

HH 98-03
HC 2397/03

WOMEN & LAW IN SOUTHERN AFRICA
RESEARCH AND EDUCATION TRUST
and
ELIZABETH SHONGWE
and
Dr THERESA MOYO
versus
DINAH MANDAZA
and
TRUST BANKING CORPORATION
and
STANDARD CHARTERED BANK OF ZIMBABWE
and
BARCLAYS BANK OF ZIMBABWE LIMITED
and
CENTURY BANK LIMITED
and
OLD MUTUAL

HIGH COURT OF ZIMBABWE
SMITH J,
HARARE, 19 and 23 June, 2003

Mr *Kuhuni* for applicants
Miss *S M Moyo* for first respondent

SMITH J: There is a dispute between the second and third applicants and the first respondent (hereinafter referred to as "Mandaza") as to who is the chairperson and who are the current trustees of the first applicant (hereinafter referred to as WLSA). The applicants filed an urgent application in April seeking an order that all banking transactions at the various financial institutions with which WLSA has accounts be suspended pending the determination of who the chairperson and trustees rightfully are. I handed down a judgment - HH

71-03 - granting the order sought and giving my reasons therefor. I found that Mandaza, who had been a trustee and chairperson since 1993, was no longer a trustee and therefore could not be the chairperson. The order had the effect of freezing all WLSA bank accounts pending the appointment of new signatories. The legal practitioner who was then representing the applicants had pointed out that it may well be necessary to pay salaries and other accounts in the interim. He said that it had been agreed that the parties would discuss the matter and try to find a solution to the problem. I said in my judgment that if a consent paper was produced, I would be prepared to issue the order required.

The legal practitioners for the parties to the dispute discussed the issue of a consent paper. That resulted in Mr *Kuhuni* sending Mrs *Moyo* a suggested draft order for the consideration of Mandaza. The covering letter was dated 30 May, a month after the provisional order was issued. The draft order was intended to facilitate payments of telephone, electricity and water accounts, staff salaries and other debts owed by WLSA. After several telephone calls asking for a response, Mrs *Moyo* wrote a letter, dated 18 June, in which she made the following points. Mandaza is not authorised to make a unilateral decision as to who should be interim signatories to the WLSA bank accounts, neither can she instruct her legal practitioner as to the contents of the draft order submitted without the approval of her Board. Mandaza objects to Mr *Kuhuni's* attempts to bulldoze her into a decision. Since it was at the applicants' instance that all the WLSA bank accounts were frozen, they cannot now be heard to complain about the natural consequences of their action. Justice SMITH said that if a consent paper was produced he would be prepared to issue the order required. Consequently, as there is no consent paper, any approach to him would constitute unethical conduct on the part of *Kuhuni* as Judge SMITH is *functus officio*,

The applicants then filed this application on 19 June, seeking an order that certain persons be appointed signatories to specified WLSA bank accounts and authorised to effect certain specified payments. Annexed to the founding affidavit was an affidavit from the Administrator of WLSA in which she deposed as follows. Salaries for all WLSA staff, except those stationed in Zimbabwe and the Regional Office, have not

been paid since February 2003. The staff in Zimbabwe and the Regional Office and the caretaker were paid up to March. Telephone bills were last paid in March and so the telephones and the facsimile line have been disconnected. The accounts for rates, water and electricity have not been paid since February. In addition, there are a number of accounts for debts owed by WLSA. A local hotel is owed \$93 550 in respect of a meeting held in February which was attended by Mandaza and 5 other trustees. A courier is owed \$620 000 in respect of documents sent by Mandaza to lawyers in some neighbouring countries. Another courier is owed \$181 870,78 for documents sent to WLSA national offices. Other accounts are for things such as electric gate repairs, stationery, printer cartridges and office security. Subscriptions to a medical aid society for staff in Zimbabwe were paid up to March, save in the case of the National Co-ordinator, in whose case payment was made up to January.

It is clear from the above that the operations of WLSA will soon be gravely prejudiced if a solution to the problem is not found. Already the telephone lines have been cut. It may well be that the electricity and water supplies will also be cut off soon. Of the greatest concern, however, is the position of the employees. They have not been paid for at least 2 months, in the case of some it is 3 months, and within a week the June salaries will become payable. One wonders how the employees are coping when they have not been paid for so long. Some of them may be facing eviction from their homes if they have been unable to pay their rent. With the current high level of inflation in Zimbabwe, when they do get paid, the money they receive will be worth far less than what it was worth when they should have received it. Furthermore, as their medical aid subscriptions have not been paid since March, any health care providers that they have visited since 1 April will not receive any payment from the medical aid society. It seems that Mandaza is not in the least concerned about the plight of the WLSA employees. Had she so wished, she could have consented to the appointment of a signatory to make certain payments, especially for salaries and essential services, without obtaining the consent of "her Board". Even if she felt that she could not agree to a draft consent paper without the consent of "her Board", she could have advised Mr *Kuhuni* that whilst she could not consent to the draft order, she would not object to the applicants making the necessary application because she had not been authorised by "her Board" to oppose the application.

I consider that it is essential that the employees of WLSA be paid as soon as possible and also that other essential payments, such as for water, electricity and telephones, be made expeditiously. If I dismiss this application, it will mean that even when Mandaza does eventually feel that she can agree to a particular signatory being appointed, such

appointment cannot be made without a further application being filed.

That will lead to further delays and further costs. As no final order has been issued I do not consider that I am *functus officio*. Accordingly I will issue an order that the second, third, fourth, fifth and sixth respondents accept as signatories to the WLSA accounts with their institutions the third applicant and either Mandaza or someone appointed by Mandaza in writing. That will mean that once Mandaza feels that she is in a position to be able to help the employees and other creditors of WLSA, she can do so without further delay. If the delays become unconscionable, then it will be necessary for the applicants to institute such further action as they are advised in the circumstances.

As regards the costs of the application, I consider that they should be treated as costs in the cause.

It is ordered that -

1. The 2nd, 3rd, 4th, 5th and 6th respondents shall accept as signatories to the WLSA account at their respective institutions the 3rd applicant and either the 1st respondent or a person appointed by the 1st respondent in writing, with any cheque or transaction to be signed or authorised by both signatories.
2. The costs of this application shall be costs in the cause.

Coghlan Welsh & Guest, legal practitioners for applicants
Honey & Blanckenberg, legal practitioners for 1st respondent