APOSTOLIC FAITH MISSION IN ZIMBABWE
versus
APOSTOLIC FAITH MISSION OF ZIMBABWE
and
AMON NYIKA CHINYEMBA
and
ALEX MWANZA
and
CAESAR MANGWENTSHU
and
DENNIS MUTUNGI

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 9 April 2022

Urgent Chamber Application

Ms *F Mahere* with her *E Homela*, for the applicant
C W Gumiro with him *N Chikono* for the respondent

ZHOU J:

Judgment on the Points *in Limine*

This is an urgent chamber application for an interdict prohibiting the respondents, in the interim, from holding a conference at a conference centre which is described in the papers as 164D Northway Prospect, Waterfalls, Harare while is held under Deed of Transfer Number 8984/87. There is a dispute as to the correct description or the exact location of the conference centre in issue, but nothing turns on that at this juncture. The respondents have raised objections *in limine* which have a bearing on whether or not the court should consider the merits of the application. Before adverting to these, it is necessary to relate to an objection to the filing of the affidavit of one MUNETSI MASHEEDZE which is attached to the answering affidavit filed on behalf of the applicant. I upheld the objection and directed that the affidavit be expunged from the record. I indicated that reasons for the decision would be given in the final judgment.

The affidavit in question is headed "supporting affidavit". A supporting affidavit is filed together with a founding affidavit. In this case, the affidavit, though called a supporting affidavit, is filed together with the answering affidavit. Significantly, the affidavit makes allegations of violent of disorderly conduct by members of the first respondent. The allegations are detailed. These would necessarily require a response from the respondent. There is no explanation as to why the affidavit was not filed together with the founding affidavit. It raises fresh allegations which cannot be permitted to stand, hence the determination that it be expunged from the record.

Turning to the objections *in limine*, these are (a) that the founding affidavit attributed to Amon Dubie Madawo is fraudulent, (b) that the papers are not paginated, and (c) that the matter is not urgent. These matters will be considered in the order in which they were raised.

The founding affidavit

The respondents alleges that at the time or on the date that the deponent to the founding affidavit is said to have sworn to the affidavit he was not in Harare, but was in Masvingo, attending a conference. In this respect, the respondents state that they do have persons who could swear that the deponent never travelled to Harare on the day that he is said to have signed the affidavit. In response, the applicant states that the deponent did travel to Harare on 7 April 2022 and signed the affidavit the following day on 8 April. In the absence of evidence from those who were with the deponent in Masvingo at the material time, there is no evidence upon which it can be found that he did not sign the affidavit himself. On the face of it, the affidavit is duly sworn to and signed before a commissioner of oaths in Harare. At the very best, the fact of whether the deponent did sign the affidavit in Harare or not is a dispute of fact which cannot be resolved on the papers. For these reasons, the objection must fail.

Pagination and Indexing of the papers

The objection pertaining to the failure to index and paginate the documents seems to pertain only to the copy of the founding papers served upon the respondents. The copy in the court record is duly paged and does have an index. While it is indeed necessary that the index be availed to all the parties, this objection does not invalidate the application. Accordingly, the objection is dismissed. There was also a reference in support of this objection to a rule 227, which does not exist in the High Court Rules, 1921. However, in view of my conclusion in respect of the paging of the papers, this becomes a non-issue.

Urgency

On the question of urgency, the respondents' objection is that the applicant became aware of the respondents' intention to hold the conference in question when it was served with the letter of 25 February 2022, and that events subsequent to delivery of that letter ought to have jolted the applicant into action. On the other hand, the applicant contends that the need to act only arose on or about 7 April 2022 when the police demonstrated that they would not assist it to stop the conference.

A matter is urgent if it cannot wait to be dealt with as an ordinary court application, see the case of *Pickering* v *Zimbabwe Nwespapers* (1980) Ltd 1991(1) ZLR 71(H). In the case of *Dilwin Investments (Pvt) t/a Formscaff* v *Jopa Engineering Company (Pvt) Ltd* HH 116-98, at p1, of the court said:

> "A party who brings proceedings urgently gains a considerable advantage over persons whose disputes are being dealt with in the normal course of events. The preferential treatment is only extended where good cause can be shown for treating the litigant differently from most litigants"

The principles articulated in the cited authorities are the reason why the court looks not just at the consequence of the failure to have the matter dealt with urgently upon the applicant, such as irremediable prejudice or harm, but also whether the applicant itself has treated the matter urgently, having regard to when the application was filed vis a vis the time when the need to act arose. In this latter respect, this court has said in many judgments that what constitutes urgency is not the imminent arrival of the date of reckoning. Urgency which stems from deliberate abstention from acting until the eleventh hour or self-created urgency, is not the type of urgency which is envisaged by the rules of court, as was pointed out in the case of *Kuvarega* v *Registrar General and Anor* 1998(1) ZLR 188 (H) at 193F-G. If a party waits until the event complained of knocks on the door or creates a justification to be heard urgently the court will not extend the preferential treatment of an urgent hearing to such a party.

In the present case, the letter of 25 February 2022 which was written by the fifth respondent is an unequivocal notification of the dates of the conference. Not only are the dates stated; the venue is also stated, Waterfalls (Gotekwa-164D Northway). The letter goes further to state that the respondents' Praise and Worship team would commence practice on 5 March 2022. This letter was responded to by the applicant's representative on 1 March 2022, some five of so days after it was written. In that response the applicant categorically stated that it would not allow the respondents to hold their conference at any of its

properties. The applicant would have had no doubt as to the proposed venue of the conference since this was explicitly stated in the letter of 25 February 2022. It had no reason to believe that the respondents would not proceed with their plans to hold the conference in the absence of an undertaking from them. The letter of 25 February is not a request for authority or permission to hold the conference. It was a notification, which means that the respondents felt no obligation to get permission from the applicant.

The alleged involvement of the police in the deliberations between the contenting parties could not justifiably lull the applicant into lethargy. The police are there to maintain law and order, and have no role in disputes pertaining to the parties' proprietary interests unless these have a criminal dimension. In this case there was no criminal complaint made to the police. In any event, the respondents dispute that the police ever issued an injunction in relation to the proposed conference.

But if the applicant had any doubt as to the intention of the respondents, such doubt would have been dispelled when the applicant's attention was drawn to the letter of 9 March 2022 which was written by the fourth respondent. The applicant stated that the letter was fraudulently written on its letterhead. This letter was not seeking permission from the police, but was merely notifying them of the impending conference. It also states the dates as well as the venue of the conference. After being notified of this letter the applicant took no steps to approach the court. Applicant refers to Facebook postings advertising the conference as the reason why it wrote the letter dated 7 April 2022. That letter is addressed not to the respondent but to the officer in charge of Zimbabwe Republic Police, Mbare. It was written by the applicant's legal practitioners. Applicant submits that it only decided to approach the court upon being advised by the police that they would not act to stop the respondents from holding the conference in the absence of an order court. Reliance on its letter of 7 April 2022 and the discovery of the Facebook postings is a classic case of self-created urgency. Clearly the need to act arose soon after 25 February 2022. The series of events which culminated in the letter of 9 March 2022 would have left the applicant with no doubt as to the respondent's plans to proceed with their conference as notified on 25 February 2022.

In all the circumstances, therefore this matter cannot enjoy the privilege of being dealt with on an urgent basis.

In the result, the application is struck off the roll of urgent matters with costs.

Dube-Tachiona, Tsvangirai, applicant's legal practitioners
Moyo Chikono & Gumiro, respondents' legal practitioners