

THE TRUSTEES OF THE ARDA-TRANSAU
RELOCATION DEVELOPMENT TRUST
versus
ZIMBABWE ELECTRICITY TRANSMISSION
AND DISTRIBUTION COMPANY (ZETDC) (PVT) LTD

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 4 April 2020

Urgent Chamber Application

K Kabaya, for the applicant
No appearance for the respondent

MWAYERA J: A raft of measures meant to comply with the World Health Organisation (WHO) guidelines on the prevention containment and treatment of Coronavirus disease commonly known as COVID19 prompted the Minister of Health and Child Care and indeed the Government of Zimbabwe to make an order for National lockdown under Statutory Instrument 83 of 2020 on 28 March with effective date of operation 30 March 2020. The order among other important provisions provides that the supply of water and electricity services are critical and essential services. The virus is real and indeed a menace as evidenced by reports of the numbers of the infected and dead. Zimbabwe has not been spared by this invisible but real enemy wreaking havoc among the rich and the poor without distinction by colour creed or age. At the time of hearing 9 recorded cases had been confirmed and 1 death recorded in Zimbabwe, South Africa had 1,505 positive cases and 9 deaths. Globally there were 1 051 697 positive cases and 56 986 deaths.¹

Bearing in mind the emphasis on personal hygiene anchored on the need to regularly wash hands with clean running water and soap the applicants jostled into action. The applicants had no water supply since the Zimbabwe Water Supply pumps supplying the household with water for community consumption had been rendered dry by disconnection of electricity. World over including our neighbour South Africa news reported increase in numbers of infected people and deaths due to the formidable pandemic.

¹ Situation report 75- World Health Organisation
www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports

The applicants faced with COVID19 outbreak and threat without running tap water due to ZESA power cut to the ZINWA outlet which supplies them with water, approached this court through the urgent chamber book. The applicant sought:

“TERMS OF THE FINAL ORDER SOUGHT

1. That the Respondent provides electricity supply services to the Zimbabwe National Water Authority water pumps within Arda – Transau community for the duration of the state of disaster subject to the load shedding schedule.
2. No order as to costs.

TERMS OF THE INTERIM ORDER SOUGHT

1. That the Respondent immediately restores electricity supply services to the Zimbabwe National Water Authority water pumps within Arda – Transau community.”

The Respondents were properly served but did not respond or appear.

The brief history of the matter is as follows:

The applicant (trustees of the trust) represent the interests and rights of the Trust, its members and beneficiaries relocated from Chiadzwa, diamond fields in Marange and now reside in ARDA TRANSAU. The relocation occurred between 2010 and 2016. From inception of relocation up to 2019 December the mining companies that relocated their families have been responsible for paying for electricity supply to the respondent. The electricity supply powered water pumps installed by Zimbabwe national Water Authority for water supplies to the relocated families. The mining companies namely Anjin Diamond Mining Company, Mbada Diamonds Housing, Jinan Mining, Marange Resources and Zimbabwe Consolidated Diamond Company paid in full for the power utility bills. Upon the cessation or discontinuity of the complete subsidization of power utility bills by the mining companies, the community struggled to pay for the electricity consumption bills. This culminated in a cumulative debt of ZW\$30 000-00 owing to the respondent ZESA. Consequently the respondent rightfully discontinued the supply of electricity to the community for none payment of electricity bills. The disconnection inevitably means no supply of tap water to the community. On the face of it this is self-created urgency stemming from none payment of ZESA bills but the question is, is it really self-created urgency given the background history of being relocated and having mining companies pay the ZESA bills and then stopping. The problem was not the villagers’ own making.

Upon considering whether or not a matter is urgent the settled factors which fall for consideration should never be looked at in isolation neither should they be dissociated from

the history and all circumstances of the cause. Looking at requirements of urgency in isolation would lead to erroneous view of the status of the matter. The immediate factors giving rise to this urgent application fall under scrutiny. On 30 January 2020 the World Health Organisation (WHO) declared Coronavirus Disease – 2019 generally known as COVID19 a Public Health Emergency of International Concern². Pursuant to the declaration WHO set guidelines for all countries to curb and control the outbreak of the disease and among other important measures is the critical requirement that individuals must regularly wash hands with clean running water and soap based substances, and further that people must maintain social distancing for about a metre from the next person in order to minimize the risk of transfer of the virus disease. The Zimbabwean Government in response is no exception as it declared through Presidential Action a state of Disaster³ and consequently a National Lockdown to contain the spread of COVID 19⁴. In an effort to give effect to the WHO guidelines to contain the spread of COVID 19 and protect citizens the Government of Zimbabwe in terms of SI 83 of 2020 banned gatherings of more than two persons in public places and declared water and electricity supply services as essential services. (underlining my emphasis). Water and electricity are critical services, however at the time of hearing both are lacking to the applicants despite being also part of all the other citizens in the declared state of disaster occasioned by the outbreak of COVID 19.

The circumstances are clear that the applicants do not have clean and regular water supply because of electricity disconnection to Zimbabwe National Water Authority ZINWA. This naturally poses a threat to personal hygiene during the lockdown period and worse still spells doom to the intended containment of the national disaster and would be further obstructive to the global efforts to successfully fight against this deadly scourge pandemic COVID 19.

The case cries out for urgent redress and indeed spells out and clearly meets the requirements of urgency as contemplated by the rules of this court. The applicant acted with agility as they set out to file the application upon the publication of water and electricity as an essential commodity. The publication was on 28 March 2020 and 3 April applicants were at court. They undoubtedly treated the matter as urgent. See *Madzivanzira and Ors v Dextrint (Pvt) Ltd and Anor*⁵. Secondly there is no other remedy except seeking redress with the court for connection of electricity to the ZINWA pipes for water to be availed. The applicants have

² <http://www.who.int>

³ Civil Protection (Declaration of State of Disaster) Rural and Urban Areas of Zimbabwe (COVID 19) Notice 2020.

⁴ Public Health (COVID -19 Prevention, Containment and Treatment (National Lockdown) Order 2020

⁵ HH 245/02

accrued a debt through the diamond companies under whom they were resettled. The long term solution of awaiting for repayment of debt would occasion irreparable harm not only to the applicants but the national and global village. Critically the none availability of water disrupt the efforts to contain the spread of COVID 19. There will be irreparable harm occasioned to the respondents because the applicants are not seeking to be exonerated from the debt neither are they seeking the debt to be written off but are seeking an interim relief for restoration of electricity supply to ZINWA pumps for them to access clean and portable water for personal hygiene during the lockdown period only. The urgent relief sought is the only remedy that will satisfactorily redress the dire circumstances of the applicants. A matter is viewed as urgent if circumstances depict it cannot wait as waiting and dealing with the matter later would render the relief sought hollow or useless.

In this case, at the time of hearing the deadly pandemic outbreak was causing havoc world over. This jurisdiction declared it a disaster and water and electricity supply were termed critical or essential services. To have the matter wait and proceed on the ordinary role would amount to a reactive reaction post event. That would not serve any purpose. In this matter the circumstances and the prevailing situation speak volumes to the extreme urgency of the matter. This is a case which apparently denotes urgency from the cause of action and nature of relief sought. See *Document Support Centre (Pvt) Ltd v Mapuvire*⁶.

In the present case the matter is fully clothed and colored with urgency. The balance of convenience lean in favour of granting the interim relief sought.

Accordingly the interim relief sought is granted.

Maunga Maanda & Associates, applicants' legal practitioners

⁶ 2006 (2) ZLR 240 H