

APOSTOLIC FAITH MISSION IN ZIMBABWE
versus
KENNEDY CHIMBI

HIGH COURT OF ZIMBABWE
MUSITHU J
HARARE, 9 November 2022 & 22 January 2024

Opposed Application-Interdict

F Mahere, for the applicant
C Gumiro, for the respondent

MUSITHU J: The applicant approached the court on an urgent basis seeking interim relief of an interdict. The matter was adjudged not to be urgent, and consequently it proceeded as an ordinary court application. The applicant approaches the court for the following relief against the respondent:

“IT IS HEREBY ORDERED THAT:

1. The respondent and all its followers, as shall be identified by the Applicant’s Resident Pastor, be and are hereby permanently interdicted from conducting any church services at Stand Number 14989 Sinini Road, Old Tafara Harare without the express authority of the Applicant.
2. Any member of the Zimbabwe Republic Police be and is hereby authorised to cause the arrest of any person who acts in defiance or contempt of the provision of this order.
3. Service of this order shall be effected by the Sheriff of Zimbabwe upon the Respondent.
4. Costs of suit on an attorney client scale.”

Background to the Applicant’s Case

The facts giving rise to this application are as follows. The applicant is a Pentecostal church and a common law *universitas*. It was established in Zimbabwe around 1916 and has been existence for over 100 years. The respondent claims to be a pastor of the applicant, though the applicant contends that he was dismissed from employment. The respondent further claims to have a pending employment dispute with the applicant.

Sometime in 2018 a leadership dispute erupted in the applicant. This saw the respondent being dismissed from the applicant’s employ. In total disregard of his dismissal from the applicant, the respondent advertised a Revival Church Crusade (hereinafter referred to as the Crusade) to be conducted at the applicant’s church premises at 14989 Old Tafara Township from 1 June 2022 to 5 June 2022. The applicant claims rights of possession in the property

through a lease agreement between the applicant and City of Harare. The applicant alleges that since the respondent is no longer affiliated with the applicant, he has no right to use the applicant's premises for his services. It is this conduct by the respondent that prompted the applicant to approach the Court.

In its founding affidavit, which was deposed to by its sitting President Amon Dubie Madawo, the applicant claims it has a clearly defined right at law to the premises in question by virtue of a 30-year lease agreement entered into with the City of Harare in 2015. One of the rights accorded by the lease was the right to exclusive use of the premises by the applicant. It is against this background that the applicant feels aggrieved by the respondent's conduct.

The respondent who ceased to be a Pastor of the applicant by virtue of his dismissal had no right to advertise the Crusade whose venue was the applicant's property. He had lost the right of use to that property. It is the applicant's case that the respondent was interfering with its property rights. The respondent did not seek the applicant's approval before posting fliers that showed the applicant's premises as the intended venue for the Crusade. The respondent had also not communicated his intentions to use the applicant's venue.

It was further averred that the respondent's conduct could potentially breach peace between the applicant and the respondent and his followers. The respondent's conduct was a security threat to the applicant's members and to its good name. A threat of irreparable harm was therefore imminent. In asserting its rights to the relief sought, the applicant referred the court to the case of *Airfield Investments Pvt Ltd v Minister of Lands and Ors*¹ wherein the requirements of an interdict were outlined.

The applicant alleged that the balance of convenience favoured the granting of the interdict as the applicant stands to suffer if the relief sought was not granted. The applicant being the sole owner of the premises in dispute, faced potential displacement by the respondent and his followers.

The Respondent's Case

The respondent denied that he was dismissed by the applicant. He alleged that there was a pending labour dispute before the Courts, and for that reason he was still serving under the applicant. He remained a Pastor and had been conducting his services uninterrupted for a long time. He argued that the applicant could not express shock about the Crusade to be

¹ 2004 ZLR 511(S)

conducted at the premises as the members of the applicant were aware that he continued to carry on his pastoral duties at the said premises.

The respondent also disputed that the applicant was the lease holder of the premises in question. He argued that the lease was not signed on behalf of the applicant and the people that were paying the utility bills were his congregants who attended his services. The applicant had no entitlement to the said premises. The court was referred to *CB Prest, The Law and Practice of Interdicts 3rd edition 2017, at p 52*, where it was held that the existence of a right is a matter of substantive law, and whether that right was clearly or only *prima facie* established was a matter of evidence. The applicant therefore had no right to interdict the respondent as he had a clear right to conduct his pastoral duties at the premises.

Analysis

The requirements of an interdict are settled at law. The requirements of a final interdict were explained by MUZOFA J in *Satond Investments (Private) Limited v Shava* as follows:

“In an application for a final interdict as the one sought by the applicant the applicant has to establish firstly a clear right, secondly an actual or a reasonably apprehended injury and, thirdly, absence of any other remedy *Setlogelo v Setlogelo* 1914 AD 221. A *prima facie* right can only suffice in an application for a final interdict where there is a likelihood of irreparable harm being suffered if the relief is not granted *Molteno Bros and other SA Rlys and Others* 1936 AD 321 at 332 cited in *Boadi v Boadi and Anor* 1992 (2) ZLR 22 (HC).”²

Further down in the same judgment, the learned judge explained what amounts to a clear right as follows:

“Whether the applicant has a clear right is a matter of substantive law. It must be a right that exists at law and can be protected. A clear right is one that is not open to doubt whatsoever.”³

What needs to be established is whether the applicant managed to establish a clear right to the property which is not open to any doubt? To answer this question, one must look no further than the papers that were filed of record. There is no doubt from the papers before this Court that an agreement of lease of land was entered into between City of Harare and the Apostolic Faith Mission represented by one Shara in 2015. That lease agreement still subsists. It then follows that the applicant has the exclusive right to use the premises and can approach the Court to protect that right when it is under threat.

The respondent claimed that the lease agreement was not signed on behalf of the applicant. He sought to fortify his argument by attaching a supporting affidavit from one

² At p2 of the judgment.

³ p2 of the judgment

Litemwe Mususa who attested to the signing of the lease agreement as a witness on the day that the lease agreement was entered into. Litemwe Mususa alleged that he did not sign the lease agreement on behalf of the applicant. His evidence is not sustainable on two grounds. Firstly, Mususa did not sign the lease agreement in any representative capacity. He merely appended his signature as a witness to the lease agreement. His participation is only to the extent of bearing witness to the signing of the lease agreement between the City of Harare and the applicant represented by Shara. He cannot therefore claim not to have signed the lease agreement on behalf of the applicant.

Secondly, the lease agreement clearly states that it is a memorandum of agreement between the City of Harare and the Apostolic Faith Mission, being the applicant herein. Mususa did not produce any evidence to support his averment that the lease agreement was not between the City of Harare and the applicant, but rather it was between the City of Harare and the congregants who paid utility bills.

The respondent also alleged that he could not be interdicted from using the premises as he was still a pastor of the applicant and had a right to exercise his pastoral duties on the said premises. The respondent was dismissed from employment on the 12th of November 2018. Evidence of his dismissal was provided by the applicant in the form of a dismissal letter from the Disciplinary Authority attached to the applicant's affidavit as annexure E.

The respondent argued that there was a pending challenge to his dismissal and therefore he could only be said to have been terminated from employment after the pending case was finalised. He does not go further to state the pertinent details of this pending labour dispute, whose existence the applicant denies. As things stand, the respondent remains a dismissed employee up until such dismissal is reversed by a court of competent jurisdiction. He cannot seek to hold on to his former employer's property without a legal basis to do so.

COSTS

The applicant prayed for costs on the attorney and client scale. I do not believe that the circumstances of the case justify an award of costs at that level. In the exercise of my discretion, I find an award of costs on ordinary scale befitting herein.

Resultantly, IT IS ORDERED THAT:

1. The respondent and all his followers, as shall be identified by the applicant's Resident Pastor, be and are hereby permanently interdicted from conducting any church services at Stand Number 14989 Sinini Road, Old Tafara Harare, without the express authority of the applicant.
2. Any member of the Zimbabwe Republic Police be and is hereby authorised to cause the arrest of any person who acts in defiance or contempt of the provisions of this order.
3. Service of this order shall be made upon the respondent by the Sheriff of Zimbabwe.
4. The respondent shall bear the applicant's costs of suit.

Dube Tachiona and Tsvangirai, legal practitioners for the applicant
Moyo Chikono and Gumiro, legal practitioners for the respondent