WOMEN OF ZIMBABWE ARISE TRUST **APPLICANT**

AND

THE OFFICER IN CHARGE C.I.D. LAW AND ORDER **1ST RESPONDENT**

AND

THE OFFICER COMMANDING C.I.D LAW AND ORDER CHIEF SUPERINTENDENT P.R. MOYO **2ND RESPONDENT**

AND

THE COMMISSIONER GENERAL OF THE ZIMBABWE REPUBLIC POLICE **3RD RESPONDENT**

IN THE HIGH COURTOF ZIMBABWE
MATHONSI J
BULAWAYO 17 JUNE 2011 AND 23 JUNE 2011

Mr. K. Ncube for applicant
Mr W. Mabhaudi for respondents

Urgent Chamber Application

MATHONSI J: The applicant leases house No. 33A Clark Road, Suburbs, Bulawayo which premises it uses as offices.

On 10 June 2011, the police raided the premises and forced their way in causing the occupants to flee. They then took occupation of the premises through mounted guards who have stood sentinel for 24 hours everyday up to now. They have not notified the applicant of the purpose of their vigil at the premises.

The applicant has brought this urgent application seeking an order for restoration of possession and directing the police to leave the premises. In their opposing papers the respondents state that they undertook that exercise because they "had information that there were some illegal activities taking place" at the house. They have not disclosed what these illegal activities are.

The respondents also state that after forcing their way into the house "no one asked for a search warrant from them and no search was conducted since all the occupants had fled." They say the guards have been placed there awaiting the arrival of the occupants so that a search can be done in their presence.

The explanation given by the respondents for the unusual behaviour of the police to take occupation of applicant's premises does not hold water at all. Firstly, *Mr Mabhaudi* appearing for respondents submitted that there is an individual at the premises who uses the servant's quarters but the police cannot conduct the search in the presence of that individual because they want a representative of the applicant who is not that individual to be present during the search. He did not give a name of that other representative.

If it is accepted that there is someone at the premises and that the police genuinely want to conduct a search in the presence of someone, there is absolutely nothing stopping the police from undertaking the search because the applicant's representative is on the ground to superintend that search.

Secondly, the respondents conceded that the applicants' legal practitioners did attend at the house immediately after police's arrival intending to oversee the activities of the police at the house. It is not clear why the police could not undertake the search in the presence of the legal representatives of the applicant. The applicant has a constitutional right to be represented by a legal practitioner of their choice and the police must leave with that.

Affidavits have been submitted by *Mr Kossam Ncube* and *Ms Nosimilo Chanayiwa* to the effect that the police actually chased them away from the house. *Mr Ncube* stated in his affidavit that:

> "3--- The position is that on Friday the 10th June 2011 when the police raided the applicant's offices, I was summoned to the scene and went there in the company of Nosimilo Chanayiwa of the Zimbabwe Lawyers for Human Rights.
> 4. When we got there we parked our vehicle about 5 metres from the gate where our client's offices are housed.
> 5. The police immediately came to where we were parked and ordered us to leave. They indicated that they did not want to discuss anything with us and they sternly advised that if we did not want any trouble we should leave forthwith."

As if that was not enough, the respondents admit having received a letter from *Kossam Ncube and Partners* dated 13 June 2011, which is filed of record, in which the legal practitioners make it clear they represent the applicant. If indeed, the police wanted to conduct a search at the premises, they could have easily done so in the presence of the legal practitioners who availed themselves on 10 June 2011. Instead they chased then away.

Even if this had been done by overzealous junior officers on the ground, the first respondent had an opportunity when he received the letter of 13 June 2011 to liaise with applicant's legal practitioners so that they avail themselves for the search to be carried out in their presence. For him to claim now that his officers are standing sentinel at the house awaiting the arrival of a representative of the applicant, who is not the one at the premises and is also not the legal practitioner that he knows, is simply red herring and cannot be taken seriously.

Thirdly, the search warrant issued by Superintendent Mupungu that has been produced by the respondents is dated 10 June 2011 and authorises the bearer to search the premises, a Ford Ranger registration number ABI 3569 and Nissan Saloon registration number AAY 1888 for:

> "unregistered firearms, documents containing subversive information which adversely affects (sic) the economic interests of the state and any other offensive materials."

There is nothing in the warrant suggesting that the search can only be conducted in the presence of a specific individual. Therefore there was nothing stopping the officers from undertaking the exercise in the presence of the legal practitioners who attended the scene on 10 June 2011 and the occupant of the premises. In fact Mr Mabhaudi emphatically argued that they do not want to arrest anyone but merely to conduct a search. This lends credence to the applicant's claims that the police did search the premises on that day. It also makes their continued presences at the premises inexplicable indeed.

The deployment of guards at the premises of the applicants in the manner employed by the respondents is not only clearly unjustified but is also unnecessary over handedness that cannot be allowed. The police can still effectively discharge their constitutional mandate of investigating crime without resorting to such crude methods.

In my view, the applicant has made out a good case for the relief sought.

Accordingly, the provisional order is granted in terms of the amended draft. The interim relief granted is as follows:

1. The applicants be and are hereby restored to full possession and occupation of House No. 33A Clark Road, Suburbs, Bulawayo.
2. The respondents be and are hereby directed to order and facilitate the immediate withdrawal of all police officers from the aforesaid house and the surrounding yard.
3. The Respondents be and are hereby directed to ensure that nothing is removed from the aforesaid house without due process.

Kossam Ncube and partners' applicant's legal practitioners
Civil Division, Attorney General's Office, respondents' legal practitioners