

TISU ANHU ACHO TRANSPORT  
versus  
GIDEON SHUNGU  
and  
WASHINGTON CHINEMASA  
and  
MESSENGER OF COURT

HIGH COURT OF ZIMBABWE  
ZHOU J  
HARARE, 12 June 2014 and 23 June 2014

**Urgent chamber application**

*V Chinamba*, for the applicant  
The respondents in person

ZHOU J: This is an urgent chamber application for a provisional order staying execution of two arbitral awards rendered by the arbitrator Mr R Charindeguta in favour of the first and second respondents on 21 June 2013. The awards were registered with the Magistrates' court. The applicant appealed to the Labour Court against the arbitral awards. The first and second respondents proceeded with the execution of the award which had been registered as an order of the Magistrates' Court. In response to the execution the applicant made an application to the Labour Court for stay of execution.

The Labour Court dismissed the application for stay of execution on the basis that it was not urgent. The order of the labour Court is dated 11 September 2013. That order is extant.

The instant application was instituted on 6 June 2014, almost nine months after the Labour Court dismissed the application for stay of execution referred to above. There is need for this court to inquire into the urgency of this application.

A matter is urgent if it cannot wait to be resolved through a court application. In the case of *Dilwin Investments (Pvt) Ltd t/a Formscaf v Joppa Engineering Co (Pvt) Ltd* HH 116-98 at p 1 GILLSPIE J said:

“A party 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 entered where good cause can be shown for treating one litigant differently from most litigants.”

It has been held that urgency which is self-created or arises where an applicant waits for the day of reckoning is not the type of urgency contemplated by the rules. See *Kuvarega v Registrar* 1998 (1) ZLR 188 (H).

*In casu* the applicant failed to act to enforce its rights after the Labour Court had dismissed its urgent chamber application. This application is being brought some 9 months after the Labour Court dismissed the first application for stay of execution. The applicant did not treat the matter as urgent as it did not seek to challenge the order of the Labour Court or, at least, to institute an ordinary court application to stop the process of execution. On the applicant's own evidence it became clear to it after the dismissal of the Labour Court application that the respondents would proceed with execution. The applicant's belief as to the legal position cannot be an excuse for its inaction given the fact that it had even tried to apply to a court for stay of execution.

In the circumstances, I find that this matter is not urgent and must be struck off the roll of urgent matters. The applicant is to pay the costs.

*Mugadza Chinzamba & Partners*, applicants legal practitioners