

CENTRE OF LIFE CHURCH

Versus

GOOD NEWS CHURCH

And

PASTOR THEMBA MAPANI

And

MR DUBE

And

CITY OF BULAWAYO

And

OFFICER-IN-CHARGE – ZRP - SAUERSTOWN NO

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 20 AND 26 JULY 2007

G Nyoni, for applicant

K Ncube, for 1st and 2nd respondents

Urgent Chamber Application

NDOU J: The applicant seeks a provisional order in the following terms:

“Terms of final order sought:

It is ordered that:

Pending final determination of the matter, the applicant be and is hereby granted the following relief:

1. It be and is hereby declared that stand 201 Richmond, Bulawayo belongs to the applicant.
2. 1st, 2nd and 3rd respondents pay costs of this application at an attorney and client scale.

Interim relief sought

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

1. 3rd respondent or any contractor for that matter acting on 1st and/or 2nd respondents' instructions or on his own volition be and is hereby interdicted from continuing any construction work on stand number 201 Richmond, Bulawayo pending the final determination of this matter.
2. Should 3rd respondent and/or any contractor so engaged by 1st and/or 2nd respondents fail to abide by the above, the 5th respondent be and is hereby ordered to do all that is within his powers to give effect to this order.

Service of the provisional order

Services of this application and the provisional order shall be by the Deputy Sheriff or applicant's legal practitioners or their clerk or any Zimbabwe Republic Police Officer-In-Charge or any such police who will do so at the former's instructions."

There are a number of errors in the way this provisional order is drafted. It seems to confuse what is interim relief and what is final relief sought. I will only revert to these problems if I decide to grant the provisional order.

The background facts of this application are the following. At all material times Pastor George Simango, the deponent to the applicant's founding affidavit, was a pastor at the 1st respondent church headed by the 2nd respondent. The headquarters of the 1st respondent is in stand 11511 Nkulumane. There are branches of 1st respondent church in Mzilikazi, Pumula, Lobengula, Tshabalala, Plumtree and Entumbane among others. In all these branches the church resolved that they be opened and the resolutions were pioneered by the 2nd respondent together with a board of elders. In February 2000, Pastor George Simango told the 2nd respondent of desire to open a branch in Richmond [the Richmond stand]. On 11 April 2000, the Richmond branch became operation with Pastor Simango in charge. This is what he says in paragraph 7 of the founding affidavit:

- “7. On the 11th of April, 2000 I started the church in Richmond and instead of using a new name I though it prudent to take it as a branch

of the main [1st respondent].”

And further in paragraph 8 he states:

“I did not receive any financial or human resource support. I started the branch renting at the Richmond Community Hall and paying out of my own pocket.”

Later Pastor Simango informed the 2nd respondent of his intention to make an application to the City of Bulawayo for a church stand. He got the blessing to do so. He made the application. The application was made on 1st respondent’s letterhead and was dated 15 August 2000. The fourth paragraph of the said application reads:

“We propose to build a church, hall, pre-school, pastor’s house and of cause, a church sanctuary on the site. We are a branch of Good News Church, Nkulumane, which is currently leasing stand number 11511, Nkulumane.”

The City of Bulawayo initially rejected the application thrice. But eventually, by a minute dated 24 August 2001 granted the application. The minute is addressed to “Good News Church, c/o Pastor G Simango ...”

Thereafter, Pastor Simango hired an expert who drew up the church, pastor’s house and other buildings plans. The cash receipt shows that the work was done on behalf of “The Good News Church, Richmond Branch.” Even the memorandum of agreement of lease was between the Municipality of Bulawayo and “Good News Church represented by (1) George Michini Simango, (2) Christine Njerekayi and (3) Egifa Mukwande ...” From the foregoing it is apparent that at the time the Richmond stand was acquired, Pastor Simango was a member of the 1st respondent church. Pastor Simango was instrumental in the acquisition of the Richmond stand. In what capacity was he doing all the acquisition? He was a pastor of the Richmond branch

which was overall under the jurisdiction of the mother church i.e. the 1st respondent. He was not acting independent of the 1st respondent. He used his own personal funds plus offerings from members of the congregation of 1st respondent for the acquisition of the Richmond stand. He clearly stated in the application to the City of Bulawayo that he was acting in a representative capacity, i.e. representing 1st respondent church. He was not acting in a frolic of his own but in the name of 1st respondent. Even in the founding papers in this application does Pastor Simango say he had resigned from 1st respondent and was acting on behalf of the applicant at the time of the acquisition. In fact, the applicant did not even exist at the time of the acquisition of the Richmond stand.

According to papers filed by the applicant with the founding affidavit, the applicant came into existence at a meeting held on 2 July 2007 i.e. several years after

the acquisition of the Richmond stand. Its constitution was apparently adopted in that meeting. In fact the minutes of the meeting clearly show that the meeting was initially that of the Richmond branch of 1st respondent which was later converted into one in which the applicant was formed. It was only after this meeting that the applicant sought to have the Richmond stand transferred (or changed) into its own name and wrote to the City of Bulawayo for that purpose. At the time of the acquisition Pastor Simango was representing 1st respondent. Pastor Simango was acting under auspices of 1st respondent at the time of acquisition. The resources that he expended to the acquisition must be viewed in this light. As far as resources from the Richmond branch tithes and offerings they were given to mother church i.e. 1st respondent. In this regard I associate myself with what SMITH J said in *Zambezi*

Conference, SDA Church v The SDA Assn of Southern Africa 2000 (1) ZLR 179 (H)

at 186A-G:

“I accept the submissions by Mr Andersen that when members of a particular congregation, before December 1992, gave their tithes and offerings to a church falling under the jurisdiction of the predecessor of the Zimbabwe Conference, they were giving that money to the church as part of the Mother Church. When bequests were made to a church, they were made in the light of the recipient being part of the Mother Church. When the delegates at the session in December 1992 decided that they would break away from the mother church, they established a new entity, separate from the Mother Church. On that basis can that new entity claim to be the successor of its predecessor and therefore heir to the assets of its predecessor? Even if it could claim so, however, with regard to the immovable property, the predecessor of the Zimbabwe Conference was not the registered owner thereof ... Even if the SDAA holds the properties in trust that does not mean that any individual church can, at any time, approach the SDAA and demand that the property be transferred into its name. That being the case, the Zimbabwe Conference has even less right to do so. The properties in question were acquired and registered in the name of the SDAA long before December 1992, which is when the Zimbabwe Conference came into existence.

The strongest case that Zimbabwe Conference has is that it is the lawful successor to the movable property and the monies held by its predecessor Having given this aspect very careful consideration, I feel that the weight of authority does not support the Zimbabwe Conference. The funds which were used to buy the movable property or to be deposited in the various accounts, were collected from or through members of the various congregation who gave their tithes and offerings on the basis that they were being made to entities within the Mother Church. That being the case, when the Zimbabwe Conference broke away from the Mother Church it lost its claim to the movable property and monies held by its predecessor. Most of the property in

question was acquired long before December 1992 which is when the Zimbabwe Conference came into existence. It therefore, could not have purchased any property or raised money to service any loans raised to purchase the property ...”

These principles apply to the facts of this case as illustrated above. The applicant only came into existence in 2 July 2007 and it cannot claim to have rights to Richmond stand, which was long before that, and also acquired in the name of the 1st respondent. On 2 July 2007 the applicant broke away from the 1st respondent church and it does not help its cause to try and give a break down of the contributions made

by Pastor Simango and his group in the acquisition of the Richmond stand – see also *Ethopian Church Trustees v Sonjica* 1926 EDL 107 and *Stewart and Ors v Mzimba & Ors* (1899) 9 CTR 96.

In the circumstances, the applicant failed to establish a *prima facie* case for the interim relief sought. Further suing for damages or eviction is a satisfactory remedy at the applicant’s disposal should it successfully rebuts the presumption created by the registration of the Richmond stand in the name of the 1st respondent – *Kandema & Ors v Commissioner of Police & Ors* HH-206-03; *Knox Darcy & Ors v Janieson & Ors* 1995 (2) SA 579 and *Maphosa v Cook* 1997 (2) ZLR 314.

In the circumstances the application must fail. Accordingly, the application is dismissed with costs.

Majoko & Majoko, applicant’s legal practitioners

Job Sibanda & Associates, 1st and 2nd respondents’ legal practitioners