SITWELL GUMBO
versus
PORTCULLIS (PVT) LTD
T/A THE FINANCIAL CLEARING BUREAU

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 26 June 2013

URGENT CHAMBER APPLICATION

Applicant in person

BERE J: This matter was brought before me on a certificate of urgency on 25 June 2013. After considering the papers I declined to hear the matter on urgent basis on 26 June 2013. In so declining I remarked as follows:

> "There is no urgency in this matter warranting this matter to be allowed to jump the queue. The applicant has had all the time in the world to take the initiative to clear his name. I decline to treat this matter as urgent."

It has been brought to my attention that the applicant wishes to appeal against my decision hence the need for reasons of my decision. Here they are.

What has generally been accepted as the guiding principle in determining the urgency or otherwise of a matter has authoritatively been stated in the much celebrated case of *Kuvarega* v *Registrar-General & Anor*[1] where the learned judge had this to say:

> "What constitutes urgency is not only the imminent arrival of the day of reckoning; a matter is urgent, if at the time the need to act arises, the matter cannot wait. Urgency which stems

[1] 1998 (1) ZLR 188 (H) at 193F-G per the late CHATIKOBO J

> from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules."

It is really a pity that I have to regurgitate the legal position.

The applicant's founding affidavit clearly explains the genesis of his problems with the respondent. It dates back to 2003 and it spilled over to 2007, then to 2009 and it culminated in the applicant initiating what I would call corrective legal action against the respondent in 2010.

It is clearly an exaggeration for the applicant to project the job interviews of July 2013 as the date for the cause of his action against the respondent and in the process try to force the court to hear his case on an urgent basis.

For several years as confirmed by his founding affidavit he has been fully aware of the conduct of the respondent towards him and he has always had the opportunity to take the initiative to clear his name. He chose not to do so and only rushed to court on an urgent basis on 24 June 2013.

In my view this is not what is contemplated by the whole concept of urgent applicants.

The applicant's deliberate inaction over the years does not justify that his case be allowed to jump the queue and be given preferential treatment over all other matters pending consideration in this court. There is nothing special about his case and even his founding affidavit does not explain why he has not timeously acted over all these years.

I have had the opportunity to run through the notice of appeal filed and in particular para 8 therein where the applicant makes startling revelations that I should not have heard his urgent application in the first place.

It sounds a very unfair criticism because these concerns must be raised before a judge deals with the matter. It should be possible for a party who feels uncomfortable with a particular judge to seek that judge's recusal.

It is most unfortunate or clearly unfair for the applicant to insinuate that other than merely handling his application in the manner done, the judge had some other motive. Even as I write this judgment, I cannot even remember that at one time I dealt with the same matter at a pre-trial stage.

It is for these reasons minus my comments on the notice of appeal that I declined to hear the applicant's application on urgent basis.