

DESTINY OF AFRIKA NETWORK
versus
SIMANGALISO SHOKO
and
TRYWEL MUKANDARA
and
VIOLA MANDUGUZA
and
FARAI MAKUWERERE
and
AGRIPA MUPARAGANDA
and
FAFADZWA DHAKWA
and
NEVER ZHANERA
and
LYDIA KASEKE
and
EVELYN TERA

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 7 July and 30 September 2020

Opposed application

D Basopo, for the applicant
1st respondent, not served
K Choga, for the 2nd to 9th respondents

TAGU J: This is a court application for an order that the 1st to the 9th respondents be committed to prison for contempt of court, alternatively that a suspended sentence be imposed on them.

The historical background of this case is that the applicant is a non-profit making non-denominational Christian organization which is in the business of carrying out religious and developmental projects. Chief among the projects is the development of land into residential stands for the benefit of the underprivileged and low-income earning members of the society. On the 6th of February 2018 the applicant made an urgent chamber application for an interdict and obtained an order against the 1st to the 9th respondents under case number HC 772/18. The

respondents were interdicted from interfering with the operations and activities of the applicant and its members. The applicant is alleging that on various occasions and more particularly on the 7th of April 2019 the respondents interfered with the activities of the applicant by inciting other members from attending the meeting which was called by the applicant. It said this is confirmed by a video clip that was recorded on the day in question and the affidavits of some of the members who were in attendance of the meeting. For this the applicant wants the respondents to be committed to prison for contempt of an extant order. The relief sought is couched in the following terms-

“IT IS ORDERED THAT

1. The application be and is hereby granted.
2. The 1st to 9th Respondents be and are hereby found to be in contempt of the order of court of 6th February 2018 in that having been served with the orders under HC 722/18, without the authorization of the court the Respondents have continued to interfere with the operations and activities of the Applicant.
3. The 1st to the 9th Respondents be and are hereby ordered to be committed to prison for a period of 30 days, alternatively that this court impose upon the Respondents such sentence as it considers appropriate.
4. The warrant of committal to prison will be suspended on condition that 1st to 9th Respondents cease forthwith to interfere with the operations and activities of the Applicant.
5. The Respondents be and are hereby ordered to pay costs of this application on a higher scale.”

In their notice of opposition the respondents raised some preliminary points. The first point was that there was non-compliance with the rules relating to format of documents to be attached to an application. The second was that there are material disputes of fact. The third is that the application is incomplete.

At the hearing of this matter the respondents withdraw the first point *in limine*. I will examine the other points *in limine*.

MATERIAL DISPUTE OF FACT

The respondents argued that the applicant's papers contain inherent material disputes of fact which cannot be resolved on the papers in that the deponent to the applicant's founding affidavit does not allege what each of the respondents did and at the same time some of the deponents to the supporting affidavits do not mention the respondents' names at all as the people who allegedly caused disturbances on the day in question. Where some of the respondents are mentioned, what they allegedly did is not mentioned in precise terms as to point that they interfered with the activities of the applicant. They further submitted that the applicant makes a blanket statement to say the respondents disrupted the meeting without stating what each did. It was their contention that the applicant relies on a video clip whose authenticity is disputed. Some of the supporting affidavits mention persons who are not members of the applicant, and where the members are mentioned what they did is not mentioned.

In responds the applicant submitted that it is clear what the group did and it cannot pin point each one as having done what. It therefore disputed that there are material disputes of facts.

While the respondents challenged the authenticity of the video clip they did not object to the court viewing it. When the court viewed the video clip it noted the following. Reverend Obadia Musindo addressed a composed gathering of several people without any interference from anyone until he finished. While he was addressing people there appeared some skirmishes at the far gate. It appeared some agitated people were being refused entry into the meeting but it was not clear who was stopping them from entering. Police came to restore order but the skirmishes persisted. The video showed other people seated on outside the fence and chatting peacefully. When he was going out some people blocked him and shouting something to do with their contributions. It could not be said with certainty as to who was doing what. The court could not understand what was contained in a number of supporting affidavits which were written in vernacular language which is not the English language. The applicant did not bother to have them translated into English. I therefore agree with the counsel for the respondents that there are material disputes of facts which cannot be resolved on papers.

INCOMPLETE APPLICATION

The respondents submitted that they were not furnished with a copy of the video clip. Secondly there was no attendance register to confirm who attended the meeting that day. To this the applicant said it forgot to remove or attach the attendance register to its answering affidavit.

The court was left at a loss as to who attended and who did what that may be said to constitute contempt of court. The preliminary points are therefore upheld. The applicant therefore failed to prove its case and the application is struck off the roll.

IT IS ORDERED THAT

1. Preliminary points are upheld.
2. The application is struck off the roll.

T. Pfigu Attorneys, applicant's legal practitioners
Choga and Associates, respondents' legal practitioners.