

LAKE USERS ASSOCIATION  
versus  
THE DIRECTOR, ZIMBABWE NATIONAL PARKS AND WILDLIFE MANAGEMENT  
AUTHORITY  
and  
MINISTER OF ENVIRONMENT WATER AND CLIMATE  
and  
THE MINISTER OF TRANSPORT AND INFRASTRUCTURAL DEVELOPMENT

HIGH COURT OF ZIMBABWE  
FOROMA J  
HARARE, 9 December 2015

**Urgent application**

*E Morris*, for the applicant  
*W P Zhangazha*, for the 1<sup>st</sup> respondent  
*E Mukucha*, for the 2<sup>nd</sup> & 3<sup>rd</sup> respondents

FOROMA J: This application was filed on 30 November 2015 as an urgent application. On receipt of the application in chambers on 4 December 2015 I directed that the application be served on the respondents and directed that it be set down for consideration at 10:00am on 8 December 2015. The matter could not be dealt with on 8 December 2015 because service that had been effected was in my assessment not in compliance with the rules and direction I had given namely that service be effected on the respondents as service had in fact only been made on Messrs Chinogwenya and Zhangazha legal practitioners as the first respondent's legal practitioners only. On clarifying the service I required to be made I redirected that all the parties be served including the first respondent as there was nothing on record on this matter to suggest that the first respondent was being represented by Chinogwenya and Zhangazha legal practitioners.

After service was properly effected the matter which had been pencilled in for hearing at 10:00am on 9 December 2015 was moved to 3:00pm on 9 December 2015.

When the parties appeared before me at about 3:10 pm Mr *Eric Morris* applied that the matter be dealt with on the basis of the parties filing heads of argument and Mr

*Zhangazha* for the first respondent and Mr *Mukucha* who was appearing on behalf of the second and third respondents raised the issue of urgency as a point *in limine* i.e to say that they did not consider the matter to be urgent whereupon I invited counsel for the applicant to satisfy me that the matter was urgent before we could proceed to consider whether the matter could be dealt with by the parties filing heads of argument.

Mr *Morris* submitted that the matter was urgent and relied heavily on the certificate of urgency. Mr *Mukucha* submitted that on the strength of the case of *Kuvarega v Registrar General & Anor* 1998 (1) ZLR 188 the applicant had not acted at the time the need to act arose and that the applicant was simply trying to jump the queue and pointed to the fact that in terms of the minutes of the applicant's meeting held on 17 October 2015 it had been resolved that court action be commenced by 19 October 2015 and yet nothing was done until 30 November 2015. Mr *Zhangazha* associated himself with the submissions made by Mr *Mukucha* and endorsed that indeed the matter was not urgent adding that the applicant was responding to the consequences of the act of erecting the boom when they should have acted upon the erection of the boom if indeed it was considered to be illegal.

In response Mr *Morris* partially attempted to explain the delay in filing the application on the delay in his being briefed and submitted that the delay was not inordinate. He also sought to suggest that the urgency arose when one of the persons manning the boom gate cocked his gun and pointed it on Mr K Pilz as testified to in the affidavit of Keith Pilz which affidavit was used to support the application. Once Mr *Morris*'s attention was brought to (i) the fact that the said affidavit was deposed to on 29 October 2015 and that a whole month passed before any action was taken counsel could not take the matter further and (ii) that there was no explanation for the delay in the applicant's papers he was unable to persist on his stance even though he did not abandon his brief. I accordingly considered that the point *in limine* had merit and found that the matter was not urgent and ruled that I could not deal with it on an urgent basis.

*Mtewa Law Chambers*, applicant's legal practitioners  
*Chinogwenya & Zhangazha*, 1<sup>st</sup> respondent's legal practitioners  
*Civil Division of the Attorney General's Office*, 2<sup>nd</sup> & 3<sup>rd</sup> respondents' legal practitioners