

ZIMBABWE CONGRESS OF TRADE UNIONS

APPLICANT

AND

**OFFICER COMMANDING POLICE KWEKWE
DISTRICT SUPERINTENDENT MADIRO R (NO)**

1ST RESPONDENT

AND

COMMISSIONER GENERAL OF POLICE

2ND RESPONDENT

AND

CO-MINISTERS OF HOME AFFAIRS

3RD RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 2ND JULY 2010 AND 26 AUGUST 2010

Mr L. Jamela assisted by *Ms Chanaiwa* for applicant
Mr. T. Makoni with Supt Madiro for respondents

Urgent Chamber Application

MATHONSI J: At the hearing of this urgent application, I granted the provisional order in favour of the Applicant and indicated that the reasons for doing so would follow. These are the reasons.

The Applicant is a registered trade union and the umbrella body of several trade unions nationally which are affiliated to it. The Applicant has branches throughout the country and its core business is championing the interests of its members.

On the 14th May 2010, in the normal conduct of its functions as a trade union representing workers in Kwekwe, the Applicant notified the police in the District of its intention

to commemorate the well known Hwange June 6 disaster in which mine workers perished in a mine in Hwange. The Applicant planned to commemorate the disaster by undertaking a peaceful procession along one of the streets in Kwekwe and observing a moment of silence. The Applicant also requested a police escort to protect its members during that activity. The ceremony was originally planned for 5th June 2010.

The police responded by letter dated the 18th May 2010 signed by Superintendent E.A. Chivandire on behalf of the first Respondent which reads in part as follows:-

“RE: NOTIFICATION OF PROCESSION AND POLICE ESCORT -05 JUNE 2010.

- (1) The above subject matter is relevant.
- (2) I appreciate your notification of your intention to carry out a commemoration of the Hwange Colliery 6th June 1972 Mine Disaster.
- (3) Your intention to commemorate the day is very noble. However such commemorations should be done at the site that is at Hwange Colliery Company Kamandama Site.
- (4) The nation has taken precedence of all commemorations like the Heroes' commemoration, Chimoio, Nyadzonya, Mukushi and Hwange annual commemorations which are done on the site.
- (5) There is nothing wrong if you can travel to Hwange and commemorate the day on the 6th June 2010 in Hwange together with the Hwange Colliery Community.
- (6) I can not allow you to Commemorate the day in KWEKWE and POLICE OFFICERS will be engaged in other operations taking place around the District.
- (7) Be advised that the notification is NOT APPROVED” (The underlining is mine)

Clearly therefore the police had assigned themselves the responsibility not only to regulate the activities of the Applicant but also to determine when and where the commemorations should take place. Indeed they even abrogated a ceremony that had been planned and pencilled for Kwekwe on 5th June 2010.

The Applicant again approached the first Respondent on the 17th June 2010 notifying him of an intention to commemorate the mine disaster on the 26th June 2010 by a procession

along a road in Kwekwe. The first Respondent responded by letter dated 22 June 2010 which reads in the main as follows:-

“RE: NOTIFICATION FOR A PROCESSION AGAINST THE HWANGE 6 JUNE DISASTER.

- (1) Above matter is pertinent.
- (2) I appreciate and buy the idea of commemorating the Hwange June 6 disaster.
- (3) However I cannot authorise the procession because of the following reason:
 - (1) The police officers we have are engaged in world cup and constitution making process duties.
- (4) Be advised that your application is not approved.
(Underlining is mine.)

Again the tone of the first Respondent’s letter suggests that he had assumed the power to authorise and approve the procession before it could take place. Having met this stumbling block the Applicant shifted the commemoration date to the 3rd July 2010 and physically approached the first Respondent to try and resolve the matter. Whereupon, Applicant was advised that it was required to notify the police in terms of the Public Order and Security Act, [Chapter 11:17] of its planned procession and its local chairperson was threatened with unspecified reprisals if he went ahead with the procession and advised that the police will certainly interfere with it to prevent it taking place.

This forced the Applicant to approach this court on an urgent basis seeking authority to go ahead with the procession and an interdict against the Respondents barring them from interfering with or stopping the commemoration activities

At the hearing of the matter *Mr Makoni* who appeared with the first Respondent, after raising extraneous issues relating to service of the application, submitted on the merits that the Applicant had not exhausted domestic remedies. In his view, the Applicant still had to negotiate with the regulating authority on the modalities of holding the procession. If that

effort failed, according to *Mr Makoni*, the Applicant could then approach the local magistrate. I find the submissions made by *Mr Makoni* to be devoid of any merit.

Zimbabwe is a democratic country and the freedom of assembly and association is enshrined in Section 21 of the Constitution. Persons are entitled to assemble freely and associate with other persons particularly to form trade unions and other associations for the furtherance of their interests.

Sections 23, 24, 25 and 26 of the Public Order and Security Act, [Chapter 11:17] govern the holding of public gatherings and set out the procedure to be followed by those intending to hold such gatherings. However, those provisions have no application whatsoever in the circumstances of this case. This is by virtue of the provisions of Section 26A of the Act which provides:

“Sections 23, 24, 25 and 26 shall not apply to gatherings of a class described in the schedule.”

The schedule lists gatherings to which the sections do not apply to include:-

“Gatherings held by a registered trade union for bona fide trade union purposes for the conduct of business in accordance with the Labour Relations Act [Chapter 28:01]”

It was not argued for the Respondent that the commemoration of the Hwange Mine disaster by a properly registered trade union did not fall under that exemption. Therefore by purporting to regulate the conduct of the workers commemoration the first Respondent was engaging in an exercise in extreme futility as he possessed no such power.

To the extent that the commemoration was organised by the Applicant for bona fide trade union purposes, which it was, Applicant was not required to follow the procedure set out in sections 23, 24, 25, and 26 of the Act as it enjoyed an exemption. The first Respondent's

conduct therefore betrays a lamentable ignorance of the provisions of the Public Order and Security Act, [Chapter 11:17] which he is sworn to uphold. In the process he has interfered with the rights of the Applicant protected by Part VII of the Labour Act [Chapter 28:01] and by section 21 of the Constitution.

Accordingly the order is granted in terms of the draft order on pages 15 and 16 of the bound application.

Zimbabwe Lawyers for Human Rights, applicant's legal practitioners
Civil Division, Attorney General's Officer, respondent's legal practitioners