

CHRISTOPHER BAKASA	1 ST APPLICANT
and	
ZOZINHU PATRICK AGUSHTO	2 ND APPLICANT
and	
NDIRINI NJAITE	3 RD APPLICANT
and	
WONDER CHIPFUYAMITI	4 TH APPLICANT
and	
LEONARD BHASIKORO	5 TH APPLICANT
and	
BINDALA MIDYA	6 TH APPLICANT
and	
TECLA MATOSI	7 TH APPLICANT
and	
JOSHUA CHINYADZA	8 TH APPLICANT
and	
MOSES AIDI	9 TH APPLICANT
and	
RAYMOND ZOZINHU	10 TH APPLICANT
and	
MARIA GORIATI	11 TH APPLICANT
and	
MAORIDI AIDI	12 TH APPLICANT
and	
NJAITI NJAITI	13 TH APPLICANT
and	
MARIA MIKEZHI	14 TH APPLICANT
and	
MANZOU JABULANI	15 TH APPLICANT
and	
THOMAS SANDAWARA	16 TH APPLICANT
and	
MIRIAM BECHANI	17 TH APPLICANT
and	
MEMORY TARUVINGA	18 TH APPLICANT
and	
LLOYD JAMES	19 TH APPLICANT
and	
MEKI JAMES	20 TH APPLICANT
and	
TAURAI VIRANIKI	21 ST APPLICANT
and	
ELISHA SHAYANOWAKO	22 ND APPLICANT
and	
LOVEMORE ZUZE	23 RD APPLICANT
and	
THEMBA PUNZAI	24 TH APPLICANT
and	
MASONDO ZIVANAI	25 TH APPLICANT
and	

OBERT SANDE 26TH APPLICANT
and
THOMAS DIZA 27TH APPLICANT
and
GRACE KARUVA 28TH APPLICANT
and
GODFREY DAISON 29TH APPLICANT

versus

MINISTRY OF LANDS, AGRICULTURE, WATER, RESPONDENT
CLIMATE AND RURAL RESETTLEMENTS

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 17 January 2019

Urgent Chamber Application

P Nyakureba, for the applicants
P Garwe, for the respondent

MUZENDA J: The twenty-nine (29) applicants are illegal settlers at Yorkshire 7C Farm, Makoni District, Headlands and according to them have been in occupation of the said land since 2003. On the 10th of January 2019 they brought this application as an urgent chamber application seeking the following relief:

“TERMS OF FINAL ORDER SOUGHT:

That you show cause to this Honourable Court why a final order should not be made in the following terms:

- (a) The threat to evict the 1st to 29th applicants and their families from Yorkshire 7C Farm, Headlands without a Court Order by the respondent and all those acting in concert with it or under its instructions is hereby declared unlawful.
- (b) The respondent is permanently interdicted from evicting the applicants from Yorkshire 7C Farm, Headlands without first securing a Court Order.
- (c) Respondent shall pay the costs of this application on attorney-client scale.

INTERIM RELIEF GRANTED

Pending finalisation of the matter, the following relief is granted:

- (i) Respondent and those acting in concert with it or under its instructions are interdicted from arbitrarily evicting 1st-29th applicants from Yorkshire 7C, Headlands, destroying their homesteads, livestock and their crops.
- (ii) The 1st to 29th applicants and their families shall remain in occupation of their homesteads.”

I directed the registrar to set the matter down for the 17th January 2019 and have the respondents served. On the date of hearing I asked Mr *Nyakureba* to address the court on the aspect of urgency. From the applicants' papers, it can be noted that the applicants wrongly cited the respondent. The appropriate part to be cited is the Minister and not the Ministry. The Respondent issued eviction notices to the applicants on the 4th of January 2019 and the current application was issued by the Deputy Registrar of this court on the 10th January 2019. There are 5 days in between, from the 5th to 9th of January 2019. It was on this basis that the court asked the applicant to proffer an explanation as to why the applicants did not timeously approach the court after getting the notices of eviction.

Mr *Nyakureba* submitted that all the applicants were unsophisticated rural peasant farmers who admittedly took time to approach legal practitioners and after instructing their current legal practitioners, the lawyers had to go to Headlands and assess the situation where after they had to prepare court papers. In Mr *Nyakureba*'s view it was a reasonable one. The argument proffered by the applicants did not find favour with this court, the certificate of urgency prepared by TAFADZWA JARICHA nor the affidavits prepared on behalf of the applicants did not address this delay an explanation was only advanced by Mr *Nyakureba*. This, in the court's view was not proper.

In the matter of *Kuvarega v Registrar General and Anor.* 1998 (1) ZLR 188 (H) CHATIKOBO J at 188 had this to say:

“What constitutes urgency is not only the imminent arrival of the day of reckoning, a matter is also urgent, if at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline draws near, is not the type of urgency contemplated by the rules. If there has been any delay, the certificate of urgency or supporting affidavit must contain an explanation to the non-timeous action.” (My emphasis).

The applicants were aware from 2003 that they were illegal settlers and did not do anything to legalise their occupation. They have no legal basis to stay on that piece of land. The applicants failed to establish grounds upon which they should be preferentially treated and allow their matter to be dealt with urgently, they did not show such good cause to be treated differently from most litigants.

See the matter of *General Transport and Engineering (Private) Limited and others v Zimbabwe Banking Corporation Limited* 1998 (2) ZLR 301 (H) per GILLESPIE J. In my view the application failed to qualify to jump the queue and be on lead ahead of other matters on the

ordinary roll. It failed to qualify as warranting to be treated as critical or high priority and deserving of immediate attention.

See *Ramwide Investments (Private) Limited v Ronderbuild Zimbabwe (Private) Limited and Ors* 2016 (2) ZLR 275 (H) per MATANDA-MOYO J.

The applicants have failed to convince this court that this application is urgent. The imminent eviction is not per se a ground moving the matter to be heard on urgent basis. Accordingly it is hereby ordered that:

The application is not urgent and is hereby removed from the roll of urgent matters.

Maunga Maanda & Associates, applicant's legal practitioners