HB 307/16
HC 2611/14

CITY OF KWEKWE

Versus

ZIMBABWE NATIONAL WATER AUTHORITY

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 12 JUNE 2015 & 10 NOVEMBER 2016

Opposed Court Application

V. Mutatu for applicant
Advocate L. Nkomo for defendant

KAMOCHA J: On 12 November 2014 applicant sought and was granted a provisional order wherein the respondent was ordered to restore water supply to it forthwith. Respondent was interdicted from interfering with water supply to the applicant pending finalisation of this matter.

The final order the applicant sought reads thus:

"Terms of the final order sought

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

(i) That the respondent be and is hereby interdicted from disconnecting water supplies to the applicant in whatever manner, whatsoever without a court order.
(ii) That the respondent pays costs of suit on an attorney and client scale."

The parties in this matter entered into an agreement on 15 February 2013 for the provision of water. The Zimbabwe National Water Authority (ZINWA) being the provider while Kwekwe City Council was the consumer.

According to clause 4 of the agreement the consumer would be billed on a monthly basis for the 30 000 mega litres per year allocated to it. The national blend price was US$6 per mega litre, water levy of US$1,06 per mega litre and sub-catchment rate of US$1,00 with VAT at 15%.

The consumer was obliged to pay for the allocated water as per the bill. Yet despite the consumption of the allocated water, and billing Kwekwe City Council the consumer neglected or failed to pay and as at 30 April 2014 owed ZINWA a sum of US$894 802,94.

Pursuant to the provisional order granted on 12 November 2014 after hearing the parties, the matter now is before this court for confirmation or discharge of the said provisional order.

The traditional requirements that an applicant needs to establish in matters of this nature have been repeatedly stated thus:-

(a) A *prima facie* right, even if it is open to doubt;
(b) An infringement of such right by the respondent or well-grounded apprehension of such an infringement;
(c) A well-grounded apprehension of irreparable harm to the applicant, if the interlocutory interdict should not be granted and if he should ultimately succeed in establishing his right finally;
(d) The absence of any other satisfactory remedy; and
(e) That the balance of convenience favours the granting of interlocutory interdict. See *Setlogelo* vs *Setlogelo* 1914 AD 221.

The applicant in an effort to show that it had a clear right sought to rely on agreement contained in a letter annexure 'A' written on 7 October 2014. Applicant did not refer to the parties' agreement entered into on 15 February 2013.

A clear right is not established by what was agreed in a letter, in my view. I am not at all convinced that the first requirement was satisfied.

In respect of the injury of such right actually committed by the respondent or well-grounded fear of such injury of the right applicant alleged disconnection which occurred on 5 November, 2014. Besides the mere say so, there is no documentary proof to support that allegation.

The respondent denied that it disconnected water on 5 November, 2014. It explained what actually happened. There was only a decreased amount of water supplied because respondent could not carry out maintenance works due to failure by applicant to pay for the water. Despite failure by applicant to pay for the water respondent had continued to supply it with water.

In paragraph 10.1 of its founding affidavit the applicant states that injury relates to its customers like ZIMASCO, DELTA Beverages et cetera et cetera. Applicant was alleging injury to third parties who were not party to the proceedings not to itself. That, in my view was not competent. It seems to me that applicant failed to satisfy the requirement that there was injury to itself.

The applicant's claim that it had no other satisfactory remedy available to it is untenable. It owed the respondent US$894 802,94 and only paid us $6 000,00. The satisfactory remedy, in my view, was to make regular payments of what it owed so that the respondent would properly manage the water supply.

In any event the allegation that water supply was disconnected was unsubstantiated and was without proof.

Consequently, I would discharge the provisional order with costs.

Messrs Mutatu & Partners, applicant's legal practitioners
Cheda & Partners, respondent's legal practitioners