

THE TRUSTESS OF THE TIME BEING OF THE APOSTOLIC FAITH MISSION IN
ZIMBABWE

versus

APOSTOLIC FAITH MISSION OF ZIMBABWE

and

AMON NYIKA CHINYEMBA

and

TAPIWA MUTUNHIRA

and

ELISHA CHIKWINDI

and

JAIROS MUZENDA

and

DENNIS MUTUNGI

and

MARTIN FATI

HIGH COURT OF ZIMBABWE

DUBE-BANDA J

HARARE; 10 February 2025 & 19 March 2025

Application for summary judgment

Ms. F. Mahere for the applicant

C.W. Gumiro for the respondents

DUBE-BANDA J:

[1] This is a summary judgment application. At the moment this matter was called out, Mr *Gumiro* counsel for the respondents stood up intending to raise some preliminary issues for consideration by the court. Ms. *Mahere* counsel for the applicant objected indicating that counsel for the respondents had no right to begin. However, I allowed Mr *Gumiro* to place on record the preliminary issues he sought the court to consider.

[2] Mr *Gumiro* raised two preliminary issues; the first was that the seventh respondent is now deceased and no executor has been appointed to be substituted for him in terms of the requirements of the law. Counsel made the point that he had no mandate to represent the interests of the estate of the seventh respondent. The second issue was that there was no application before court because the summary judgment application was dismissed by the Registrar for want of compliance with the Case Management Order.

- [3] After hearing brief submissions, I stood down the matter, directing counsels to liaise with the Registrar for the purposes of ascertaining the correct factual position. After consulting with the Registrar there still was no agreement.
- [4] For completeness and on the authority of *Mhungu v Mtindi* 1986 (2) ZLR S at 173 A-B, I called for the other court records between the parties. The factual position as appears from the court records and submissions by counsel can be summarized as follows. For purposes of this judgment, and in order to avoid confusion, I will refer to the parties as the “plaintiff” and the “defendants”. On 22 July 2022 the plaintiff sued out a summons in case number HC 5021/22 seeking an order that the defendants and their followers stop accessing, using and or carrying any gatherings or activities at the plaintiff’s premises and administrative offices situate at stand number 12921 Salisbury Township of Salisbury Township Lands measuring 3 045 square meters held under deed of transfer number 4631/2003, also known as number 12921 Chaminuka Street Mbare, Harare. In addition, an order that the plaintiff regains its full control and uninterrupted possession of the church premises and offices. The defendants filed a notice to defend and a plea.
- [5] The plaintiff filed an application for summary judgment in case number HC 5021/23. The application was opposed and the notice of opposition bears case number HC 5021/23. The plaintiff’s answering affidavit bears case number HC 5021/23; however, this is the answering affidavit that was expunged from the record in HH 212/24. The plaintiff’s heads of argument bear case number HC 5021/22 i.e., the summons case, and the defendants’ heads of argument bear case number HC 5021/23, the summary judgment case.
- [6] The summary judgment application was set down before TAKUVA J. The application was heard on 18 October 2023 and judgment handed down on 30 May 2024. The court did not deal with the merits of the application, but heard arguments on a preliminary point taken by one of the parties and rendered judgment in *The Trustees of the Time Being of Apostolic Faith Mission in Zimbabwe v Apostolic Faith Mission of Zimbabwe* HH 212/24. The notice requesting a set down date bears number HC 5021/21, and this explains the reason the judgment bears cross-reference case number HC 5021/22 i.e., the summons case, instead of HC 5021/23 the summary judgment application. This is the first point where the summary judgment application went off track.

[7] The plaintiff's legal practitioners seeking the continuation of the hearing of the summary judgment matter, on 5 June 2024 filed a blank notice of set down bearing case number HCH 5021/23. On 10 October 2024 the plaintiff's legal practitioner wrote a follow-up letter to the Registrar, this letter now bears case number HCHR-HCH 5021/22. On 21 January 2025 the Registrar issued a Notice of Hearing, this notice bears case number R-HCH 5021/22.

[8] On 17 June 2024 and in case number HC 5021/23 this court *per* ZHOU J issued a Case Management Order which is couched as follows:

- i. The applicants take all steps necessary in terms of the rules of court to ensure that the matter is finalized, including setting down the matter, within thirty (30) from the date of receipt of this order.
- ii. If the applicants fail to comply with paragraph 1 hereof this application shall be deemed abandoned and dismissed and the Registrar shall notify the parties accordingly.

[9] On 4 July 2024 the Registrar by letter informed the plaintiff of the Case Management Order, and on 17 October 2024 the Registrar wrote to the plaintiff, the letter says:

“The above matter refers.

Reference is made to the order by Justice ZHOU J dated 17 June 2024.

Kindly note that the applicant has failed to comply with paragraph 1 of the order requesting the applicant to take all steps necessary in terms of the rules to ensure that the matter is finalized, including setting down the matter, within thirty (30) from the date of receipt of this order.

The matter is deemed abandoned and dismissed by the Registrar in terms of paragraph 2 of the same order.”

[10] What emerges out of the above factual narration is that the summons case bears case number HC5021/22, while the summary judgment application bears case number HC 5021/23. The matter went off course at the point the plaintiff filed a notice requesting a set down date in number HC 5021/21, instead of HC 5021/23. This explains the reason the judgment in HH 212/24 bears cross-reference case number HC 5021/22 i.e., the summons case, instead of HC 5021/23, the summary judgment case. The plaintiff compounded the error when it filed heads of argument bearing case number HC 5021/22; and its follow-up letter to the Registrar seeking a set down date bearing case number HCHR-HCH 5021/22; and on 21 January 2025 when the Registrar issued a Notice of Hearing bearing case number R-HCH 5021/22. Instead of filing

pleadings in HC 5021/23 the summary judgment case, the pleadings were filed HC 5021/22 the summons matter and which was not ripe for set down. The matter having taken a wrong turn, and the pleadings being filed in HC 5021/22 it appeared that the case HC 5021/23 was not been prosecuted, and this resulted in the Case Management Order and the dismissal by the Registrar.

[11] The matter that was sought to be set down before me is case number HC 5021/23, the summary judgment application. This is the matter that was dismissed in pursuance of the Case Management order. In essence, there was no matter to be set down in that the matter that was sought to be set down was dismissed by the Registrar on 17 October 2024. This matter underscores the importance of paying attention to detail regarding case numbers so that pleading do not get lost or be filed in wrong files.

[12] In view of the decision I have reached, it will serve no useful purpose for me to deal with death and the consequences thereof of the seventh defendant.

[13] There remains to be considered the question of costs. In the circumstances of this case, a no costs order would be the most appropriate.

In the result, I order as follows:

- i. The summary judgment application in HC 5021/23 be and is hereby struck off the roll.
- ii. There is no order as to costs.

DUBE - BANDA J:

Zvimba Law Chambers, applicant's legal practitioners
Moyo, Chikono & Gumiro, respondents' legal practitioners