debated. The majority of councillors present at that meeting voted in favour of proceeding with the elections in open defiance of the ministerial order.

Conscious of the need to comply with ministerial directives in terms of the Urban Councils Act [*Chapter 29:14*], the 2nd respondent in her capacity as chairperson and acting executive mayor declared the meeting closed. Despite the closure of the meeting the applicants proceeded to reconstitute themselves into a full council meeting and proceeded to hold

the elections in flagrant open defiance of both ministerial and mayoral orders.

Sections 313(3) and 314(4) require council to expeditiously comply with ministerial directives. Having adjudged that the applicants' conduct in defying his ministerial order constituted acts of misconduct, the Minister proceeded to suspend the applicants from council with effect from the 1st June 2004 in terms of section 114(1) of the Urban Councils Act [*Chapter 29:14*] erroneously quoted as [*Chapter 29:13*].

After the suspension the applicants rushed to court in great haste seeking a provisional order of which the interim order provided as follows:

> "Pending the confirmation or discharge of the provisional order it is ordered that:
> 1. The suspension of the applicants by the 1st respondent be and is hereby set aside.
> 2. The 1st respondent be and is hereby interdicted or restrained from disrupting with (*sic*) the business of council, in non-policy issues.
> 3. The 2nd respondent be and is hereby interdicted from disrupting council activities.
> 4. The 3rd and 4th respondents or any person acting through them be and are hereby interdicted or restrained from interfering or disrupting with (*sic*) council activities."

The first issue for determination is whether or not the applicants have demonstrated that there is urgency in this matter such that the applicants cannot wait their turn in the queue for their application to be heard in the normal way by the court.

As regards the relief sought under paragraphs 2 to 4, my brother OMERJEE J has already ruled that there is no urgency and has directed that the application be heard in the normal way. There is merit in that finding and I stand bound by that decision.

That leaves me with the claim seeking to set aside the applicant's suspension from council.

In the case of *General Transport and Engineering (Pvt) Ltd and others v Zimbabwe Banking Corporation* 1998(2) ZRL 301 GILLESPIE J had occasion to remark that:

> "He who brings proceedings urgently gains a considerable advantage over persons whose disputes are being dealt with in the normal

course of events. This preferential treatment is only extended where good cause is shown for treating one litigant differently from most litigants." (my emphasis)

I am in respectful agreement with the above sentiments. I can only add that in the absence of special exceptional circumstances the courts must hear cases on a first come first served basis for every case is important to the litigants concerned. To do otherwise will amount to an injustice to those litigants who have approached the courts earlier but have the discipline and patience to await their turn.

In this case the applicants deliberately and intentionally defied the ministerial order with the full knowledge of the consequences that were likely to follow.

They circumvented and pre-emptied the court's decision in the application they had already filed with the court by exercising self help interpreting the law in their own favour and executing their own decision.

It is trite that the courts and the public at large frawn upon those who exercise self help which is inimical or incompatible with the rule of law.

If someone gets hurt in the process of exercising self help in defiance of the rule of law he cannot rush to court in great haste, hoping to gain the court's sympathy and sneaking in ahead of those who have been patiently waiting their turn into court.

The applicants' predicament is self-inflicted. There is therefore no basis upon which they can displace other cases to make way for their own case.

The duty and authority to interpret the lawfulness, validity or otherwise of the ministerial order lay with the courts. By interpreting and implementing the law in their own favour, the applicants were usurping the functions of the courts.

They ought to have awaited the outcome of the application they had already filed with the court. Had they done so they would not have been suspended and this application would not have been necessary at all.

The applicants also complained that council is unable to function properly in their absence on suspension. I find no merit in that submission for the simple but good reason that apart from their mere say so, council has not complained or indicated to this court that in the absence of the applicants on suspension it is experiencing any difficulties in discharging its mandate. Had this been the case, council would certainly have said so and taken the appropriate action.

The remaining councillors still form a quorum. But even if they did not, there are adequate safeguards and structures in the Act to facilitate the smooth functioning of council in their absence.

In conclusion I feel constrained to restate that in a civilised parliamentary democracy such as Zimbabwe, citizens must refrain from taking the law into their own hands. This country has adequate civilised lawful and peaceful dispute resolution mechanisms through the courts, mediation, conciliation and arbitration. Recourse must be had to these lawful dispute resolution mechanisms. Those who clamour for the rule of law must themselves operate squarely with the confines of the rule of law.

Admittedly the wheels of justice tend to turn slowly but law-abiding citizens must have the discipline and patience to wait for justice in terms of the law. They cannot exercise self-help and only rush to court when the tables are turned against them.

Having said that I come to the conclusion that the applicants have failed to establish on a balance of probabilities that this is an urgent matter which cannot wait. It is accordingly ordered that the matter should proceed as an ordinary application. The applicants are to bear the costs of this application.

Mbizvo, Muchadehama and Makoni, the applicants' legal practitioners
Mandizha and Company, the 1st respondent's legal practitioners
Chihambakwe, Mutizwa and Partners, the 2nd respondent's legal practitioners
Civil Division of the Attorney-General's Office, the 3rd respondent's legal practitioners