

ZAMBUKO APOSTOLIC CHURCH
and
ONISIMUS TAKAVADIYI
versus
EUNICE MLAUZI
and
CITY OF BULAWAYO

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 27 MAY 2016 AND 2 JUNE 2016

Opposed Application

Ms J. Mugova for the applicants
N. Mlala for the 1st respondent

MATHONSI J: After hearing arguments in this matter I granted an order confirming the provisional order issued by this court on 17 February 2015 and said the reasons for doing so would follow. These are they.

The first respondent is a common law universitas constituted in terms of a constitution for the purpose, *inter alia*, of fellowship among its members. The second applicant is its overseer. The first respondent was, at the material time, the appointed co-ordinator of the first applicant who was acting on its behalf when the first applicant made an application to the second respondent, the local authority owning vacant land, for a vacant stand for purposes of constructing a church.

Apparently the church did not have premises of its own, did not have an address and used the first respondent's residential address, being Z29 Mzilikazi Township, Bulawayo as its address.

The spirit that filled the first applicant church to take the initiative in the furtherance of its objectives is commendable indeed and the local authority must be congratulated for responding swiftly to the clarion call, so to speak. By letter dated 1 September 2014, the local authority

acceded to the application and allocated the first applicant stand 18732 Thorngrove, Bulawayo as a church stand on certain terms and conditions set out therein. The first applicant accepted the offer by paying the requisite \$115-00 for preparation of the lease agreement and facilitated the flighting of a newspaper advertisement of the proposed lease of the stand in the local newspaper.

It is then that greed and the pursuit of self-interest set in and got the better of the first respondent, the co-ordinator of the applicant. When the lease agreement was generated by the second respondent, she intercepted it and, purporting to now represent another church Zambuko Apostolic Faith whose head office is her residential address, No Z29 Mzilikazi Bulawayo and has one of its objectives, the object to bury the dead, the first respondent wrote a letter to the second respondent which reads:

“REF: ER 8-301

Please may the Bulawayo City Council be advised that in connection with the church stand application Ref ER 8-301, only the undermentioned first three individuals are responsible for the stand application and payment between the church and the City of Bulawayo and that the City of Bulawayo should not tolerate any other individuals as they emanate from Harare. Please check in your files that through the co-ordinator Eunice Mlauzi made (*sic*) the stand application for their congregants as you the City of Bulawayo have rightfully responded to the stand application using the proper address of communication.”

The letter is signed by the first respondent and two other individuals and represents the highest level of turpitude and indeed falsehood especially as it is the first applicant which made the application and paid the lease agreement fee. The first respondent gleefully latched onto the use of her address in the application and the fact that as the then co-ordinator of the first applicant it is herself who had submitted the application, in an effort to sustain her weird argument that the stand was allocated to herself or her new church. That way she signed the lease agreement with the municipality on 24 November 2014 along with her two lackeys purporting to represent “Zambuko Apostolic Church” when her new organization has been christened “Zambuko Apostolic Faith.”

When the applicants discovered the scheme, they launched an urgent application and obtained from this court a provisional order interdicting the first respondent from purporting to act on their behalf and directing her to surrender the original agreement with the second

respondent. It is the confirmation of that provisional order which is opposed by the first respondent.

In her opposing affidavit the first respondent states that she now leads “a splinter Zimbabwe Apostolic Church.” While admitting that she was indeed the co-ordinator of the first applicant, she maintains that owing to differences “we split and went away on (*sic*) with other members of the Zambuko Apostolic Faith Church.” The first respondent denies any fraudulent misrepresentation or any unlawful conduct on her part. To her the first applicant should apply for another stand as the one in dispute belongs to her and her faction.

This matter resolves itself on the basis of those facts which are either common cause or cannot possibly be disputed. They are that the application for allocation of a church stand was made by the first applicant. It being an association it could only do so through its officers, in this case the co-ordinator, who authored the application letter on its behalf. The second respondent allocated the stand to the first applicant and accepted its payment for the lease agreement. It did not allocate it to the first respondent or her splinter church. In fact when she wrote the letter I have cited above, the first respondent was engaging in an exercise in self-aggrandisement sacrificing the common good in favour of personal gain. In that ill-fated misadventure she misled the second respondent into believing that she was the applicant or that she still represented the applicant for land.

Even if indeed there has been a split which has resulted in the first respondent going away to form another church, that cannot help her at all. The first respondent and her fellow congregants, who may be only three in number, have left the first applicant church, by their own admission. Therefore a secession has occurred and as such the first respondent cannot lay a claim on the property of the original church.

That is a point that has already been authoritatively settled by the Supreme Court in *The Church of the Province of Central Africa v The Diocesan Trustees for the Diocese of Harare* 2012 (2) ZLR 392 (S) 421A –B where MALABA DCJ remarked:

“The principle is that, in the absence of express provision in the constitution of a voluntary association such as a church, property held in trust must be applied for the benefit of those who adhere to the fundamental principles of the association. Related to this is the principle that a member of a voluntary association who leaves the organization

whilst others remain must leave the property with those who have not resigned membership. When one leaves a club one does not take its property with him or her. It has long been established as a salutary principle of law in this area of property ownership that when one or more people secede from an existing church they have no right to claim church property, even if those who remain members of the congregation are in the minority.”

See also *Guta Ramwari v Waduka and others* HH 470/14.

In my view the matter is resolved. The first respondent and her group having left the first applicant church, they cannot claim the stand which was allocated to the original church. It matters not that the first respondent participated in securing the stand. She did so for the church in her capacity as its co-ordinator. It was not in her personal capacity.

Mr Mlala for the first respondent submitted that there are disputes of fact which cannot be resolved on the papers. As I have said those facts which are common cause, resolve the dispute. There is therefore no merit in that submission.

In the result, it is ordered that:

1. The provisional order issued on 17 February 2015 is hereby confirmed.
2. It be and is hereby declared that the lease agreement concluded by first and second respondents is null and void.
3. The second respondent is hereby directed to conclude a lease agreement with the first applicant for stand 18732 Thorngrove Bulawayo within 24 hours of the granting of this order.
4. The costs of this application shall be borne by the first respondent on the scale of legal practitioner and client.

Lazarus and Sarif, applicants' legal practitioners
Sansole and Senda, 1st respondent's legal practitioners