

PATSON MAKHIWA

APPLICANT

Versus

MINISTER OF EDUCATION, SPORT & CULTURE

1ST RESPONDENT

And

BULAWAYO ADVENTIST SECONDARY SCHOOL

2ND RESPONDENT

And

**THE HEADMASTER
BULAWAYO ADVENTIST SECONDARY SCHOOL
MR MARANDURE N.O.**

3RD RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO 11 & 24 JANUARY 2013

J.T. Tsvangirai for applicant
Miss N. Ncube for 2nd and 3rd respondents

Urgent Chamber Application

CHEDA AJ: The applicant filed an urgent chamber application seeking a provisional order against the respondents in the following terms.

“Terms of the final order sought

That you show cause to this honourable court why a final order should not be made in the following terms:

1. There is no lawful basis for the respondent to interfere with the minor child’s right to education based on her dread locked hair that expresses her religious beliefs.
2. The verbal communication by 2nd and 3rd respondents directing that minor’s hair be cut is declared to be null and void and of no legal effect.
3. The respondents be and are hereby perpetually interdicted from interfering in any way with the child’s access to education on the basis of her dread locked hair.
4. 2nd and 3rd respondents shall pay the cost of this application on a legal practitioner and client scale, jointly and severally, the one paying the other to be absolved.

Interim relief granted

1. 2nd and 3rd respondents are directed and ordered to immediately allow Anele Makhiwa to attend form one (1) classes at Bulawayo Adventist Secondary School.
2. That the respondents are hereby interdicted from in any way interfering and/or harassing the minor child Anele Makhiwa for having dreadlocked hair.

I ordered that the application be served on the respondents and that the parties appear in chambers for the matter to be heard.

Miss *Ncube*, for the respondents advised that she had not had enough time to prepare full opposing papers but wanted to raise a point *in limine*. She pointed out that the applicant secured a place for the child in the 2nd respondent's school fraudulently. Her admission to the school was based on misinformation. She produced an application form which was used to apply for a place at the 2nd respondent's school, the relevant part of which reads as follows:-

"This is to certify that the above named person is a regular member (attender) of the Branch Davidson Seventh Day Adventist (Parklands)."

The above is written above a part of the form which says:

"I hereby promise to obey all rules of Bulawayo Adventist High School and to co-operate with ALL teachers and any person placed in authority by the School Administration."

Another part of the same form calls upon the parent or guardian to make the following certificate.

"I certify that to the best of my knowledge the information given on the application form is correct."

In his founding affidavit the applicant says he is a Rastafarian and his daughter is a Rastafarian.

This declaration makes it clear that the application form has false information about the child. His averment that the school offered her a place fully aware that she is a Rastafarian is unfounded in view of the information on the application form.

The applicant says he was advised that the school rules of the respondent do not allow pupils to have locked hair.

The applicant was applying for a place for his child in a school which is a Seventh Day Adventist and does not permit dread locked her. The application form gives false information that the child is a member of the Seventh Day Adventist Church. Clearly this information was intended to deceive and mislead the 2nd respondent into accepting the child to this school. The

suggestion by Mr *Tsvangirai* (for the applicant) that there was no intention to mislead is meaningless as the documents speak for themselves.

The applicant was clearly aware that if he had shown on the application form that the child was a Rastafarian and keeps dread locked hair the child would not be offered a place at the school since this was not permitted.

Even if the issue of religion was not involved as long as it is shown that the respondent had accepted the child on the basis of misinformation, of some material fact, the 2nd respondent was entitled to cancel the child's acceptance.

In *Boudtich v Peel and Magill*, 1921 AD, 561 (a case originating from High Court of Southern Rhodesia) it was held that a person who has been induced to contract by material and fraudulent misrepresentation of the other part may either stand by the contract or claim rescission.

See also *Glaston House (Pvt) Ltd v Inag (Pvt) Ltd*, 1977 (2) SA 846 and *Cloete v Smithfield Hotel (Pvt) Ltd* 1955 (2) SA 622 (O).

The applicant's child was declared to be a member of the Seventh Day Adventist Church when in fact she is a Rastafarian. On that basis alone the respondent would still be entitled to cancel the admission of the child to its school.

The application for the provisional order cannot be granted.

I have no papers claiming costs from the respondent but they would have to apply for costs if they so wish.

The application is dismissed with no order as to costs.

Dube-Tachiona & Tsvangirai, applicant's legal practitioners
Lazarus & Sarif 2nd and 3rd respondents' legal practitioners