

DESTINY OF AFRICA NETWORK (PVT) LTD

Versus

OBADIAH MSINDO

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 17 MAY 2006 & 12 JULY 2007

Tsangirayi, for applicant
Mushangwe, for respondent

Judgment

BERE J: The application before me has been brought on urgent basis and the applicant seeks an interim remedy couched in the following terms:

- (a) Respondent be and is hereby interdicted from purporting to be the president and founder member of Destiny of Africa Network (Pvt) Ltd.
- (b) Respondent be and is hereby interdicted from representing or acting for and on behalf of Destiny of Africa Network (Pvt) Ltd.
- (c) That respondent be and is hereby interdicted from interfering with or having anything to do with activities of Destiny of Africa Network (Pvt) Ltd.

During the initial hearing I hinted to applicant's counsel the undesirability of having an interim remedy which takes the place of a substantive remedy. Counsel then proposed that the respondent be given 30 days to show cause why the interim remedy so worded should not be granted.

Cases brought on urgency must satisfy the basic requirements of urgency as provided for in our court rules and expanded through precedent. There are numerous cases queuing for attention at our courts and these cases have to be dealt with in the normal court process. There is a plethora of decisions emanating from this court

which have addressed the question of urgency. It is not a new topic. The common denominator in all the decided cases is that a matter is urgent "if at the time a litigant

decides to, 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.

Self created urgency will not suffice. Documents at hand show that from the year 2000 the respondent has been at the helm of Destiny of Africa Network and was generally regarded by many as its founder president.

The present deponents have always been aware of that. Both litigants are in agreement that they started having problems with each other in the organisation as far back as 2005. The problems continued in 2006 up to the present. Hitherto respondent had always been known to operate under the banner of Destiny of Africa Network which incidentally was registered as a company with limited liability by the deponents.

The dispute between the parties centre on the use of the name Destiny of Africa Network and the documentary exhibits filed do not show that the use of this name by respondent has been sudden to warrant the institution of an urgent application as in the instant case. As rightly argued by respondent’s counsel Annexure ‘D’ and ‘R’ confirm this position. It does seem to me the subsequent registration of a company styled Destiny of Africa Network (Pvt) Ltd in 2005 and subsequent correspondence to respondent to stop using the name were developments calculated to induce urgency and this is certainly not the kind of urgency contemplated by the court rules. To nurse a potential dispute for a period close to 2 years and then try to bring that dispute as an urgent one in order to have that matter

granted preferential treatment over other pending matters is tantamount to a naked abuse of court process and the courts must frown at such practices.

The nature of irreparable harm complained of in a matter of this nature must not be subject to speculation but it must be clear to the court that there is no alternative remedy available to the applicant.

Surely if respondent is alleged to be imposing himself on the applicant there must be other sustainable civil remedies available and it is not being candid with the court to suggest that such a case cannot wait the normal court process. I am more than satisfied that this matter is not urgent and on that score alone I dismiss it with costs.

Danziger & Partners, applicant’s legal practitioners

Judgment No. HB 76/07

Case No. HC 967/07

3

Mutezo, Mushangwe & Company, c/o Cheda & Partners respondent's legal
practitioners