

**GUTA RAMWARI**

**Versus**

**JOSEPH TAYALI  
BARNABAS BENSON CHAMOTO  
JULIET CHAMOTO  
ELIJAH NYONI  
ZEPHANIA MULUMBA  
LEAH MADZIMBAMUTO  
JOEL TAWODZERA  
GIBSON NGWENYA  
VICTORIA ZIVAVE  
BARBARA CHORUMA  
SARAH TAYALI  
PERCY DZIVAKWE  
AUGUSTINE BANGO**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 16 SEPTEMBER AND 4 NOVEMBER 2004

*S S Mlaudzi* for applicant  
*J James* for respondents

Judgment

**NDOU J:** The order sought is in the following terms:

**“Interim Relief sought**

1. That the respondents and all who sympathise with them in disrupting and inciting the disrupting of services and functions verbally or physically; or threaten to assault members of the leadership anywhere, or unlawfully without permission of the leadership remove furniture or property of the applicant, or hold prayers within the premises of applicant other than within the prayer halls, or demand that those who worship or intend to worship peaceful within the prayer halls or prayer places do not be ordered to desist or be forcibly removed from such prayer halls or places of worship of applicant with the assistance of the police be arrested if need be.
2. That 1 above be effectively operative until the resolution of the misunderstanding or the threatened legal action is finalised.

**Terms of Final Order sought**

1. That the respondents be and are hereby ordered to leave the applicant unless they abide by the orders of applicant and desist from the disruptive violent and disobedient conduct.
2. That the police be and are hereby authorised to remove or arrest those who disrupt or in any way disturb the worship at applicant's prayer halls/places or in anyway assault any member of the applicant.
3. That the respondents be ordered to pay the costs if they oppose the applicant.”

I agree with the respondents that the prayers sought are too general and vague.

I think it is always better for litigants to draw their prayers in simple and concise sentences. It is at times very difficult to discern the nature of the order sought from long and winding sentences. Reading through the papers I have a general idea that the applicant seeks an interdict restraining the respondents from disrupting church services. Before I deal with the draft order I have to deal with the point *in limine* raised by the respondents.

From the papers filed of record, it is beyond dispute that there are serious divisions within Guta RaMwari Church. It is unfortunate that a church, as a place of worship, is characterised by power struggles and religious intolerance. This has divided the church into factions. Instead of unifying congregates a lot of divisive activities are taking place. There is a threat of violence taking place. Legal, instead of divine interventions have been sought resulting in this and other cases coming before the court between the parties.

Two issues have been raised *in limine* and I propose to deal with them in turn. First, two persons, deposed to founding affidavits on behalf of Guta RaMwari. They purported to act in a representative capacity on behalf of Guta RaMwari, a voluntary association. The issue is whether they were authorised to do so. The respondents raised the issue and these two were then enjoined to prove such mandate –

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*Administrator Transvaal v Mponyana* 1990(4) SA 407 (W). It is trite that the right to sue or the liability to be sued depends in the first place on capacity. In order to be capable of either suing or being sued, a person must have *locus standi in iudicio*. Consequently persons who are wanting in that capacity cannot be parties to any civil action unless that want has first been implemented – *Introduction to South African Law and Legal Theory* 2ed by W J Hosten, A B Edwards, F Bosman and Church, *Wilson v Zondi* 1967(4) SA 713 (N) and *Phetho v Minister of Home Affairs & Anor* 2001(2) ZLR 581 H at 565A-G.

That the question of *locus standi* is crucial in this case is illustrated in *Guta RaMwari v Chimoto & Ors* HC-2965-04 (This order was filed on behalf of the applicant) the two deponents to the “joint founding affidavit” appear as first and second respondents sued by applicant. As they are purporting to act in a representative capacity on behalf of Guta RaMwari Church, they must prove such authority. The church in question is a voluntary association and office bearers are not automatically entitled to sue in terms of the applicant’s constitution. They are unable to say who mandated them to sue in the name of Guta RaMwari. The deponents are perfectly entitled to sue in their individual capacity but once they purport to do so in a representative capacity they must establish authorisation especially, as in *casu*, where their capacity is challenged. They have failed to do so. On this reason of want of authority the application must fail I do not have to deal with the question of the joint founding affidavit.

Accordingly, the application is dismissed with costs being borne by the two deponents *viz* – Mathias Jawa and Joseph Mlambo.

*Samp Mlaudzi & Partners* applicant’s legal practitioners  
*James, Moyo-Majwabu & Nyoni* respondents’ legal practitioners