Judgment No. HB 53/07
Case No. HC 757/07

LUCAS MAFU

And

MALUSI NGWENYA

And

IGNATIUS NCUBE

And

EMMANUEL SIBANDA

And

MACLEANS MZUMARA

And

NKOSIYABO THABETHE

And

MANDLENKOSI MLOTSHWA

Versus

SOLUSI UNIVERSITY

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 3 MAY & 10 MAY 2007

C P Moyo, for applicants

Urgent Chamber Application

BERE J: The seven applicants whose status *vis-a-vis* respondent has deliberately not been spelt out allege in their founding affidavit that respondent, Solusi University a body corporate is being run in direct violation of the Charter that brought about its very existence.

The applicants appeared to have been ruffled by *inter alia* the manner in which the current Vice Chancellor has been appointed and how the other respondent's

organs have been created. The applicants seem to be convinced that all these developments are a direct violation of the respondent's founding Charter.

The applicants have therefore sought to remedy the alleged anormally by bringing the instant urgent application in which they seek interim relief couched in the following terms:

"Pending the determination of this matter the applicants are granted the following relief:

(i) Respondent be and is hereby ordered to cause using the amended Charter that does not confirm with the requirements of the Zimbabwe Council for Education Act[Chapter 25:27].
(ii) Respondent be and is hereby ordered to dissolve the University Council as currently constituted and adheres to the Charter."

Before dealing with the matter on merits, I must satisfy myself that the matter indeed deserves to be brought as an urgent matter as contemplated by the Court Rules as perceived.

Is the matter urgent?

As is the practice in applications of this nature, it will be noted that the present application is accompanied by a certificate of urgency duly signed by a qualified legal practitioner. I must however, add caution and say that the mere fact that there is such a certificate does not necessarily mean that the court must make a finding that the matter is indeed urgent. The certificate of urgency must not be religiously accepted but is merely meant to assist the court in the exercise of its discretion in determining whether or not the matter is urgent.

The question of urgency is not new to our courts. There has been so many decisions which have decisively dealt with this issue. The common denominator in these matters is clearly that a matter is deemed to be urgent "if at the time a litigant

decides to act, it is so clear or apparent that the matter cannot wait to follow the normal court channel". See *Kuvarega* v *Registrar-General and Anor* 1998(1) ZLR 188H, per the late CHATIKOBO J.

Paragraph 10 of first applicants' affidavit clearly states that the alleged violation s of the respondent's Charter started "during the year 2005 when there was some re-organisation in the Seventh Day Adventist Church" which was granted the Charter by the President of the Republic of Zimbabwe.

Paragraph 11 of the same affidavit goes on to suggest that there were further violations of the founding Charter in the year 2006 when "the responsibility of managing the University was removed from the Southern Africa and Indian Ocean Division to another part of the church known as the Zimbabwe Union Conference."

In the same paragraph the same deponent concludes "These resulted in wholesale changes in the University Council structures."

It is abundantly clear in my view that the alleged violations started almost two years ago and appear to have been systematic. If this is accepted, why would such developments by the respondent require an urgent application to rectify them?

It cannot be taken seriously that the alleged urgent action by the applicants as alluded to in paragraph 14 of first deponent's affidavit has been prompted by the applicants' concern for the welfare of students.

I want to assume that the respondent as presently constituted has been chaining out graduates from its institution in both 2005 and 2006 with the applicants fully aware of the violation now complained of.

Whichever way one looks at this matter, it cannot possibly be justified to bring the instant application as an urgent one. The applicant's perception of urgency in this

matter is certainly not one contemplated in the rules of this honourable court. The applicants' perception of urgency in the instant matter is certainly misplaced and on this basis alone the matter ought to be dismissed.

In passing I must point out that in an application of this nature it is imperative that applicants' *locus standi* in bringing such an application must not be subject to speculation. It must be clearly spelt out in the body of the application itself. It is not the function of the court to speculate on the status or capacity of a litigant in bringing an action. The filed papers must speak for themselves. There is a yawning gap in this regard in this application.

I also make the observation that although the relief sought is headed "interim", in reality the applicants have sought to obtain a substantive remedy before affording the respondent an opportunity to be heard. The undesirability of such practice cannot be overemphasised. It is procedurally wrong to do so.

In the instant case, even if the application had passed the test of urgency it is clear one would have found it extremely difficult to differentiate the interim relief sought from the final order sought.

Costs

The applicants must consider themselves fortunate in that the only reason why I am unable to make an order for costs against them is because the application has not been served on the respondent. Otherwise this is a proper case where applicants could not possibly have avoided such an order against them.

I accordingly dismiss the filed application.

Majoko & Majoko Legal Practitioners, applicants' legal practitioners