

IN THE HIGH COURT OF ZIMBABWE  
HELD AT HARARE

CASE NO. HC

1223  
/16

In the matter between:-

MARANGE DEVELOPMENT TRUST

AND

THE DISTRICT ADMINISTRATOR MUTARE DISTRICT N.O.

ZIMBABWE CONSOLIDATED DIAMOND COMPANY  
(PRIVATE) LIMITED

THE MINISTER OF RURAL DEVELOPMENT, PROMOTION,  
PRESERVATION OF NATIONAL CULTURE & HERITARE

THE COMMISSIONER GENERAL OF POLICE

1st Applicant

1st Respondent

2nd Respondent

3rd Respondent

4th Respondent

URGENT CHAMBER APPLICATION

Prepared by:-

**MAUNGA MAANDA & ASSOCIATES**  
Applicant's Legal Practitioners  
4th Floor, Livingstone House  
48 Samora Machel Avenue  
Harare [TM/PN/dm]

Tel: 04 - 796541-2

In the matter between:-

MARANGE DEVELOPMENT TRUST

1<sup>st</sup> Applicant

AND

THE DISTRICT ADMINISTRATOR MUTARE DISTRICT N.O.

1<sup>st</sup> Respondent

ZIMBABWE CONSOLIDATED DIAMOND COMPANY  
(PRIVATE) LIMITED

2<sup>nd</sup> Respondent

THE MINISTER OF RURAL DEVELOPMENT, PROMOTION,  
PRESERVATION OF NATIONAL CULTURE & HERITARE

3<sup>rd</sup> Respondent

THE COMMISSIONER GENERAL OF POLICE

4<sup>th</sup> Respondent

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DATED AND SIGNED AT MUTARE THIS 1<sup>st</sup> DAY OF DECEMBER 2016.

  
.....  
**MAUNGA MAANDA & ASSOCIATES**  
Applicant's Legal Practitioners  
4<sup>th</sup> Floor, Livingstone House  
48 Samora Machel Avenue  
Harare [TM/PN/dm]

And

To: **The Registrar**  
High Court of Zimbabwe  
Harare

And

To: **1<sup>st</sup> Respondent**

The District Administrator  
Mutare District Administration Complex

Mutare

✓ S/O by offering @  
the baglar-ban  
gate after the  
employee M  
15th floor refuse  
to accept  
Semi

And

To:

**2<sup>nd</sup> Respondent**

Zimbabwe Consolidated Diamond Company  
C/o Mutamangamira & Associates  
No. 38 Clairwood  
Alexandra Park  
Harare

S/O Baburamakar Shambira  
employee for Mutamangamira  
& Associates @ 01506

- Service  
effected @ 12

And

To: **THE MINISTER OF RURAL DEVELOPMENT, PROMOTION,  
PRESERVATION OF NATIONAL CULTURE & HERITAGE**

**3<sup>rd</sup> Respondent**

2<sup>nd</sup> Floor, Unity Court  
64 Kwame Nkrumah

Harare

15th Floor Kaguwa Building " " "  
S. Muzenda (Contact) @ 1255 hrs " "

And

To: **THE COMMISSIONER GENERAL OF POLICE**

4<sup>th</sup> Respondent  
Police General Headquarters  
J Chinamano/7<sup>th</sup> Street

Harare

✓ 050922V SGT  
MUKUNGUWA  
DECIDE TAIZINI  
@ 0136 hrs



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HELD AT HARARE

CASE NO. HC

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In the matter between:-

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1<sup>st</sup> Applicant

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THE MINISTER OF RURAL DEVELOPMENT, PROMOTION,  
PRESERVATION OF NATIONAL CULTURE & HERITAGE

3<sup>rd</sup> Respondent

THE COMMISSIONER GENERAL OF POLICE

4<sup>th</sup> Respondent

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URGENT CHAMBER APPLICATION

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Application is hereby made for an order in terms of the Draft Order attached hereto. The application is made on the following grounds;

1. On the 30<sup>th</sup> of November 2016 the 1<sup>st</sup> Respondent gave the 26 families who are members of the Applicant 24 hours' notice to vacate Tinoengana village in order to pave way for the diamond mining activities of the 2<sup>nd</sup> Respondent.
2. Further, the 1<sup>st</sup> Respondent has threatened to evict the members of the Applicant through the police and bulldozers of the 2<sup>nd</sup> Defendant on the 2<sup>nd</sup> of December 2016 should they fail to vacate on their own by the 1<sup>st</sup> of December 2016.
3. The respondents' conduct is in violation of the rights of the membership of the applicant to freedom from arbitrary eviction as envisioned in section 74 of the Constitution of Zimbabwe.

- The accompanying affidavit of **Malvern Mudiwa** and the supporting affidavits of **Tichatonga Tinoengana** and **Clive Chiwadzwa** and attached documents are tendered in support thereof.

DAY OF DECEMBER 2016.

Zimbabwe Consolidated Diamond Company  
C/o Mutamangamira & Associates  
No. 38 Clairwood  
Alexandra Park

Harare

And

To: **THE MINISTER OF RURAL DEVELOPMENT, PROMOTION,  
PRESERVATION OF NATIONAL CULTURE & HERITARE**

**3<sup>rd</sup> Respondent**

2<sup>nd</sup> Floor, Unity Court

64 Kwame Nkrumah

Harare

And

To: **THE COMMISSIONER GENERAL OF POLICE**

4<sup>th</sup> Respondent

Police General Headquarters

J Chinamano/7<sup>th</sup> Street

Harare

IN THE HIGH COURT OF ZIMBABWE  
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1<sup>st</sup> Applicant

AND

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ZIMBABWE CONSOLIDATED DIAMOND COMPANY  
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2<sup>nd</sup> Respondent

THE MINISTER OF RURAL DEVELOPMENT, PROMOTION,  
PRESERVATION OF NATIONAL CULTURE & HERITARE

3<sup>rd</sup> Respondent

THE COMMISSIONER GENERAL OF POLICE

4<sup>th</sup> Respondent

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ADDRESS FOR SERVICE

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PLEASE TAKE NOTICE THAT the Applicant's address of service is care of its undersigned Legal Practitioners, **Messrs Maunga Maanda and Associates**, number 48 Samora Machel Avenue, Harare.

DATED AND SIGNED AT MUTARE THIS 01<sup>st</sup> DAY OF DECEMBER 2016.



MAUNGA MAANDA & ASSOCIATES  
Applicant's Legal Practitioners  
4<sup>th</sup> Floor, Livingstone House  
48 Samora Machel Avenue  
Harare [TM/PN/dm]

And

To: The Registrar  
High Court of Zimbabwe  
Harare

And



**To: 1<sup>st</sup> Respondent**

The District Administrator

Mutare District Administration Complex

**Mutare**

**And**

**To:**

**2<sup>nd</sup> Respondent**

Zimbabwe Consolidated Diamond Company

C/o Mutamangamira & Associates

No. 38 Clairwood

Alexandra Park

**Harare**

**And**

**To:**

**THE MINISTER OF RURAL DEVELOPMENT, PROMOTION,  
PRESERVATION OF NATIONAL CULTURE & HERITAGE**

**3<sup>rd</sup> Respondent**

2<sup>nd</sup> Floor, Unity Court

64 Kwame Nkrumah

**Harare**

**And**

**To:**

**THE COMMISSIONER GENERAL OF POLICE**

**4<sup>th</sup> Respondent**

Police General Headquarters

J Chinamano/7<sup>th</sup> Street

**Harare**



In the matter between:-

MARANGE DEVELOPMENT TRUST

Applicant

AND

THE DISTRICT ADMINISTRATOR MUTARE DISTRICT N.O.

1<sup>st</sup> Respondent

ZIMBABWE CONSOLIDATED DIAMOND COMPANY  
(PRIVATE) LIMITED

2<sup>nd</sup> Respondent

THE MINISTER OF RURAL DEVELOPMENT, PROMOTION,  
PRESERVATION OF NATIONAL CULTURE & HERITAGE

3<sup>rd</sup> Respondent

THE COMMISSIONER GENERAL OF POLICE

4<sup>th</sup> Respondent

CERTIFICATE OF URGENCY

I, RANGARIRAI MUHLORO MUBATA, a duly registered practitioner of this Honourable Court duly sworn, admitted and practicing as such under Mubata, Chigadza and Associates Legal Practitioners, and having read the documents in this matter do hereby certify in terms of Rule 244 of the High Court of Zimbabwe rules 1971 that the matter is one of urgency for the following reasons;

1. The 1<sup>st</sup> Respondent has given inadequate notice to the members of the Applicant to vacate their homesteads on their own, only 24 hours or face eviction by this office with the support of the police in order to pave way for diamond mining activities of the 2<sup>nd</sup> Respondent.
2. The threats by the 1<sup>st</sup> Respondent are being made by a public official who has shown the capacity to carry them out even though he does not have a court order sanctioning the eviction. The threats cannot be taken lightly by the Applicant.
3. The 1<sup>st</sup> Respondent's conduct is in violation of the rights of the membership of the Applicant, if allowed to go ahead with the eviction this will be an

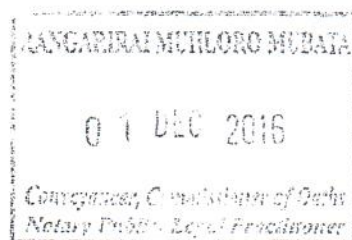
arbitrary eviction in violation of their freedom from arbitrary eviction as enshrined in Section 74 of the Constitution of Zimbabwe.

4. The conduct is also not a just or reasonable and prompt administrative decision, it is in violation of the right to just administrative conduct in terms of section 68 of the constitution of Zimbabwe.
5. Members of the Applicant cannot relocate on their own within the 24 hours' notice given to them by 1<sup>st</sup> Respondent. That is simply impossible.
6. The members of the Applicant will suffer irreparable harm if the 1<sup>st</sup> Respondent was to continue to evict them without an order of the Court. They are bound to lose their shelter and other valuables.
7. Applicant has no other efficacious and effective remedy available to it.

In the premises I respectfully submit that this matter is extremely urgent and it which should be heard accordingly.

DATED AND SIGNED AT MUTARE THIS 14 DAY OF DECEMBER 2016.

  
RANGARIRAI MUHLORO MUBATA



In the matter between:-

MARANGE DEVELOPMENT TRUST

1<sup>st</sup> Applicant

AND

THE DISTRICT ADMINISTRATOR MUTARE DISTRICT N.O.

1<sup>st</sup> Respondent

ZIMBABWE CONSOLIDATED DIAMOND COMPANY  
(PRIVATE) LIMITED

2<sup>nd</sup> Respondent

THE MINISTER OF RURAL DEVELOPMENT, PROMOTION  
PRESERVATION OF NATIONAL CULTURE & HERITAGE

3<sup>rd</sup> Respondent

THE COMMISSIONER GENERAL OF POLICE

4<sup>th</sup> Respondent

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AFFIDAVIT OF MALVERN MUDIWA

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I the undersigned **MALVERN MUDIWA** do hereby make oath and swear to state that:

1. I am the Director of the above applicant. I am authorised to depose to this affidavit in terms of a resolution attached as annexure "A" to this affidavit and the facts stated herein are within my knowledge and are true and correct to the best of my knowledge and belief. In matters that I speak about the law I have taken advice which advice I accept as correct.
2. First Respondent is the District Administrator for Mutare Rural District his address for service is care of Mutare District Administration Complex, Mutare.
3. Second Respondent is, Zimbabwe Consolidated Diamond Company (Private) Limited is a private company with the licence to carry out mining

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activities in Marange diamond fields, Mutare rural. Its address for service is care of their legal Counsel Mutamangira & Associates.

4. Third Respondent is the Minister responsible for the administration of the 1<sup>st</sup> Respondent, its address for service is 2<sup>nd</sup> Floor, Unity Court, 64 Kwame Nkrumah -Harare. The 4<sup>th</sup> Respondent is the Commissioner – General of the Zimbabwe Republic Police whose address for service is care of Police General Headquarters J Chinamano/7<sup>th</sup> Street, Harare.
5. Applicant is an organisation that was formed to represent the interest of Marange villagers and it is capable of suing and being sued in its own name. I incorporate herein by reference its Deed of Trust.
6. Its main objectives are to provide an advocacy platform for Marange villagers in Mutare rural district and engage government in issues to do with the collective welfare of its membership. The applicant was formed in order to act as a lobby group in matters that the membership of it will need to speak with one voice.
7. The Applicant has received threats that 26 households of its members in Tinoengana village are going to be evicted from their homesteads on the 2<sup>nd</sup> day December 2016 to pave way for the 2<sup>nd</sup> Respondent to continue with diamond mining activities at their homesteads. This threat was delivered by the one Mr. Edgar Seenza the District Administrator for Mutare rural in person on Wednesday the 30<sup>th</sup> of November 2016.
8. The 1<sup>st</sup> Respondent called for a meeting of all the 26 affected households at Tinoengana village and addressed the members of the Applicant. He advised the villagers that the government had resolved to evict them from their homestead with immediate effect and relocate them to a place called Aida Transau which is about 100km from their current homestead.
9. The meeting with the District Administrator held on the 30<sup>th</sup> of November 2016 was the first meeting ever held between the 1<sup>st</sup> Respondent and the villagers over their relocation. Prior to that the villagers had not been



relocated when another batch of members of the 1<sup>st</sup> Applicant were relocated to Arda Transau to pave way for proper diamond mining in Chiadzwa diamond mines over five years ago.

10. When the 1<sup>st</sup> Respondent called for the meeting he was escorted by several police officers in riot gear whom he threatened to unleash on the members of the 1<sup>st</sup> Respondent if they attempted to resist the eviction which he threatened to enforce on the 2<sup>nd</sup> of December 2016.
11. During the previous relocations, the office of the 1<sup>st</sup> Respondent, the 3<sup>rd</sup> Respondent and the companies that used to mine in Chiadzwa diamond areas engaged the villagers in time and assess their homesteads in order for compensation to be paid for their losses before they were relocated. In actual fact the relocated villagers were paid various sums of money in compensation prior to relocation. In addition the villagers were allocated their new homesteads in Arda Transau which were designed to suit their family needs.
12. In the present case there is no assessment of the homestead has been done, the members of the 1<sup>st</sup> Applicant have not been given prior and reasonable notice, they have not been shown the homesteads they are being relocated to. The affected members of the Applicant have their proper homesteads they built for themselves and the families. They have already planted crops in their fields at a cost following the rain season. If they are to be arbitrarily evicted they will suffer irreparable harm.
13. Further to that the intended process is being implemented compulsorily and through the use of force through State security apparatus without a court order for our eviction. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have threatened to evict members of the Applicant using police force and bulldozers from the 2<sup>nd</sup> Respondent to destroy their homesteads.
14. In the meantime the 2<sup>nd</sup> Respondent has already expanded its mining activities to the village in question and is mining right in the homesteads of the members of the 1<sup>st</sup> Applicant. I refer to the supporting affidavits of

Tichatonga Tionoengana and Clive Chiwarziwa who are residents of Tionoengana villages. The affidavits are marked as Annexure "B1" and "B2".

15. The members of the Applicant have families with young children who are attending school at Ganda Primary and Secondary schools. They do not know whether or not the place they are being evicted to has schools for their children to continue with their education. Some of the members are terminally ill persons who need ready access to clinics for treatment and they have such facilities in the present set - up.
16. Section 74 of the Constitution of Zimbabwe protects every person in Zimbabwe from arbitrary eviction from their homesteads or the demolition of their homesteads without an order of the court.
17. In the present matter it is clear that the 1<sup>st</sup> Respondent is seeking to evict the members of the 1<sup>st</sup> Applicant without first having secured an order of the Court. Such an act is a flagrant violation of the rights of the members of the 1<sup>st</sup> Applicant.
18. In terms of s58 of the constitution applicant's members have a right to freedom of assembly and association.
19. In terms of the constitution the state has a duty to respect, protect, fulfil and promote human rights. In this instance the respondents seem to seek to do the exact opposite.
20. The conduct of the respondents is unconstitutional in so far as it is contrary to the letter and spirit of the constitution. It is contrary to the objectives and the founding principles on which our country is based in terms of the values and principles set out in the constitution.

EXTRACT FROM THE MINUTES OF A MEETING OF THE EXECUTIVE OF MARANGE  
DEVELOPMENT TRUST ZIMBABWE HELD AT MUTARE ON THE 1<sup>ST</sup> DAY OF  
DECEMBER 2016 WHERE IT WAS RESOLVED

THAT MR MALVERN MUDIWA BE AUTHORIZED TO ACT ON BEHALF OF THE  
MARANGE DEVELOPMENT TRUST IN THE MATTER OF THE COURT APPLICATION  
FOR AN ORDER BARRING THE RESPONDENTS FROM UNLAWFULLY EVICTING  
THE 26 FAMILY MEMBERS OF THE APPLICANTS.

SIGNED AT MUTARE THIS 1<sup>ST</sup> DAY OF DECEMBER 2016 AS CERTIFIED TRUE  
EXTRACT OF THE MINUTES.

SECRETARY.....

DATE.....



In the matter between:-

MARANGE DEVELOPMENT TRUST

1<sup>st</sup> Applicant

AND

THE DISTRICT ADMINISTRATOR MUTARE DISTRICT N.O.

2<sup>nd</sup> Respondent

ZIMBABWE CONSOLIDATED DIAMOND COMPANY  
(PRIVATE) LIMITED

3<sup>rd</sup> Respondent

THE MINISTER OF RURAL DEVELOPMENT, PROMOTION  
PRESERVATION OF NATIONAL CULTURE & HERITARE

4<sup>th</sup> Respondent

THE COMMISSIONER GENERAL OF POLICE

SUPPORTING AFFIDAVIT OF TICHATONGA TINOENGANA


I, TICHATONGA TINOENGANA, do hereby make oath and state that the facts I state herein are to the best of my knowledge true and correct; -


1. I have read and understood the founding affidavit of MALVERN MUDENA and I fully associate myself with averments made therein in.
2. I confirm that on the 30<sup>th</sup> day of November 2016 and at Tinoengana village, Chief Chiadzwa, Marange the 1<sup>st</sup> Respondent addressed the 26 families residing in Tinoengana village and advised that he was giving us 24 hours within which to vacate our homesteads in order to pave way for the mining activities of the 2<sup>nd</sup> Respondent.
3. He was accompanied by employees of the 2<sup>nd</sup> Respondent and over twenty (20) police officers in riot gear. He stated that if the villagers do not vacate on their own on the 2<sup>nd</sup> of December 2016 he was going to evict them using the police and bulldozers from the 2<sup>nd</sup> Respondent.
4. Prior to the alluded meeting no other meeting was ever held between the 1<sup>st</sup> Respondent and members of the Applicant.
5. That is all I wish to state.



THUS SWORN TO AT MUTARE THIS DAY OF DECEMBER 2016

BEFORE ME

  
TICHATONGA TINOENGANA

  
CHESANG NYAMARORA  
LL.BS (U.Z); LL.M (Notredame)  
Legal Practitioner; Notary Public; Conveyancer  
& Commissioner of Oaths  
ZIMBABWE

In the matter between:-

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1<sup>st</sup> Applicant

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1<sup>st</sup> Respondent

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(PRIVATE) LIMITED

2<sup>nd</sup> Respondent

THE MINISTER OF RURAL DEVELOPMENT, PROMOTION,  
PRESERVATION OF NATIONAL CULTURE & HERITAGE

3<sup>rd</sup> Respondent

THE COMMISSIONER GENERAL OF POLICE

4<sup>th</sup> Respondent

SUPPORTING AFFIDAVIT OF CLIVE CHIWADZWA

I, CLIVE CHIWADZWA, do hereby make oath and state that the facts I state herein are to the best of my knowledge true and correct; -

1. I have read and understood the founding affidavit of MALVERN MUDIWA and I fully associate myself with averments made therein in.
2. I confirm that on the 30<sup>th</sup> day of November 2016 and at Tinoengana village, Chief Chiadzwa, Marange the 1<sup>st</sup> Respondent addressed the 26 families residing in Tinoengana village and advised that he was giving us 24 hours within which to vacate our homesteads in order to pave way for the mining activities of the 2<sup>nd</sup> Respondent.
3. He was accompanied by employees of the 2<sup>nd</sup> Respondent and over twenty (20) police officers in riot gear. He stated that if the villagers do not vacate on their own on the 2<sup>nd</sup> of December 2016 he was going to evict them using the police and bulldozers from the 2<sup>nd</sup> Respondent.
4. Prior to the alluded meeting no other meeting was ever held between the 1<sup>st</sup> Respondent and members of the Applicant.
5. That is all I wish to state.

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THUS SWORN TO AT MUTARE THIS DAY OF DECEMBER 2016

BEFORE ME

