

PETER MUFUNDA  
and  
BENSON SHUMBA  
and  
ISAAC MAHACHI  
and  
JAQUELINE TAKURE  
and  
EMMANUEL MAKARIPE  
and  
GILBERT GOZHO  
and  
LAINA CHIKODZI  
versus  
CHITUNGWIZA MUNICIPALITY  
and  
CHIGUMETE  
and  
ALFRED TOME  
and  
MINISTER OF LOCAL GOVERNMENT PUBLIC WORKS  
AND NATIONAL HOUSING  
and  
MINISTER OF LANDS AND RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE  
CHITAPI J  
HARARE, 4 December, 2015 and 30 August, 2017

### **Opposed Application**

*G T Mharapara*, for the applicants  
*L Shambamuto*, for 1<sup>st</sup> and 2<sup>nd</sup> respondents  
*R Hove*, for 4<sup>th</sup> and 5<sup>th</sup> respondents

CHITAPI J: This matter appears listed as one where judgment has been pending since 4 December 2015. It is necessary to put the circumstances of how the matter has remained in my chambers since it was argued on 4 December, 2015 into perspective.

When the matter was called, the parties legal practitioners indicated that the dispute between their clients was being resolved. In particular counsel for the fourth and fifth respondents indicated on record that the fifth respondent contrary to what he had stated in his affidavit in paragraph 5 to the effect that he would withdraw offer letters issued to the applicants, he had in fact engaged the applicants through his officials and would not withdraw the offer letters until alternative land had been found and allocated to the applicants.

The parties undertook to execute a deed of settlement which they would file with the court. The issue of wasted costs was reserved as the first respondent was opposed to an order of costs being made against it. I however directed that since the parties were in the process of negotiating and had undertaken to file a deed of settlement, the issue of costs would remain reserved and should the parties not agree on the issue in the deed of settlement, I would then determine the issue of costs and invite counsel to present argument on the issue if I considered that I required further argument in addition to what counsel had submitted in the heads of argument on the issue. The deed of settlement would in any event have indicated in the absence of agreement that the question of costs be determined by the court.

The deed of settlement was supposed to have been filed by 15 December, 2015. The court record was therefore retained in my chambers and when accounting for it, it was recorded as one in which judgment was reserved which was true in a sense but not quite accurate for the reasons I have given above.

The parties neither filed a deed of settlement as undertaken nor did they update the court on what had taken place. Counsel just went quiet. I express the courts' displeasure at the attitude of counsel. Where counsel make undertakings to court, it is imperative to honour them and where the same cannot be met, to seek extensions of time within which to honour them.

On 3 May, 2017 a document headed "request for judgment" purportedly prepared and signed by "P Mufunda" whom I assume is the first applicant was filed with the Registrar. In the said document, the author signed "on my behalf and the other applicants." The document's contents state that counsel for the third to 5<sup>th</sup> respondents abandoned negotiations for settlement. He complains that the applicants' farming operations are being interfered with by invaders. In the event, he requests for judgment.

The said P Mufunda does not sufficiently disclose who he is in relation to the application. He does not indicate by what authority and in what capacity he wrote the document. I therefore disregard the document.

Notwithstanding my disregarding the document aforesaid the fact still remains that the record remains in my chambers and the statistical records show that the matter is awaiting determination. The problem as I have indicated is that counsel did not take steps to have the matter finalised as promised. The matter was not argued and therefore I cannot prepare a judgment.

In order that this matter sees the light of day and is resolved I consider that it is proper that I make an order which I now in hindsight realize I ought to have made. I had however not anticipated that counsel would fail to honour their undertaking and treat the matter as abandoned by just going quiet.

I therefore order as follows:

1. The matter is removed from the roll.
2. The applicants if they wish to persist in the matter are directed within 14 days of the date of this order to set down the application for hearing failing which the Registrar shall invoke the provisions of paragraph 9 of Superior Court Practice Direction 3 of 2013.

*Mutombeni, Mukwasha & Muzawazi & Associates, applicants' legal practitioners*  
*Matsikidze & Mucheche, 1<sup>st</sup> & 2<sup>nd</sup> Respondents' legal practitioners*  
*Civil Division of the Attorney General's Office, 3<sup>rd</sup> – 5<sup>th</sup> respondents' legal practitioners*