

**MOVEMENT FOR DEMOCRATIC CHANGE**

**Versus**

**CHIEF SUPERINTENDENT C W MUZEZE**

**And**

**ASSISTANT COMMISSIONER SIBANDA**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 14 FEBRUARY 2003

*J Tshuma* for the applicant  
*S Mazibisa* for the respondents

**Urgent Chamber Application**

**CHEDA J:** This is an urgent application filed on 13 February 2003 for the following relief.

“That the 1<sup>st</sup> and 2<sup>nd</sup> respondents be directed to allow the applicant to hold its public gathering at White City Stadium on 15 February 2003 and to provide security for the peaceful staging of the gathering.”

The background of the matter is that applicant is Movement for Democratic Change, a duly registered political party in terms of the laws of Zimbabwe. On 6 February 2003 a Mr A Mdlongwa who is the Provincial Chairman of applicant wrote a letter to 1<sup>st</sup> respondent who is the regulating authority of Bulawayo Province notifying him of his party’s intention to hold a public meeting also known as a political rally and referred to as a Star rally. This notification was in terms of section 24 of the Public Order and Security Act [Chapter 11:17]. Section 24 (1) reads:

“(1) Subject to subsection (5), the organiser of a public meeting shall give at least four clear days’ written notice of the holding of the gathering to the regulating authority for the area in which the gathering is to be held:

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Provided that the regulating authority may, in his discretion, permit shorter notice to be given.

- (2) For the avoidance of doubt, it is declared that the purpose of the notice required by subsection (1) is –
- (a) to afford the regulating authority a reasonable opportunity of anticipating or preventing any public disorder or a breach of the peace; and
  - (b) to facilitate co-operation between the Police Force and the organiser of the gathering concerned; and
  - (c) to ensure that the gathering concerned does not unduly interfere with the rights of others or lead to an obstruction of traffic, a breach of the peace or public disorder.

First respondent responded to this notification on the same day i.e. 6 February 2003 and that letter reads:

“6 February 2003

THE CHAIRMAN (BYO PROVINCE)  
MOVEMENT FOR DEMOCRATIC CHANGE

Attention: Mr A Mdlongwa

This office acknowledges receipt of your notice dated 6 February 2003 to hold a star rally/meeting on 15 February 2003 at White City Stadium.

Only skeleton manpower has been left at stations, the rest have already been deployed to cover the International World Cup Cricket which will run up to 15<sup>th</sup> March 2003.

In the light of the above, this office is unable to sanction your meeting as enough manpower is unavailable to cover your event.

Any inconveniences caused are sincerely regretted.

C.W. MUZEZE (Chief Superintendent)  
 Officer Commanding  
BULWAYO WEST PROVINCE

Cc Officer Commanding Bulawayo Province

Cc C. P. O.

Cc P.D.I.O. West

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In its application the Provincial Chairman deposed to an affidavit wherein he stated that, applicant organised a political rally to be held on 15 February and 1<sup>st</sup> respondent refused them permission to hold this rally on the basis that they do not have sufficient police manpower to man the meeting. This matter was placed before me as an urgent matter and upon perusal of the papers I could not see its urgency. I then invited Mr Tshuma to address me on the question of urgency. His submissions are that, the matter is urgent because the rally has been set for 15 February 2003, members of the public have been notified through advertisements in the newspapers and this has entailed the hiring of tents and a public address system. Most importantly, that in the event of a cancellation, the people who have already been notified of this rally will have to be informed through the print media which on its own is impossible at short notice.

He further argued that it was improper for 1<sup>st</sup> respondent to refuse applicant permission wily-nilly. He stated the legal requirements which respondents should prove on a balance of probabilities are that:

1. there is a likelihood of the disruption of law and order if the meeting goes ahead; and
2. that they do not have the capacity to deal with that situation should it arise.

He further argued that the reason that they have a skeleton staff as the rest has been deployed to cover the International World Cup Cricket is flimsy.

After hearing his address on the urgency, I ordered that both respondents be served so as to deal with the *bona fide* or otherwise of their reason for refusal. In order for a matter to be heard on an urgent basis it is essential that applicant show that it has a *prima facie* case and after hearing *Mr Tshuma's* submission I was of the view

that the matter was indeed urgent.

At the next hearing in the afternoon *Mr Mazibisa* for both respondents appeared and his arguments are, that indeed respondent were approached by way of notification by applicant and they were advised that they (respondents) did not have adequate police manpower to handle such a rally in view of their other commitments in the Cricket World Cup being staged in Harare and Bulawayo. He further argued that after applicant was notified by police's inability to handle this rally Messrs Albert Mdlongwa and Victor Moyo (the Provincial Secretary General and ward 16 Councillor) respectively held a meeting with 1<sup>st</sup> respondent wherein full reasons as to their inability were given and in addition to that respondent gave them statistics of their manpower in the Bulawayo Province. It is therefore his further argument that as of 12 February 2003 applicant were aware of the reasons of respondents' inability. Incidentally, it is on the same date that applicant filed an urgent chamber application with this court.

*Mr Mazibisa* further argued that in terms of section 24 of Public Order and Security Act applicant as the aggrieved party should have appealed to the Minister. He also submitted that it is common knowledge that political rallies at White City Stadium have often resulted in violence.

*Mr Tshuma* in reply argued that in relation to the provisions of section 24 of Public Order and Security Act the court's jurisdiction is not ousted by those provisions. I agree with *Mr Tshuma* because the court has an inherent jurisdiction to preside over all judicial or quasi-judicial bodies as it were, depending on the circumstances of each case. The notification was made on 6 February 2003 and the rally was due to be held on 15 February 2003, which is a period of one week, that

period would not, with all respect have allowed applicant to note an appeal to the Minister as required, in any case the use of the word may as opposed to shall speaks volumes of the discretion on the part of the applicant. (my emphasis) It would not have been possible for applicant to appeal to the Minister and achieve its purpose in the circumstances.

*Mr Tshuma* has argued that there are basically two requirements. As pointed out above, respondent has two requirements which it must show to the court. I therefore propose to deal with them as follows:

**1. Is there a likelihood of the disruption of law and order if the meeting is held.**

In deciding this question, it is important to approach it objectively and in my view it is pertinent to take into account the outcome of previous rallies at this venue. In addition to that, one has to be live to the animosity which exist between ZANU (PF) and MDC which on many occasions has resulted in unnecessary violence in these rallies nation wide. It is common knowledge that as of now there are two rival political parties in the country namely ZANU(PF) and applicant. It is also common knowledge that lives have been lost at these rallies as a result of members of those parties fighting each other. The likelihood of violence should not just be a mere likelihood it must be a real likelihood and to properly assess it, one can not ignore the tension presently existing in the country. It is for that reason that the police are to be notified whenever a public meeting, notably of a political nature is to be held. The courts have a duty therefore to see to it that law and order is maintained on the land.

**2. That they do not have the capacity to deal with that, should the situation arise.**

The police, as *Mr Tshuma*, correctly pointed out, should protect members of the public in the exercise of their constitutional rights e.g. demonstrations in expressing their disgruntlement or association for a common good even if it is against the Executive. This right is, internationally recognised and has to be protected by these courts.

Respondent provided figures of their manpower and the deployment plan to applicant. This was to demonstrate that they do not have adequate capacity to deal with a violent situation should that arise.

The respondents argued that there is no urgency in the matter as they state applicant were aware of their stand. Applicant indeed have gone out of their way to advertise and book the venue for the rally, they, however, did so with the full knowledge that respondents were not going to provide adequate security. Surely, where a party is aware that the holding of a function is dependent on the co-operation of the other party, but, proceeds to make all the necessary and expensive plans without assurance of that co-operation can not be heard to cry foul when his plans on good grounds shown are scuttled. What applicant has done is to arm twist respondent despite the fact that it was advised against holding the rally and statistics given that they were not able to provide security. It is common knowledge that the hosting of the World Cricket Cup by all host countries has necessitated the visit by the International Cricket Council security officers who have had to satisfy themselves that adequate security measures of a particular country are up to their standard. For that reason, it was reasonable for respondents to make adequate preparations in order to avoid a let up. Those security arrangements have to be weighed against the needs and

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necessity for applicant to hold a star rally. According to their papers, the star rally is a “report back”. It is not clear what is to be reported back. It would have been necessary in my view to disclose in general terms so as to enable me to determine the importance of the rally *vis-à-vis* the justification of the respondent’s refusal to sanction this rally on the basis of having deployed their police force at various places for the cricket match.

As it is, respondents argue that in the event of a break down of law and order they will not be in a position to contain the situation. If this happens, the duty which section 24(2) seeks to impose on the Regulating Authority will be defeated.

*Mr Tshuma* has argued that it is the people’s right to attend gatherings such as political rallies. I can not agree with him more. However, it is important to note that in a city like Bulawayo with the number of people, who are likely to attend the rally *vis-à-vis* those who will not attend is small. In our quest to protect their constitutional rights of the people sight should not be lost of the fact that there is a real likelihood of irreparable harm occurring should violence break out. Respondents have produced evidence to show that they have previously sanctioned political rallies and/or meetings before and the latest having been on 1 February 2003 at Tshabalala Hall. In view of that it is their argument that their refusal to sanction is therefore *bona fide*.

Respondents have in my view proved on a balance of probabilities that their refusal to sanction this rally is *bona fide* in that there is indeed an international cricket tournament taking place in the country which has taken up a large number of their police officers to protect international players and as such should a violent situation obtain at White City Stadium, bearing in mind, the previous skirmishes at such

rallies, they will be ill equipped to contain the situation.

In my view the court will be failing in its duty to protect members of the public if it allows such a rally to proceed when the police have already proved on a balance of probabilities that they are not ready to do so. The balance of convenience favours the respondents.

I find that it is improper to ask the respondents to do what is clearly a physical impossibility and I accordingly dismiss this application with costs.

*Webb, Low & Barry*, applicant's legal practitioners  
*Cheda & Partners*, respondent's legal practitioners