

THE TRUSTEES OF THE CHRIST MINISTRIES
versus
COLIN ZONDAI MAKONI

HIGH COURT OF ZIMBABWE
MUNANGATI-MANONGWA J
HARARE, 22 February 2024

Urgent Chamber Application

Advocate *Mahere*, for the applicant
N F Kambarami, for the respondent

MUNANGATI-MANONGWA J: Where a litigant has made detailed allegations against a respondent in an affidavit it is pertinent for a respondent to address in detail the allegations levelled in order to enable the court to appreciate what could have happened during the interactions between the parties. The court being a party to which facts are being narrated post the occurrence, has to be presented with a full picture in order not only to appreciate what transpired but be in a position to fairly determine a dispute. Bold denials and failure to address alleged facts in full can only work to the detriment of the party answering to the allegations. This case demonstrates how failure to fully address elaborated allegations can be prejudicial to one's defence.

The applicant herein approached this court on an urgent basis seeking two reliefs which are, a spoliation order and an interim interdict. Upon an application to amend the terms of the initial draft order, I granted the amendment on the basis that what had been presented was a draft order and the application came before the hearing of the matter and no prejudice ensued from the granting of the amendment. On 27 July 2023 I granted the relief sought and issued the following order:

Spoliation order

- i. Respondent be and is hereby ordered to restore to the applicant quiet, peaceful and undisturbed possession and control of Christ Ministries High School.

- ii. Respondent is ordered to remove his armed private security personnel and dogs from the Christ Ministries High School premises immediately upon being served with this order.
- iii. In the event that the respondent fails to comply with this order within 24 hours of the same, the Sherriff and the Zimbabwe Republic Police is hereby enlisted and ordered to remove private security and dogs from the Christ Ministries High School property.
- iv. It is hereby ordered that the noting of an appeal shall not suspend the operation of this order.
- v. The respondent is ordered to pay costs of this application.

Interdict

Terms of Final Order Sought

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

Final Interdict

- i. The respondent is hereby interdicted from disturbing, disrupting or interfering with operations and administration of any institutions supervised or controlled by the applicant.
- ii. The respondent be and is hereby interdicted from using the applicant's name or stationery in his correspondence without applicant's authority.
- iii. The respondent bears the costs on an attorney client scale.

Interim Relief Granted

Interim Interdict

Pending confirmation or the discharge of the order, this order shall operate as a temporary order:

- i. The respondent or any person acting through him or on his behalf is hereby prohibited from interfering with, disrupting the operations, administration of any institution under the supervision of the applicant, including but not limited to Christ Ministries High Church. Christ Ministries High School, Christ Ministries Children's home or

- harassing or disturbing or interfering with the functions of any personnel associated with the applicant or any of its stake holders.
- ii. The respondent is barred from sending out correspondence on any Christ Ministries letterhead to church members, members of staff at all Christ Ministries associated institutions and stakeholders or to the outside world.
 - iii. In the event that the respondent fails to comply with this order, the Sherrif of Zimbabwe and the Zimbabwe Republic Police is hereby enlisted and ordered to enforce the order.
 - iv. It is hereby ordered that the noting of an appeal shall not suspend the operation of this order.
 - v. The respondent is ordered to pay costs

Service of the order

That the applicant's legal practitioners be and are hereby authorised to serve a copy of this order on each of the respondents and file proof of such service with the Registrar.

The respondent has noted an appeal and incidentally requested reasons for judgment and these are:

Background Facts for an application of a spoliation order

In approaching the court on an urgent basis, the applicant brought a complaint that on the 21 of July 2023, the respondent took physical control of Christ Ministries High School premises and property when he descended on the school in the company of nearly a dozen men armed with rifles and vicious dogs. The armed men were immediately deployed on the school grounds and the respondent advised the school security that he had taken over the control and was in charge of the school. The armed men respondent had brought were given strict instructions not to allow the headmaster to leave the school premises. Apparently, the Headmaster stays at the school premises. This happened at a time when the school children were in the midst of writing examinations and as per the applicant this rattled and unsettled the learners as this created a tense environment. It is the applicant's evidence that when the applicant's President arrived on the premises to ascertain what was happening, she was advised that the respondent had given instructions not to allow anyone into the school yard without his authority.

The applicant further stated that there was a temporary reprieve on 21 July 2023 when the police intervened but the respondent disregarded the order by the police to remove the armed men and the dogs from the school premises. Instead, on 25 July 2025 the respondent seized keys to the gate and school offices from the school security creating a risk of vandalism to the property. The applicant submitted in the application that prior to 21 July and 25 July 2023 it was in quiet, peaceful, undisturbed possession and control of Christ Ministries High School and that such quiet, undisturbed possession and enjoyment of the property was forcibly and unlawfully taken away by the respondent. In that regard the applicant sought a spoliation order.

Facts for application of an Interim Interdict

The applicant stated that the respondent was employed by Christ Ministry High School as the education Secretary cum school chaplain and the letter of such appointment was presented as Annexure 6. The applicant complained that the respondent has been in the habit of issuing out unauthorised correspondence to various stakeholders in connection with the affairs of the church and its institutions. The applicant listed a number of purported infractions and instances where the respondent is purported to have behaved to the detriment and prejudice of the interests of the applicant which are:

- o forceful physical control of the Christ Ministries High School on 21 July 2023,
- o the written invitation of 18 July 2023 to the headmaster for a disciplinary hearing,
- o the writing of a letter dated 27 June 2023 to the Director of Social Welfare in the Ministry of Public Service Labour and Social Welfare in his capacity as Head of Denomination and Trustee,
- o the writing of letters to the Ministry of Primary and Secondary Education purporting to be the responsible authority for Christ Ministries High School.
- o a letter written on his behalf addressed to all stake holders advising them that the respondent is now the head of Christ Ministry Church.

All the above correspondences were placed before the court as annexures 10,11,12 and 13. Three of the letters bear the respondent's signature whilst the fourth one was written on his behalf.

Thus, the applicant raises issue with the misrepresentation by the respondent that the respondent is the new head of the denomination of Christ Ministries Church and that Mrs

Leddie Makoni the President is no longer in charge. This the applicant alleges is causing havoc and confusion as the respondent called the headmaster of Christ Church High School to an unsanctioned disciplinary hearing, and is giving directions to stake holders against the Trust's instructions. The applicant refers to an agreement signed by all trustees of Christ Ministries Church of Zimbabwe Trust on 31 March 2016 wherein the trustees agreed that none of them should act in a manner prejudicial to the interests of the Trust and Legacy of Dr Cuthbert Tafundikira Makoni. The said agreement is attached to the application and appears as annexure 7.

The applicant alleged that the respondent is circulating whatsapp correspondence to members of the church, persons associated with the institutions and the outside world harassing the leadership of the church and making unfounded allegations against the President and other fellow trustees.

Mrs Leddie Makoni the deponent to the founding affidavit gave a history of the origins of the trust. She detailed how she and her now deceased husband co-founded the church in 1984. She indicated that in the 1992 Constitution the husband had powers to appoint a successor and he appointed her in terms of his last will which she alleged the respondent unsuccessfully challenged. Subsequently a resolution to establish a trust was made and the resolution indicated Right Reverend Cuthbert Tafundikira Makoni as the Founder and President of Christ Ministries Church and his wife as the Vice President. The resolution appears as Annexure 4. The trust was registered on 22 June 2001 under MA1028/2001 the deed of Trust appears as annex 5A and 5B with the aforesaid husband and wife as the founding Trustees. The respondent and his siblings were co-opted into the trust as Trustees through an amendment to the Trust Deed in 2016. All the registered Trustees and the co-opted members form the Executive Committee of Christ Ministries Church.

The objectives of the trust are *inter alia* to establish Church institutions, colleges, provide training and social welfare services acquire property, and organise and supervise directly or indirectly the running of colleges, services or institutions. Applicant averred that Christ Ministries High Schools is one of the institutions under its supervision hence the Trust is the recognised responsible authority for the school. She indicated that she had applied for a declarator to be declared the President in case number HC5046/20, the matter was heard on preliminary points and was struck of the roll. She noted an appeal against the ruling and the appeal was removed from the roll for non-payment of security for costs.

The deponent alleges that after these legal developments that is when the respondent went overdrive misinforming stakeholders of Christ Ministries Church and its institution that he is now head of denomination and engaging on the acts complained of. The deponent further stated that the respondent has been claiming to have been appointed by founder members but has failed to produce the authority upon which he was purportedly appointed. She stated that the respondent claims to have been appointed by one Moses Ruvetsa who left the Church in 1989, and left for the United Kingdom and has since formed his church.

The applicant filed a supporting affidavit deposed to by the Head Master of Christ Ministries High School Mr Kaungwa. In his affidavit the headmaster indicated that he was employed by the applicant or the Trust in 2016 and a contract is attached to the papers filed of record. He stated that his position as the school head is above that of the respondent who is a school secretary and Chaplain equally appointed by the board and in fact his subordinate. He stated that he had in May 2023 instituted disciplinary proceedings against the respondent who has since been found guilty and awaits mitigation. He detailed how the respondent has afterwards turned tables and started claiming to be the Head of Denomination and the responsible authority demanding employees' contracts which the headmaster refused to hand over. The deponent detailed how on 21 July 2023 the respondent stormed the school with armed guards around 05:00 hours accompanied by armed men with vicious dogs and deployed them around the school campus. An armed guard with a dog was deployed at his home as he stays in the school campus. When he sought to go and report to the police, he was prevented from leaving the school premises by the armed guards and only left after the intervention of the police. He stated that the school security had been immobilised and told that respondent was taking over the school. He stated that despite an instruction from the police to remove his armed guards the respondent has not done so. The deponent stated that prior to the forceful takeover of the school, the school was under peaceful and undisturbed supervision and administration of the Board of Trustees.

This deponent stated that the incident occurred when the pupils were writing their mid-year exams and the whole scenario frightened both students and staff. The headmaster averred in his affidavit that on 24 July 2023 the respondent purported to have dismissed him for defying his instructions to hand over staff contracts. On 25 July 2023, the armed guard under the instruction of the respondent seized the keys to the gate and the offices effectively despoiling the applicant of the control of the school. The headmaster submitted that apart

from the fear and anxiety created in both the staff and students, he is afraid that respondent may vandalise the bursar's office.

The respondent filed a notice of opposition and raised three points *in limine* highlighted below:

i. Conflict of interest

The respondent submitted that the applicant's lawyers had no legal right to represent the applicant as they are the same legal practitioners who amended the Trust Deed of 2016. He averred that these are the lawyers for the Trust hence they cannot represent the Trust against him on issues involving Christ Ministries Church. He further stated that he has individually met the very lawyers and discussed matters relating to the trust hence they are conflicted.

In response it was submitted on behalf of the applicant that there is no conflict of interest as the legal practitioners in issue have always represented the Trust, and at no time did they represent the respondent in his personal capacity. Further Ms Mahere for the applicant submitted that the question of conflict of interest does not arise.

The respondent seems to consider the contest at hand to be between him and Leddie Makoni forgetting that the applicant is an entity on its own. This is deciphered from the following statement in respondent's affidavit on para 3 of the opposing affidavit:

"As such, this firm of legal practitioners is conflicted and cannot represent the applicant against me. This is because we are all Trustees and he is the lawyer for the Trust."

I find that the applicant's legal practitioners are representing the Trust in an issue that involves the Trust and its institutions and is not representing the interests of an individual Trustee. Further the respondent has not indicated that he had engaged the law firm at any one time in a personal matter, rather when he met the lawyers at hand, he stated that they were to discuss matters relating to the Trust. I do not see how the legal practitioners are compromised where they represent an entity's interests as opposed to individual trustees' interests. Accordingly, the point *in limine* has no merit and same is dismissed.

ii. Lack of authority by Leddie Makoni to represent the Trust

The respondent challenged the authority of the deponent to the applicant's affidavit insisting that there was no joint resolution of the Trustees to institute these proceedings and that no notice of a meeting to be held on 21 July 2023 was ever issued. He stated that he had verified with other trustees and was assured that there was never a meeting on such a date. He further

stated that this was not the first time the deponent had come to court without authority in a different matter and he thus argued that the application should be dismissed.

It was submitted by the applicant's legal practitioner that the deponent had authority to represent the applicant. Reference was made to a resolution by the Trustees emanating from a meeting held by the applicant's trustees dated 21 July 2023. Same is attached to the application as Annex 1. Ms *Mahere* also submitted that contrary to the assertion by the respondent that no meeting had been called for on 21 July 2023, a notice had been sent out to all Trustees calling upon them to attend a meeting on 21 July 2023. The applicant produced proof of service of the notice of the meeting on respondent which showed that the notice was delivered to him by way of FedEx courier. Minutes of the meeting were produced which showed that the respondent attended. Ms *Mahere* submitted that the issue of instituting legal proceedings was put to a vote and the vote result was 5:2 in favour of instituting legal proceedings. There is also a recording of the proceedings.

I find that the deponent to the founding affidavit *Leddie Makoni* had authority to institute the proceedings given the extract of the minutes and the resolution arrived at by the trustees as reflected on the resolution attached to the application. The respondent sought to mislead the court by alleging that no notice of the meeting had been given until the applicant not only produced proof of service but minutes indicating that he attended the meeting on 21 July 2023 in the company of other trustees. The respondent could not challenge the authenticity of the minutes, the original proof of service and did not deny the existence of the recording. His assertion that he verified with other trustees and was told no meeting happened is an affront to the court's dignity as it was an absolute and deliberate lie in the face of produced evidence. This was gross conduct given that the respondent attended the meeting. When a litigant lies and seeks to mislead the court and there is outright evidence to the contrary the court will censure such a litigant.

The respondent repeatedly stated that there is a judgment which says that *Leddie Makoni* cannot represent the Trust. That is not correct. I carefully read *Manzunzu J's* judgment. The judge therein indicated that for *Leddie Makoni* to represent the applicant *Christ Ministries Church* a legal persona, she required authority. She had no resolution authorising her to institute the proceedings unlike in this case. She sought to rely on a clause in the constitution which she stated gave her absolute power as the president to act unilaterally. This is not the case here. She has authority of other trustees which emanated

from a resolution from a meeting which was convened after due notice was given to trustees. Equally there is a misconception that the legitimate leadership of Christ Ministries Church of Zimbabwe Trust was decided by the High Court and the Supreme Court. The judgment of MANZUNZU J is clear as regards the ultimate decision of the court. The application was struck off the roll. The Supreme court appeal was not heard on merits.

During argument the respondent's legal practitioner maintained that Christ Ministries Church should have challenged the applicant's conduct rather than the applicant. The objects of the Trust are very clear. The Trust is among other things authorised to establish educational institutions and indeed Christ Ministries High School is under the supervision of the trust and the trust is the recognised responsible authority of the school. In that regard any disturbances call upon the Trust or the Trustees to act as happened in this matter. Thus, the Trustees are within their powers to bring legal action in this case and they so sanctioned such action to be taken.

Given the foregoing I find that Leddie Makoni was duly authorised to bring the proceedings in the name of the trustees hence the point *in limine* is dismissed.

iii. Reference to arbitration.

The respondent stated that disputes between trustees should be decided by the joint decisions of Trustees and in the event of failure then the issue is referred for arbitration. The respondent stated in his affidavit that he never despoiled anyone but was exercising his powers as Trustee and Head of denomination, thus the issue pertains to interpretation of powers of the Trustees and the exercise thereof, hence arbitration would have been the prescribed route.

After considering submissions by both parties the court finds that the nature of the relief sought being spoliation and interim interdict this could only be resolved by a court and the submission that this matter should not be heard by this court has no legal basis. Equally there being no merit in this submission the same is dismissed.

On Merits

SPOLIATION CLAIM

The respondent submitted that he was appointed the head of the denomination by the founding fathers of Christ Ministries Churches and is the administrative head of the school and is thus the link between the school and the board of Trustees. He denied despoiling

anyone of possession and maintained he exercised his powers and brought more security to the school. He submitted that he never barred anyone from the school and never disturbed anyone. It was the respondent's argument that as he is also a Trustee his actions cannot be regarded as illegal as he is part of the school administration. The respondent justified bringing in armed guards as good in "the turmoil of pre-election period" as per his words. The respondent denied threatening or disturbing anyone including the headmaster Mr Shelton Kaungwa. As noted in the foregoing paragraphs, the headmaster of the school explained how the takeover occurred, the grabbing of the keys to the gate and offices, the denial of exit from the school, deployment of dogs even at his house and attempt to expel him. The respondent replied to the supporting affidavit in **one** paragraph consisting of four sentences. In essence he denied taking over the school and stated that no guns were pointed and described what is contained in the affidavit as "nothing but fiction".

The respondent's responses to the allegations of spoliation and an interim interdict are short and consist of bare denials despite the elaborate allegations. Quite apparent is the fact that numerous allegations and complaints about his behaviour of writing letters to stakeholders, the headmaster, educational authorities and misrepresenting facts on the outcome of the High Court and Supreme court cases and forcibly taking over the school are contained in paragraphs 22 - 33. These paragraphs refer to annexures relating to evidence supporting the applicant's claim. Respondent responds to these paragraphs (22-33) in one paragraph denying barring anyone and disturbing anyone.

ANALYSIS

It is trite that where one seeks a spoliation order the applicant has to make and prove two allegations which are that:

- i. The applicant was in peaceful and undisturbed possession of the property.
- ii. The respondent forcibly and wrongfully deprived the applicant of possession.

I find that the clauses 4.5 and 4.6 of the Amended Notarial Deed of Trust for the Christ Ministries Church of Zimbabwe MA1028/2001 makes the applicant the responsible authority by virtue of the powers conferred to the trustees to make rules for the administration of colleges, service or institutions and to organise and supervise directly or indirectly the running of the colleges service or institutions. Christ Ministries Church and High School all fall under the trust having been created by the trust. The respondent is a trustee and he has not

successfully challenged that as Educational Secretary and cum school secretary he fell under the headmaster who instituted disciplinary proceedings against him. Bringing security which prevented the headmaster from leaving the school and confiscated gate and office keys amounted to despoiling the relevant authority in this case the applicant. I am privy to the fact that the applicant claims to be the head of denomination. Whilst this remains a contested matter which I am wary to delve into the fact remains that the manner in which the respondent took over or sought to assert his authority was wrongful. He took the law into his hands. The police had to intervene for the headmaster to be able to get off the premises. The respondent has not denied that prior to his bringing in the purported additional security to the school, security which the applicant described as armed with guards and vicious dogs, the school had its own security. The respondent rather said in his affidavit, “more security is good and cannot be denied in the turmoil of pre-election period”. The security was armed although he says that no guns were pointed at anyone. He does not challenge the assertion by the headmaster that these armed guards came at 05.00 hours and that an armed guard with a dog was deployed at his house. Gate and office keys were confiscated. The respondent has not disputed that this happened during a time that the children were writing their mid-year examinations and this certainly would have affected them.

The authority was in peaceful and undisturbed possession and control of the school until the respondent brought in his armed guards, gave random instructions, demanded files of employees and confiscated office and gate keys. The peaceful and tranquil environment was disturbed and there is extensive detail provided in the founding and supporting affidavits pertaining to the occurrences of 21 to 25 July 2023 which the respondent did not bother to fully counter, content to make bold denials. Surprisingly he does not deny that gate and office keys were confiscated at his instructions. Given the foregoing, I find that the applicant was in peaceful and undisturbed possession and control of the school premises and was despoiled of such possession and control. Accordingly, the claim for a spoliation order is meritorious and is granted with costs.

Interim Interdict

An application for an interim interdict must succeed if the applicant establishes the following (see *Artuz v Zanu PF HC 263/18* par 13):

- o Prima facie right

- o A well- grounded apprehension of irreparable harm
- o Absence of an alternative remedy
- o The balance of convenience favours the granting of interim relief.

I find that the applicant has a right to oversee supervise and administer the affairs of the school. This mandate emanates from the powers contained in the 2016 Deed of Trust which the respondent refers to in his papers. It is pertinent to note that the headmaster who is in charge of the school was appointed by the trust. The Trustees have the mandate to safeguard the interests of the school and hence their right is established.

Equally there is reasonable fear that irreparable harm may result if the conduct of the respondent is not censured. There is evidence that the respondent has been holding himself as the Head of Denomination and the responsible authority to stake holders. Stakeholders may genuinely respond and recognise the respondent much to the prejudice of the responsible authority which runs a children's home, a church and High School. As submitted by the applicants the forceful take over of the school through imposition of armed guards and the prevention of Trustees from entering and leaving the school coupled by the purported dismissal of the headmaster can have far reaching effects on the school and the pupils. This incident happened during examination time and the psychological effect on the pupils cannot be dismissed. The misleading statements by the respondent when he alleged as follows in a letter of 27 June 2023 addressed Ministry of Public Service Labour and Social Welfare:

“We formally advise you that Colin Zondai Makoni is the new head of denomination of the church following dismissal of the High Court application and the Supreme Court appeal by Reverend Leddie Makoni and the Church.”

Of note is the fact that the letter starts with the following introduction “We are writing in our capacity as trustees in terms of the Amended Notarial Deed of Christ Ministries Church of Zimbabwe MA01326/2016 which governs the Christ Ministries Children's Home.”

There is no evidence of him being sanctioned by the trustees hence the complaint for an interdict. Further, the High Court did not dismiss the application but struck it off and that did not make the respondent head of denomination. In fact, his claim is contested and that's a story for another day. On 18 July 2023 a letter inviting the headmaster to a hearing was sent by the respondent claiming to be the responsible authority yet he was appointed by the Trust and he remains a trustee.

There is thus evidence from correspondence written on respondent's behalf and those emanating from him that he is approaching stake holders misrepresenting the outcome of the court cases mentioned above and claiming to be at the helm yet the Amended Deed of Trust of 2016 that he refers to, clearly refers to Leddie Makoni as the Vice President. I am aware that there are issues pertaining to a will in which the said Leddie Makoni was appointed successor and President of the Trust. That is a separate issue but trustees among themselves have reason to worry over the conduct of the respondent which *prima facie* is creating havoc and despondence within the institutions of the trust. Irreparable harm is likely to ensue if in the interim the respondent's actions are not checked. Moreso when the respondent is a signatory to an undertaking by trustees dated 6 April 2016 where Trustees agreed that no Trustee will do anything alone concerning the Trust without consulting all members of the Board of Trustees. This is clear from Annexure 7 attached to applicant's papers which the respondent has not disputed.

I find that there is no alternative remedy to the applicant's complaint. Arbitration will not stop the behaviour complained off. Equally the balance of convenience favours the granting of the interim interdict as the hardship to be suffered by the applicant should the interim interdict not be granted is greater. The respondent does not suffer any inconvenience compared to the applicant given that the actions of the respondent are already affecting the running of the institutions under the supervision of the trust.

I find that the application meets the requirements for the granting of an interim interdict accordingly an order in terms of the amended draft is granted. Whilst costs are normally granted to the successful party on the return day, the court will express its displeasure to the conduct of the respondent in lying to court that he had not received an invitation for the trustees to attend a meeting and trying to mislead the court that he did not attend the meeting where the resolution to institute legal proceedings was made, by granting costs against the respondent. Clear evidence which respondent could not challenge was presented showing that applicant not only received a notice to attend the meeting of 21 July 2023 but he actually attended the meeting. It is also just that the respondent pays costs at this juncture as censure so that in attending to the proceedings he realises how costly it is to pull wool over the court's eyes and try and mislead the court. A litigant has to be truthful even in issues which may seem to militate against their case.

It is for this reason that costs for the granting of the interim interdict are awarded. It is due to the foregoing reasons that I granted the amended order prayed for.

BNM Attorneys, applicant's legal practitioner
LT Muringani Law Chambers, respondent's legal practitioner