ANGLICAN CHURCH C.P.C.A (HWEDZA) DISTRICT
versus
REVEREND BISHOP OF MANICALAND
and
DIOCESAN SECRETARY (MANICALAND)
and
CHAD GANDIYA
and
DIOCESAN SECRETARY (HARARE)
and
SECRETARY GENERAL: COUNCIL OF BISHOPS

HIGH COURT OF ZIMBABWE
HUNGWE J
HARARE 2 October 2018 & 30 July 2019

Opposed Application

No appearance by the applicants

A Mutungura, for 1st respondent
S J Matsika, for 3rd and 4th respondents

HUNGWE J: The applicants have chosen not to appear at the hearing either in person or through chosen counsel. Throughout the process, applicants engaged the services of an obscure entity styled "Lelimas Legal Aid Society." I doubt the legal competency, under the Legal Practitioners Act, [Chapter 27:07], of legal aid societies in engaging in the business of offering legal services to the public and will therefore refer this matter to the Law Society for its attention. Clearly, ss 8 to 12A of the Act have been contravened in this matter and in several instances where such entities have offered legal services. I did not raise this matter at the hearing as both applicant and its chosen representatives were not in attendance. They had filed their heads of argument and therefore this court decided to determine the matter on the merits argued in the heads of argument.

The applicants are part of the Anglican Church for the Province of Central Africa. They have decided to sue the Diocesan Secretary of both Manicaland and Harare Diocese, the Right Reverend Bishop of the Harare Diocese of the Anglican Church as well as the Secretary General

of the Council of Bishops. Their cause of action is not clearly spelt out but can be gleaned from the draft order annexed to their application. It is this. They seek an order declaring that the Anglican churches in the Hwedza district of Zimbabwe fall under the diocese of Harare. They are not happy with resource allocation for the district and the denial of services that they believe they are entitled to as a district. What triggered this application is the failure by the church authorities to decide, one way or the other, whether to accede to their request for the return of the district to the Diocese of Harare. They seek an order that the Bishop of Manicaland and the diocesan secretary be ordered to write a letter transferring these churches from the Manicaland Diocese to the Harare Diocese and that the Bishop of Harare Diocese of the Anglican Church in Zimbabwe the right Reverend Bishop Chad Gandiya and his secretary consent to the transfer. No order is being sought against the Secretary General of the Council of Bishops.

The basis of this application is set out in the founding affidavit sworn to by one Lloyd Goto, who is styled "President of the Hwedza District Committee". In the affidavit he sets out in general terms the source of the grievances held by the churches of the district against the decision taken by Synod to move the administration of the church district from the Harare Diocese to the Manicaland Diocese in 1983. The thrust of the applicant's complaint is that the respondents have failed or neglected to make a decision regarding petition for the transfer to Harare Diocese in spite of an instruction from the territorial authority for the Central Africa region of the church.

In opposition the respondents raised two points *in limine.*

First they argue that there is no organ in the structures of the Anglican Church known as the "Anglican Church for the Province of Central Africa (Hwedza District)" which enjoys a legal status to sue or be sued in its own right. As such, they challenge the *locus standi in judicio* of the applicant to bring this application. Secondly, the respondents argue that implicit in the averments in the founding affidavit by Goto is a tacit admission that applicants have not exhausted the internal remedies which not only exist and are available to them but are also capable of resolving whatever issues the applicants perceive to exist.

On the merits the respondents argue that the court has no jurisdiction to entertain a matter which is within the exclusive administrative jurisdiction of the ecclesiastical arena of the church. They point to the church's Constitution, Acts, and cannons as providing appropriate processes and procedures for the handling and resolution of any administrative dispute within and amongst

Church members. As there has been no violation of any of these statutes, cannons and the Church Constitution there is no basis for the court to interfere with what is strictly an administrative matter within the Church.

I consider that the first point *in limine* deserves scrutiny. I make this observation because, the question becomes whether applicant is entitled to bring these proceedings. But first what the court must decide is whether indeed the applicant is a *legal persona.* However, it appears that the question of locus standi in judicio of the applicants may be answered by rule 8C of the High Court Rules, 1971, which provide:

> ***8C. Proceedings by or against persons under their trade name***
> Subject to this Order, a person carrying on business in a name or style other than his own name may sue or be sued in that name or style as if it were the name of an association, and rules 8A and 8B shall apply, *mutatis mutandis*, to any such proceedings.

In light of the above, I need to consider whether the applicants have exhausted the available domestic remedies within the main church. It will be clear from the respondent's opposing papers that the position adopted by the church is that it has always been ready and willing to resolve whatever problem the applicants have in terms of the cannons of the church. Those rules and cannons are capable of resolving the issues which the applicants want the courts to adjudicate on.

In a line of cases, this court has determined that it will be very slow to exercise its general review jurisdiction in a situation where a litigant has not exhausted domestic remedies that are available to him. A litigant is expected to exhaust domestic remedies before approaching the courts unless good reasons are shown for making an early approach.[1]

There is the matter of the applicant's legal practitioners. It is a "legal aid society." Using that appellation, the legal aid society has virtually carried out work only a legal practitioner registered with the Law Society to practice as a legal practitioner in terms of the Legal Practitioners Act *[Chapter 27:07]*. I say this because, although the pleadings are drawn under the hand of the applicant, the address for service is that of the legal aid society. The notice of set down however specifically indicates the legal aid society as "applicant's legal practitioners." My deep suspicion

[1] Moyo v Forestry Commission 1996 (1) ZLR 173; Musanhu v Cresta Lodge Disciplinary and Grievance Committee HH-115/94; Tuso v City of Harare 2004 (1) ZLR 1 (H); Chawora v Reserve Bank of Zimbabwe 2006 (1) ZLR 525; Tutani v Minister of Labour & Others 1987 (2) ZLR 88 (H)

is that the papers were drawn under the hand of someone who has been deregistered from the register of legal practitioners. If that is so, clearly he is acting in breach of the Legal Practitioners Act. It drew the Heads of argument and set down the matter for hearing. I have a deep suspicion that the applicant's lawyers are acting in contravention of the Legal Practitioners Act judging from the manner I which applicant prosecuted the application. It may well be that I am mistaken in the view that I take but it is a matter which, in my view, the Law Society needs to investigate. I make this remark because, curiously, on the date of hearing, neither the society nor its client, the applicant appeared to present argument. Upon further inquiry, the court was advised by counsel appearing on the respondent's behalf that this has been applicant's manner of conducting the pleadings. Although no-one representing the "legal aid society" was found manning the address given as applicant's address for service, process left at that address would be duly attended to with alacrity. In the event that the legal aid society acted within its mandate, I still believe that there is need for clarity on the role of such entities as they are a fertile ground for the ripping off of indigent and ignorant litigants who may approach these in good faith.

In the result, the application is dismissed with costs.

Lelimas Legal Aid Society, applicant's legal practitioners
Mutungura & Partners, 1st and 2nd Respondent's Legal Practitioners
Matsika legal Practitioners, 3rd & 4th Respondents' Legal Practitioners