

MUGODHI APOSTOLIC FAITH CHURCH  
and  
WASHINGTON MUGODHI N.O  
versus  
DAVISON MANGOMA  
and  
TEDIUS MUNYANYI  
and  
NGOBSON BANDIRAI  
and  
NIGO MIKE MUKARATI  
and  
CEPHAS CHATORA  
and  
PRINCE MACHIRIDZA  
and  
RUZAI GWAVAVA  
and  
MANFRED MADAKA  
and  
TALENT MAPWEZA  
and  
TOBIAS MARWA  
and  
CHARLES MASANGO  
and  
GEORGE MANGWIRO  
and  
OBERT TAKABVIRA  
and  
HAMAYANGU NGANGA  
and  
MATAMBUDZIKO CHIYAMBIWA  
and  
MIRIRO BARE  
and  
THERESA NHAITAI  
and  
TAONESA TAKABVIRWA  
and  
CAINOS DANDANYIKA  
and  
WEDZERAI MAGEJO  
and  
MANASSA SENGWE  
and  
PHILIP MUSUVA

and  
MUDIWA SAVIOUS MUTSARO  
and  
HOSIA SHAMBAMUTO  
and  
WEBSTER NYEKETE  
and  
SHUPIKAI MATAMBO  
and  
BRIGHTON MAHWITE  
and  
SAMUEL MAZURU  
and  
JACOB MACHIKANDA  
and  
GIVETMORE DZIMBANHETE  
and  
RUNGANO FAMBISAI  
and  
TAWANDA MUPAMHANGA  
and  
PETER KWATYA  
and  
ERIA PARIMWA  
and  
ERUWATI NYANDORO  
and  
TONNY SUGAUKE

*Advocate Ndlovu*, for the applicants  
*Advocate Madhuku*, for the respondents

and  
RANGANAI CHIKWENA  
and  
LAMECK CHAKUNGA  
and  
FUNNY CHADYA  
and  
PHINIAS JAJA  
versus  
MUGODHI APOSTOLIC FAITH CHURCH  
and  
AARON MUNODAWAFA  
and  
TONNIE SIGAUKE  
and

WASHINGTON MUGODHI

HIGH COURT OF ZIMBABWE  
MHURI J  
HARARE, 30 June & 24 August 2022

Mr *L Madhuku*, for the applicants  
Mr *I Ndudzo*, for the respondents

### **Opposed Application**

**MHURI J:** Before me were three matters divided into Volume I, Volume II AND Volume III.

Volume I is a court application under HC 5594/21 pitting MUGODHI APOSTOLIC FAITH CHURCH and DAVISON MANGOMA and 35 other named respondents. The application is for an interdict to bar respondents from entering into any of the first applicant's premises or from interfering in any manner with its congregants, members, leaders, activities programmes and gatherings of its members.

Volume II is an urgent chamber application for an interim interdict pending determination of the application HC 5594/21. The application is filed under case number HC 901/22 and the parties are the same as in case number HC 5594/21 above. Applicants prayer in this application is that pending determination of the application under HC 5594/21 an interim order that respondents and anyone associated with them be barred from convening, attending, intruding, or entering applicants' premises at the National Shrine Chitope Hwedza, be issued.

Volume III is a court application filed under case number HC 905/22 and the parties are:-

Ranganai Chikwena  
and  
Lameck Chakuinga  
and  
Funny Chadya  
and  
Phinias Jafa  
versus  
Mugodhi Apostolic Faith Church  
and

Aaron Munodawafa  
and  
Tonnie Sigauke  
and  
Washington Mugodhi

The application is for a declaratory order and ancillary relief. Applicants are seeking declaratory relief to the effect that:-

- a) second respondent is the substantive Bishop of first respondent in terms of its constitution
- b) third respondent is the Vice Bishop of the first respondent in terms of its constitution
- c) fourth respondent's appointment as Vice Bishop of first respondent being ultra-vires the first respondent's constitution is null and void

As consequential relief, applicants are seeking that:-

- d) fourth respondent be interdicted from holding himself as Bishop of first respondent
- e) all appointments and or reassignments and actions of fourth respondent in his purported capacity as Bishop are unconstitutional and therefore null and void
- f) fourth respondent pays costs of suit on a legal practitioner and client scale.

At the commencement of the hearing of the applications counsel for the Parties were in agreement that the application to be heard first is the application under HC 905/22 for a declaratur, as the resolution of issues raised therein will resolve the issues in HC 5594/21 and HC 901/22 more particularly the issue of who the leader of the church is.

Advocate Ndlovu made the submissions that there are material disputes of facts which cannot be resolved on the papers, as such the matter should be referred to trial. The disputes are about whether the Church has a constitution or not and which of the two sets of minutes of 10 August 2019 is the correct one.

As regards the issue of the constitution, it was submitted that there are two opposed positions *ex facie* the papers, respondents averring that the church does not have a written constitution, it relies on oral canons whereas the applicants aver that there is a written constitution. It was submitted that even if the court were to take a robust approach, this material dispute of fact cannot be resolved on the papers without hearing *viva voce* evidence. The constitution produced as part of applicants' papers is a fraud and has been doctored for purposes of these proceedings, reference being made to two contradicting dates, on the constitution and

absence of committee members names on the constitution. Further, the fact that applicants did not avail the 1952 constitution which is said to be amended goes to show that it does not exist. On that basis, *viva voce* evidence is required so that the court can make a finding on that.

As regards the minutes of the meeting of 10 August 2019 respondents submitted that there are two versions of minutes of the same meetings. Each party prepared their own minutes to suit their own position. The persons who took down the minutes must come to court and give evidence on which minutes are to be taken as correct. This dispute of fact must be referred to trial, so submitted respondents.

It was respondents' prayer that the points have merit and therefore the matter be referred to trial with the papers standing in as pleadings.

In response, applicants' submissions were that there is a written constitution and referred to the constitution filed on pages 676-677 of the consolidated record. The dispute referred to is not a material one it can be resolved on the papers. The signature that appears at the last page of the document has not been challenged. The date stamp referred to is just a stamp and is irrelevant. It will not be in the interest of justice to delay the resolution of this matter, the court is urged to take a robust approach and invoke Rule 59(26)(b) of the High Court Rules. They urged the court to dismiss the point and allow them to lead evidence on the main issues of the dispute.

The issue for determination by this court is whether there are material disputes of facts which cannot be resolved on the papers, and need to have the matter referred to trial for the leading of *viva voce* evidence.

It goes without saying that matters must not be brought to court under motion proceedings if there are material disputes of facts.

In the celebrated case of *Supa Plant Investments Private Limited v Chidavaenzi* 2009 (2) ZLR 132 H at 136 F quoted with approval by MALABA CJ in the case of *Rio Zim (Private) Limited v Falcon Resources (Private) Limited & Rusununguko Nkululeko (Private) Limited SC* 28/2022.

MAKARAU (JP as she then was) elaborately stated the position that:

“a material dispute of fact arises when material facts alleged by applicant are disputed and traversed by 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.”

As stated by MALABA CJ in the *Rio Zim* case (*supra*) mere allegations of a possible dispute of fact is not conclusive of its existence.

In *casu*, the dispute centres on whether the Church has a Constitution or not. The respondents' (HC 905/22) position is that the Church has no written Constitution, the one availed by applicants is a fraud, a doctored one produced for purposes of these proceedings. The applicants' position is that the Church has a written Constitution, which Constitution is filed of record.

As pointed out by respondents, the Constitution filed by applicant *ex facie* shows contradicting dates, namely that it is purported to have been prepared on 1 August 2012 and yet it bears a date stamp of 28 May 2018. Reference was also made to the chairman's opening remarks at the meeting of 10 August 2019 where it is said, "some members of Harare who were not Pastors were allowed by the Chairman in the meeting as he wanted to present them to the Pastors for the mammoth task of coming up with the Constitution for Mugodhi Apostolic Faith Church." In the same minutes, reference is made to section 16 of the amended Constitution by the Chairman.

With these divergent positions by the parties, where one says there is a written Constitution and the other says there is no written Constitution and attacks what is referred to in the said written Constitution, I am persuaded that there is a material dispute of facts which requires the adducing of *viva voce* evidence to resolve it. I am not persuaded that I should take a robust approach and invoke Rule 59(26)(b) and allow oral evidence to resolve the dispute. I agree with respondents' submission that this Rule is not meant to convert motion proceedings to trial proceedings.

To that end, I will grant the respondents' prayer. It is therefore ordered that the matter be referred to trial for evidence to be led from the committee members on the Constitution referred to for the court to determine whether the Church has a written Constitution and for the person who prepared the minutes of 10 August 2019 to testify on the minutes. The papers filed of record to stand as the pleadings.