REFORMED CHURCH IN ZIMBABWE
versus
REVEREND NICENT MAKUWERERE
and
ENOCK MAYIDA
and
SHADOWSIGHT KUMBIRAI CHIGANZE

HIGH COURT OF ZIMBABWE
MUNANGATI - MANONGWA J
HARARE, 6 June 2023 and 31 May 2024

Opposed Matter

J Mupoperi, for the applicant
A. Muchadehama, for the respondents

MUNANGATI - MANONGWA J: The law has always protected the rights of owners of property to vindicate property from whoever is in possession of it without the owners' consent, a right which can be exercised even against an innocent occupier. Vindication of property through *actio rei vindicatio* is in line with s71 of the Constitution of Zimbabwe, Act 2013 which protects the right to property.

The applicant herein brought an application seeking a vindicatory order against the respondents for restoration of possession of a piece of land situate in the District of Salisbury called Lot 211 Block C of Hatfield Estate measuring 3,6002 hectares which is also known as No. 32 Winston Road South, Hatcliffe, Harare ("the property"). The applicant is the registered owner of the property under Deed of Transfer No.2721/2010.

The applicant is a church and is a common law universitas by status, with a Constitution that regulates its affairs. It is represented by Isaac Pandasvika who is the Moderator of the Reformed Church of Zimbabwe (RCZ) as well as the Chairperson of the Board of Trustees. The Board of Trustees is mandated in terms of the applicant's Constitution to institute and defend legal proceedings on its behalf.

The first respondent who is cited in his official capacity, is an ordained Minister stationed at the applicant's Hatcliffe Congregation ("the Congregation"). He is responsible for the administration, decision making and control of the sect. The second respondent is a congregant and an elected Secretary of the Congregation who is currently on suspension. The third respondent is the elected Central Deacon of the Congregation Church Council Executive which is responsible for the administration and control of Congregation. The respondents are opposing the application and the first respondent has deposed to the main opposing affidavit with second and third respondents formally adopting the contents or averments made by the first respondent.

The facts of the matter as per the applicant are that: The first respondent was elected a Reverend by the applicant. He was posted to Hatcliffe Congregation in September 2000. The Congregation in discharging its responsibility as per the applicant's policy provided accommodation for him after which the first respondent assumed occupation of the property now in issue. The property had been bought in 2009.The applicant states that it is the owner of rights, title and interest in the immovable property. It avers that all property acquired by the applicant in terms of its Constitution vests in the Board of Trustees. The Board of Trustees consists of five members namely the Moderator (Synod Executive), Synod Secretary, Treasurer, General Secretary and Actuary. The applicant states that it is empowered through its Board of Trustees and in terms of clause 19 of its Constitution to demand that the respondents' hand over vacant possession of the property. Despite demand, the respondents have neglected and or refused to hand over vacant possession of the property to the applicant. The applicant maintains that the respondents are in wrongful possession of the property as they continue to occupy the property against the applicant's wishes and thus without applicant's consent.

The first respondent states that the property was bought by the Congregation in 2009 through its contributions to accommodate the Congregation Reverend and conduct church gatherings as directed by the Council. The property remained in the custody and control of the Congregation for years. The first respondent further states that, in the conduct of their affairs congregations are autonomous and retain exclusive control and custody of the property they purchase. It is the respondents' claim that the property is registered in the applicant's name as a matter of procedure and to avoid unnecessary ownership disputes, thus the applicant is just a nominal owner.

The respondent provided background facts that one of the applicant's branches called the Inner-City Harare which hold church services at Dutch Reformed Church premises along Samora Machel Avenue, Harare became independent and a separate congregation from the 'Congregation' in 2014. In 2016 the Inner-City congregation laid administrative claim to the property despite the fact that the Congregation had been in custody of the property since its purchase. The matter was dealt with after which the Congregation was reaffirmed as the rightful custodian of the property. On 20 November 2020 a resolution was passed by the Synodical Committee which awarded sole administration of the property to the Board of Trustees. The Synodical Committee wrote to the Congregation on the 24th of November 2020 purporting to give notice to vacate the property. The first respondent states that on 20 October 2021, the deponent to the affidavit demanded keys to the property from him. The first respondent advised that he was not in possession of the keys. It is the first respondent's claim that the deponent to the plaintiff's affidavit alleged that the Congregation was their tenant. The respondents did not agree and thus did not vacate the property hence the applicant approached this court.

The respondents raised several preliminary points which despite the order in which the points were structured, it is imperative that the court consider the points as follows;

Points in *Limine*

i. That the court has no jurisdiction.
ii. That the application is not properly before the court.
iii. That the applicant's claim has prescribed.
iv. That non-joinder of parties by the applicant is fatal to the proceedings.
v. Whether there is material dispute of facts, failure to make full disclosure and as such whether the wrong procedure was used?

Whether this court has jurisdiction to determine the matter?

The first respondent submitted in his opposing affidavit that the applicant did not exhaust internal remedies before making an application to this court. He avers that the issue of who should have custody and control of the property is pending before the Synod. They aver that the applicant's Synodical Committee and Synod have *quasi-judicial* jurisdictions and have capacity to deal with the present matter hence this court lacks jurisdiction. He states that canonical issues should not willy-nilly be taken to circular courts. In alleging that this court lacks jurisdiction, the

respondents relied on *Church of the Province of Central & Ors* v *Kunonga* HH 217/11 where it was ruled that remedies in terms of church constitutions must be exhausted before a party approaches the courts.

It should be noted that the question whether the Synod and the applicant's Synodical Committee have *quasi-judicial* jurisdictions and have capacity to deal with the present matter depends with the nature of the dispute. This applies when the issue under determination is a matter of faith, discipline, canon and is ecclesiastical in nature. Such matters are distinct from a claim for *rei vindicatio* which is a common law remedy granted by courts with competent jurisdiction. The nature of the dispute herein is such that the High Court has full original jurisdiction. The court notes that the matter pending before the Synod is centered on who should have custody and control of the property which is distinct from this application.

This preliminary point is therefore dismissed for lack of merit.

Whether the application is properly before the court?

The respondents allege that the deponent to the applicant's affidavit lacks authority to institute these proceedings because the resolution he relied on is defective in the sense that two of the signatories to the resolution were no longer members of the Board of Trustees at the time this application was made. The alleged resolution is dated 2 December 2021 and the application was made on 2 December 2021 after members of the Board of Trustees had changed. The first respondent states that the resolution never mentioned that the action should be taken specifically against them.

There is no law to the effect that when signatories to a resolution are no longer members it then invalidates resolutions they made. It is for this reason that the deponent to the applicant's affidavit cannot be said that he was not properly authorized to act on behalf of the applicant. The resolution clearly gave authority to proceed with this application. In *Dube* v *Premier Service Medical Aid Society & Another* SC 32/2022 it was ruled that;

> "A person who represents a legal entity, when challenged, must show that he is duly authorized to represent the entity. His mere claim that by virtue of the position he holds in such an entity is not sufficient. He must produce a resolution of the board of that entity which confirms that the board is indeed aware of the proceedings and that it has given such a person the authority to act in the stead of the entity. I stress that the need to produce such proof is necessary only in those cases where the authority of the deponent is put in issue. This represents the current state of the law in this country."

The resolution remains binding by virtue of it being made after the cause of action arose notwithstanding changes in the applicant's leadership. The resolution is clear that the application for *actio rei vindicatio* should proceed. The court finds that the resolution is still binding. There is no proof on record that the resolution was at any particular point rescinded. It is common cause that if new members to a board are not in cahoots with a resolution previously made, they have a right or obligation to rescind it.

Although the resolution did not specifically state that the action should be taken against the respondents, by virtue of the applicant authorizing the vindicatory action and eviction, it is common cause that it was directed to them as they were the ones who were in possession of the property when the dispute arose.

The application is therefore properly before the court thus the preliminary point is dismissed.

Whether the applicant's claim has prescribed?

The first respondents raised a special plea of prescription alleging that the claim has prescribed because the applicant was aware as far back as 2009 that the Congregation had custody and control of the property and took no action to get vacant possession. It is his view that the cause of action arose in 2010 when the applicant assumed full title and ownership of the premises upon registration of the deed of transfer in its name. The applicant disputed that the claim has prescribed and submitted that the cause of action arose when the deponent demanded that the second respondent hand over keys to the premises sometime in October 2021 as conceded by the respondents in their opposing affidavit.

Whether a claim has prescribed is a matter of law and is dependent on when the cause of action arose. Section 15(d) of the Prescription Act [*Chapter 8:11*] clearly states that a debt except where statute provides otherwise shall prescribe after three (3) years. Section 2 of the Prescription Act describes a debt as:

> "In this Act-
>
> "debt", without limiting the meaning of the term, **includes anything which may be sued for** or claimed by reason of an obligation arising from statute, contract, delict or otherwise."

The aforementioned section was clearly interpretated in *John Conradie Trust* v *The Federation of Kushanda Pre-School Trust & Ors* SC 12/17, where it was ruled that:

> "Since the applicant is suing the third respondent for vindication, its suit falls squarely within the ambit of '*anything which may be sued for.*' What this means is that a claim for vindication of property amounts to a claim for a debt in terms of the prescription Act."

The ruling in *John Conradie Trust* case *supra* means that a vindicatory claim prescribe after three (3) years calculated from the date the cause of action arose. The court finds that the cause of action arose upon demand of the keys to the property as it is at this particular time that the applicant ceased consenting to the respondent's possession and occupation of the property. From the analysis of the evidence on record, calculating from the date of demand of the keys which is sometime in October 2021 to the date of service of summons which is November 2022, there is thirteen (13) months, hence the claim has not prescribed.

The first respondent sought refuge in extinctive prescription upon claiming that the congregation has been in possession of the property since 2009, hence he is of the view that the applicant cannot demand possession of the property now. Extinctive prescription is provided for in s4 of the Prescription Act which clearly states that:

> "Subject to this Part or Part V, a person shall by prescription become the owner of a thing which he has possessed openly as if he were the owner thereof for-
>
> (a) An interrupted period of thirty years"

The aforementioned section is clear that the applicant has not lost ownership of the property as the first respondent has been in occupation for a period of approximately thirteen (13) years, hence the applicant cannot be barred from proceeding with this application. This preliminary point is dismissed for want of merit.

Whether non-joinder of Hatcliffe Congregation by the applicant is fatal to the proceedings?

The first respondent states that the Congregation is laying a claim to the custody and control of the property. It is his view that the applicant ought to have cited all Congregants hence non-citing them is fatal to the proceedings. He thus seeks dismissal of the case in that regard. In response the applicant justified citing the respondents only and not the Congregation as he is of the view that it is the first respondent who is depriving it possession of the property by refusing to handover the keys to the premises upon demand. It further stated that, by virtue of the keys not being in the custody of the Congregation, there was no need to cite them.

The law provides that it is not in all instances that non-joinder of the parties' results in fatality of the proceedings. The law which makes provision for that is R32(11) of the High Court Rules, 2021 which provides that:

> "(11) No cause or matter shall be defeated by reason of misjoinder or non-joinder of any party and the court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of people who are parties to the cause or matter."

(see Wakatama *& Ors* v *Madamombe* SC 10/2012).

Thus, the non-joinder of the Congregation has no bearing to this application. The court finds that there is no bar in determining the matter, issues or questions in dispute as they affect the interests of the respondents who are parties to this dispute and are currently in occupation and possession of the property. This preliminary point is dismissed.

Whether citing of the second and third respondent is necessary?

The second respondent challenges his involvement in this case and denies being actively involved and leading the process of withholding vacant possession of plaintiff's property as alleged or at all. He is of the view that the deponent did not say how the second respondent is involved and leading the process of withholding vacant possession. Again, the third respondent is not sure how he is involved in the matter and alleges that he is not aware of what he did or did not do which warrants being cited in these proceedings.

It is trite to note that a vindicatory action is a no-fault remedy and the only ingredient that necessitates such application is when a person will be in possession of the property of the owner without his consent at the time the dispute arose. From the record, it is evident that the second respondent's contribution was that he refused to hand over keys to the church hall to the Board of Trustees as instructed by a letter dated 21 October 2021 which was addressed to the Chairperson and Council of the Congregation. The third respondent is a party to these proceedings in his capacity as the Head of the Congregation Church Council Executive responsible for the administration and control of the congregation as well as making binding decisions on behalf of the congregation. In this capacity, the third respondent generated correspondences and appended his signature resisting handing over vacant possession of the property after demand had been made. It is upon this background that the respondents found themselves to be parties to these proceedings.

Whether there is material dispute of facts

The first respondents maintained that there is a real dispute as to who should have control and possession of property. Due to the existence of such material disputes, he is of the view that the applicant used inappropriate procedure ill-suited to resolve the dispute between the parties which he believes could be solved by action procedure. The applicant maintained that there exists no material dispute of facts as the applicant is the registered owner of the property and at law can vindicate it from anyone in possession of it without its consent.

For clear understanding, material facts are facts that goes to the root of the matter and assist the court in reaching a determination. In *Supa Plant Investments (Pvt) Limited* v *Edgar Chidavaenzi* HH 92/09 at p4 MAKARAU J (as she then was) ruled that:

> "A material dispute of fact arises when such material facts put by the applicant are disputed and traversed by the respondent in such a manner as to leave the court with no ready answer to the dispute between the parties in the absence of further evidence."

Upon establishing that material dispute exists, the court will consider these three options as outlined in *Joosab & Ors* v Shah 1972 (4) SA 298 which are:

- It can dismiss the application (see *Masukusa* v *National Foods Ltd & Anor* 1983 (1) ZLR 232).
- The court can order the parties to go to trial in terms of R46 (10)(b) of High Court Rules, 2021.
- The court can hear oral evidence on the issue in dispute in terms of R46 (10)(a) of High Court Rules, 2021.

The court notes that there exist a variety of inconsistencies and contradictions in the first respondent's evidence. At some point he alleges in paragraph 11.1 of his opposing affidavit that on 20 October 2021 the second respondents passed by the Congregation and it is when the deponent demanded keys to the church hall. He further states in paragraph 11.2 that on 21 October 2021, the applicant demanded keys to the premises from the Congregation through a letter. Then in paragraph 27 of his opposing affidavit he denied the existence of such demand among any of the respondents and claim that even when such demand was made, it would have been irregular.

Before opting to order that parties lead oral evidence, the court must examine the alleged dispute of fact to ascertain if it cannot be satisfactorily determined without the aid of oral evidence, this is to avert raising of fictitious issues of facts by the respondents in a bid to delay the hearing of the matter to the prejudice of the applicant. Thus, it is not all disputes that are material. Facts

material to this case are facts that point to the registered owner of the property, where, how and by whom the funds were raised is immaterial. Certainly, this court can adopt the approach provided for in *Soffiantini* v *Mould* 1956 (4) SA 150 at p154 where it was ruled that:

> "It is necessary to make a robust common-sense approach to a dispute on motion (application proceedings) as otherwise the effective functioning of the court can be hamstrung and circumvented by the most simple and blatant strategy. The court must not hesitate to decide an issue of facts on affidavit merely because it may be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over fastidious approach to a dispute raised in affidavit."

It is imperative to note that the inconsistences in the first respondent's affidavit are self-created and without basis. This is meant to cloud issues. In any case there is evidence through written correspondence demanding keys and that respondents vacate the property. The respondents also admit this in some instances particularly para 11.1 and 11.2 of the first respondent's opposing affidavit. The dispute so referred to is not material. The respondents failed to prove existence of material disputes of facts, hence the court can adopt a robust common- sense approach and continue to determine the matter on papers. There will always be disputes in litigation but unless they go to the root of the matter in such a way as to leave the court at quandary as to who to believe in order to get to the truth the court should still be able to extract the truth from the papers before it. In this case the court is able to proceed on the papers without the need of oral evidence neither is there an need to refer the matter to trial. The preliminary point is dismissed as it lacks merit.

Failure to make full disclosure

The respondents averred that the applicant failed to make full disclosure of pertinent facts. The respondents state that the applicant did not mention that the property was bought by the Congregation to accommodate the Reverend and conduct church gatherings. They further aver that they are not aware of what they did that warrants application of this nature to be instituted against them. The applicant disputes this alleged fact, maintaining that it set out the essential averments necessary in the founding affidavit which averments are required for an applicant to succeed for a vindicatory application.

It is pertinent to note that the Congregation is not distinct from the applicant. Churches have their own way of administering their property. It is common cause that in religious institutions congregates make contributions and acquire property for their parish which will be accounted to the church as an institution. The allegations that the property was bought by contributions made

by the Congregation which is run by a Church Council is immaterial and does not affect the ownership status of the applicant.

Failure by the applicant to mention that sole custody and control of the property vested with the Congregation is immaterial as the applicant is not seeking to vindicate the property from the Congregation but from the respondents. The law distinguishes between custody, occupation and possession of property. There is no law that protects the respondents as they bear no right of retention let alone custodial rights to the property which may grant them temporary relief for continued possession of the property. Thus, it cannot be said that the applicant failed to disclose material facts which have a bearing on the case.

This preliminary point is dismissed for lack of merit. The matter proceeds to be heard on merits.

On merits

Whether the respondents enjoy a usufruct over the property justifying continued possession of the property?

Amongst the respondents' numerous defences is the defense that the respondents have or enjoy a usufruct over the property. The Council Secretary and Minister in charge acting on behalf of the Congregation wrote a letter dated 15 December 2020 alleging that the Congregation is not in possession and administration of the property as a tenant citing existence of a usufruct. The applicant disputes this assertion.

The law provides that a usufruct grants a right to enjoyment of a person's property for a specific period of time and due to lapse of time, the usufruct terminates. The usufruct is a temporary defence or bar to the application of the *rei vindicatio*, and upon termination of the usufruct, the owner repossesses his property. In instances where the period of use is not specified, the owner of the property is entitled to recover it at any given time. Apparently, the respondents have not tendered proof of the existence of such usufruct.

Equally, that the Synodical Committee wrote a letter on 20 November 2020 purporting to give notice to the Congregation to vacate the premises making them appear as tenants is of no legal substance and have no bearing to the present application.

Whether the applicant is a nominal owner?

The respondents aver that the property is registered in the name of the applicant as the nominal owner as with all other properties nationwide that are registered in the name of the applicant but their control reposes in the respective individual congregations. The applicant disputes this maintaining that it is the substantive registered owner of the property with rights, title and interest in it.

Registration of immovable property is *prima facie* proof of ownership of the party in whose name the property is registered. There is no evidence on record that points to the fact that the property was to be registered in the applicant's name as a nominal owner. The evidence that disqualifies the rights of a registered owner is proof that such registration was done fraudulently which is not the issue in this present application. This finds authority in s2 of the Deeds Registry Act and well-articulated in *Takafuma* v *Takafuma* 1994 (2) ZRL 103 (S) at p 105-106 where the Supreme Court ruled that:

> "The registration of rights in immovable property in terms of the Deeds Registry Act is not a mere matter of form. Nor is it simply a device to confound creditors or tax authorities. It is a matter of substance. It conveys real rights upon those in whose name the property is registered."

It is clear that the applicant as the registered owner has real rights to the property which are exclusive and enforceable against the whole world.

Whether the Board of Trustees has unfettered rights to deal with the Congregation's property?

The first respondent denies that the Board of Trustees has unfettered rights to deal with the congregation property and maintains that this is not in contemplation of the church rules and custom. However, the applicant contends that its Constitution gives the unfettered rights to the Board of Trustees to administer its properties.

Section 19 of the applicant's Constitution clearly states that all funds and property of the applicant shall be vested in the Board of Trustees who shall hold such property on behalf of the applicant. It is important to highlight that the Congregation is not distinct from the applicant, it is a sub-branch which is overally headed by the applicant in terms of s2 of the applicant's Constitution which states that:

> "The reformed church in Zimbabwe shall consist of all the congregations in Zimbabwe which have been founded or ceded from the Dutch Reformed Church in South Africa, and which have been handed over by that church to the Reformed Church in Zimbabwe."

Being a member of a certain religion or sect denotes that an individual has allowed himself to be bound by principles of that faith which are normally codified in its Constitution. The source of authority of a church in handling of its issues and administration was clarified in *Church of the Province of Central Africa* v *Diocesan Trustees, Harare Diocese* 2012 (2) ZLR 392 (S), where MALABA DCJ (as he then was) at p 410A-B stated the importance of constitutions in religious institutions as follows:

> "By definition, a church is a voluntary and unincorporated association of individuals united on the basis of an agreement to be bound in their relation to each other by certain religious tenets and principles of worship, government and discipline. The existence of a constitution is testimony to the fact that those who are members of the Church agree to be bound and guided in their behaviour as individuals or office-bearers on ecclesiastical matters by the provisions of the Constitution and the Canons made under its authority."

What the court considers in addressing the issue of ownership of church property at the center of church disputes was addressed in *Church of the Province of Central Africa* case at p 412C where it was submitted that:

> "Adherence to the fundamental principles on which the church is founded must be the factor on which disputes of ownership or possession and control of church property are determined…."

And at 413D that:

> "The application of the principle of adherence to the fundamental principles of a church supports the proposition that those who have departed from the standards and principles on which the church is founded are more likely to leave it."

It is clear from the church's constitution that the administration of the church property is the responsibility of the Board of Trustees as highlighted in the applicant's Constitution.

Whether the respondents raised valid defences to this application?

In order for *actio rei vindicatio* to succeed, the plaintiff should prove ownership rights and that the defendant was in possession of the property at the time the application was instituted. It is settled law in this jurisdiction that owner of property has a corresponding right of possession. In *Aspine Investments* v *Westerhoff* 2009 (2) ZLR 302 (H) it was ruled that:

> "The rei vindication is an action that is founded in property law. It is aimed at protecting ownership. It is based on the principle that an owner shall not be deprived of his property without his consent. So exclusive is the right of an owner to possess his or her property that at law, he or she is entitled

> to recover it from whomsoever is holding it without alleging anything further than that he is the owner and that the defendant is in possession of the property. Thus, it is an action in rem, enforceable against the world at large."

Upon the plaintiff satisfying on a preponderance of probabilities the requirements of *actio rei vindicatio*, there will be reverse onus whereby the respondents have to satisfy the court that the exist a valid defence that operates in his favor resultantly affecting the enforceability of *actio rei vindicatio*. Defences which goes to the root of this remedy are outlined in *Residents of Joe Slovo Community* v *Thabelisha Homes* 2010 (3) SA 454 (CC) as follows:

- That the defendant holds the property with the owner's consent.
- That he has a limited or personal right against the owner.
- That the plaintiff is not the owner of the property.
- That the property no longer exists.
- That the property was not in his possession at the time of the action.

The respondents are mistaken at law with regards to the nature of this application. Their defences to this action has no legal foundation. Their affidavits were all over the place incorporating church disputes instead of attacking the applicant's application with substantiating evidence that amounts to defences against application of *actio rei vindicatio*. The respondents' argument that the Congregation is the owner of the property when the property is registered in the applicant's name has no legal basis. The respondents failed to prove any of the aforementioned defences but rather spend time trying to seek refuge on things that are not legally recognized defences to the action. They lacked legal understanding of the position of the law as far as this application is concerned. The respondents have no protection at law as they have no title to ownership, limited or personal right to the property and failed to show that the property is non-existent.

Whether the court can order eviction of the respondents?

It is a stated position of law that for an application for a vindicatory order to succeed, the applicant must prove ownership to the property and that the respondents have been in possession of the property at the time the application was made without the owner's consent. Ownership has been proven as same is borne by the existence of the title deed in applicant's name. The respondents fail to appreciate that the matter before the court is not to determine custody and

possession of the property. The case hinges on ownership and the rights of an owner. It is settled in this jurisdiction that there are no equities in the application of *rei vindicatio*. This finds authority in *Alspite Investments (Pvt) Ltd* v *Westerhoff* 2009 (2) ZLR 236 where it was ruled that:

> "There are no equities in the application of the rei vindication. Thus, in applying the principle the court may not accept and grant pleas of mercy or extension of possession of the property by the defendant against an owner for the convenience or comfort of the possessor once it is accepted that the plaintiff is the owner and does not consent to the defendant holding it. It is a rule or principle of law that admits no discretion on the part of the court. It is a legal principle heavily weighed in favor of property owners against the world at large and is used to ruthlessly protect ownership."

In *January* v *Maferemu* SC 342/17 the court reiterated that success in a claim for *rei vindicatio* results in the granting of an eviction order. This therefore entails that a successful application for *actio rei vindicatio* entitles the applicant to automatically evict the party in occupation of the property. Having successfully satisfied the requirements for action *rei vindicatio*, there is no legal basis why the applicant's prayer for an eviction order should not be granted.

Disposition

The application has merit and ought to succeed. The applicant seeks costs on a legal practitioner- client scale. It is the general principle that costs follow the cause, however the court finds that this opposition was not *mala fide* nor an abuse of court process *per se.* Rather, the respondents genuinely albeit mistakenly, believed that they had rights to the property and they lacked sound legal guidance. The court is mindful of the fact that the congregants had purchased the property but due to the constitutional provisions of the applicant resulting in the registration of the property in applicant's name, the property does not belong to them nor the respondents. In that regard the court will not award costs on a higher scale.

Accordingly, it is ordered that;

1. The respondents shall deliver vacant possession of certain piece of land situate in the district of Salisbury called Lot 211 Block C of Hatfield Estate measuring 3, 6002 hectares which is also known as No. 32 Winston Road South, Hatfield, Harare, to the applicant within 10 (Ten) days of service of this judgement upon the respondents.
2. In the event of the respondents and or anyone acting through them failing to deliver vacant possession of certain piece of land situate in the district of Salisbury called Lot 211 Block C of Hatfield Estate measuring 3, 6002 hectares which is also known as No. 32 Winston Road South, Hatfield, Harare in terms of paragraph (1) above, the Sheriff of this

Honourable Court or his duly authorized Deputy be and is hereby authorized to take over vacant possession of the premises from the respondents, their assignees and anyone claiming right of vacation through them and hand over vacant possession to the applicant.

3. There respondents to pay applicant's costs.

MUNANGATI – MANONGWA J:……..

Saratoga Makausi Law Chambers, applicant's legal practitioners
Mbizo, Muchadehama & Makoni, respondents' legal practitioners