

CRISIS IN ZIMBABWE COALITION TRUST
versus
CHIEF SUPERINTENDANT G. MOYO N.O

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 15 August and 7 September 2022

Urgent Chamber Application

P Mapanga with Mrs Mungofa, for the applicant
D Machingauta with B Moyo, for the respondent

TAGU J: The Applicant is Crisis Coalition in Zimbabwe Trust, a trust that has been registered as such in terms of the laws of this country. The respondent is Superintendent G. Moyo, N.O. the Harare District Regulatory Authority in terms of the Maintenance of Peace and Order Act [*Chapter 11. 23*]. This is an urgent chamber application wherein the applicant is seeking an interim interdict against the first respondent so that he and all acting under or through him will not interfere with the applicant intended public meeting scheduled for 12 August 2022. The application was filed on 11 August 2022 but the file was allocated to me on 12 August 2022 the day the demonstration was to take place.

The factual background is that on 27 July 2022 applicant wrote a notification to the respondent in terms of s 7 of the Maintenance of Peace and Order Act (the Act). On receipt of the notification, the respondent wrote a letter dated 29 July 2022 to the applicant calling a meeting with the applicant in terms of s 8 of the Act. The applicant complied. On 3 August 2022 the applicant wrote a letter to the respondent incorporating changes that had been discussed at the meeting. On 10 August 2022 respondent wrote a letter to the applicant advising that he could not sanction the meeting because the meeting would violate s 10 (1) (a) of the Act.

Dissatisfied with the respondent's decision not to sanction the gathering, the applicant approached this court on an urgent basis seeking the following relief-

“TERMS OF FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms.

1. The decision of the respondent prohibiting the applicant’s proposed public meeting is hereby declared unlawful and accordingly null and void.
2. First respondent shall pay the costs of this application.

INTERIM RELIEF GRANTED

Pending finalization of the matter the following relief is granted:

1. Applicant shall proceed to hold its public meeting on the 12 August in terms of the notification letter dated 27th July 2022.
2. First Respondent and those acting in concert with him or under his instructions shall not interfere with the proposed meeting of the applicant and shall instead provide the necessary manpower from the police to ensure that the meeting is held peacefully.

SERVICE OF PROVISIONAL ORDER

1. Service of this application and provisional order shall be made on the Respondent by Applicant’s legal practitioners and/or the Deputy Sheriff.”

The application is opposed by the respondent. The respondent raised one point *in limine* to the effect that there is Non-compliance with s 11 of the Maintenance of Peace and order Act [*Chapter 11.23*]. The contention by the respondent being that the applicant has not complied with s 11 of the Maintenance of Peace and Order Act [*Chapter 11.23*], which expressly provides a primary remedy to the convener who is aggrieved by the decision of the Regulating Authority. The respondent said the applicant prematurely approached this honorable court without exhausting the available remedies provided for in the legislation protecting the rights in question. In short the applicant was supposed to approach the Magistrate court (lower court) of this higher court. Respondent prayed that this application be dismissed with costs.

On the other hand the applicant maintained that the relief applicant wants is that which this court can grant. That the conduct of the Respondent must be declared unlawful. It said this is not an appeal but for the court to decide on the validity of the conduct of the Respondent. Applicant being aware of s 11 of the Act want the court to determine the validity of respondent’s conduct. Section 11 of the Maintenance of Peace and Order Act [*Chapter 11.23*] says:-

“Appeals

(11) Any convener who is aggrieved by –

(a) any prohibition notice; or

(b) the contents of the directions issued in terms of section 8, or conditions under which a gathering is authorized, including any amendment thereof, may appeal against it to the Magistrates Court in the area where the gathering is proposed to be held, and the magistrate may confirm, vary or set aside the prohibition notice, direction or order and give such order or direction in the matter as he or she thinks just:

Provided that the noting of an appeal in terms of this section shall not have the effect of suspending any prohibition order appealed against.”

On the face of it s 11 of the Act expressly provides a primary remedy to the convener who is aggrieved by the decision of the Regulatory Authority. However, this section as headed refers to an appeal against the decision of the Regulatory Authority. The Applicant therefore, according to the respondent prematurely approached this Honorable Court without exhausting the available remedies provided for in the legislation protecting the rights in question. However, what is before the court is not an appeal but an application for an interdict and declarators on the return day. This has an effect on the decision taken by the Regulatory Authority which the Convener is not happy with.

Where the legislation expressly provide as to the action an aggrieved party should take, the action has to be followed. In the present case the primary remedy which the applicant ought to have followed, before approaching this court was to approach the Magistrate Court (Lower Court) instead of this Higher Court by way of an appeal in compliance with s 11 of the Maintenance of Peace and Order Act [*Chapter 11.23*]. Since the Applicant failed to exhaust domestic remedies first, before approaching this court, the application will be dismissed.

IT IS ORDERED THAT

1. Application is dismissed.
2. The Applicant to pay costs.

TAGU J:.....

Maunga Maanda and Associates, applicant’s legal practitioners
Civil Division of the Attorney General’s Office, respondent’s legal practitioners.