

ALFRED KUSHAMISA MWAZHA  
and  
NGONI EDWARD MWAZHA  
and  
JAMES MWAZHA  
and  
RICHARD JURU  
and  
ELSON TAFU  
and  
CHARLES TEKESHE  
and  
LOVEMORE MHARADZE  
and  
NORMAN SIYAMUZHOMBWE  
versus  
AFRICAN APOSTOLIC CHURCH  
(Vapostora Ve Africa)  
and  
ERNEST MHAMBARE

HIGH COURT OF ZIMBABWE  
WAMAMBO J  
HARARE, 25 July and 26 September 2022

### **Urgent Chamber Application**

**Prof. L Madhuku**, for the applicants  
Advocate *L Uriri*, for the respondents

**WAMAMBO J:** This is an urgent chamber application filed by the eight applicants. On the other side is the African Apostolic Church (Vapostori Ve Africa) and Ernest Mhambare as the first and second respondent respectively. I rendered a judgment in chambers earlier and have now been requested to give full reasons. These are they:

The parties apparently have a long litigation history. There are a number of pending matters before the High Court including HC 5760, HC 5763, HC 6128, HC 6188, HC 6305/21, HC 6967/21, HC 256/22, HC 537/22, HC 111/22 and HC 3207/22.

In this matter the applicants seek relief as couched below:

## TERMS OF THE FINAL ORDER

### **IT IS ORDERED**

1. That the provisional order granted in favour of the applicants in this matter be and is hereby confirmed.
2. The respondents who opposed the order shall pay the costs of this application on a legal practitioner and client scale.

### INTERIM RELIEF GRANTED

Pending determination of this matter, the applicant is granted the following relief:

### **IT IS ORDERED**

1. That pending the determination of the application for rescission filed by the applicants under HC 4457/22, the execution of the default judgment by the Honourable Justice MANGOTA in HC 537/22 handed down in Harare on 24 June, 2022 be and is hereby stayed.
2. That the respondents who opposed this order shall pay the costs of this application on a legal practitioner and client scale

Clearly the relief is focused on the decision under HC 537/22 of which a rescission application has been filed under HC 4457/22.

The respondents have raised a number of points *in limine* namely:

- (1) The applicants are approaching the courts with dirty hands.
- (2) Interim relief sought is similar to final relief sought.
- (3) In the response under merits at para 12 the respondents raised lack of urgency.

I will deal with the points *in limine*. If, however, I find that one of them disposes of the matter, I will not proceed with the rest of them.

### **Dirty Hands**

On the papers this point was elaborated from para 3, 3.1, 3.2,3.3, 3.4, 3.4.1., 3.4.2. and 3.5. of the respondent's opposing affidavit deposed to by Patrick Mahachi. The points raised are as follows:

The applicants seek stay of execution but they are defying an order issued under HC 539/22.

Applicants were served with copies of the court order under HC 537/22. Their legal practitioner and respondents themselves were served with the order on 4 July 2022. Respondents were served at Mapombe and Ndarikure Shrines.

After being served with the court order, the applicants have not complied with the order and have stayed put at the Shrines and are preparing for end of month meetings. They have made the Shrines no go areas for anyone who does not pay allegiance to Alfred K Mwasha (1<sup>st</sup> applicant) who is a defrocked Bishop of the first respondent church. Orders of the court should be complied with whether one agrees with them or not. They should not be defied and the applicants are approaching the court with dirty hands. The court should withhold jurisdiction and not entertain their application until they have complied with the order as aforementioned.

This is the third order applicants have defied. On 14 October 2021 the Supreme Court issued a judgment stating that the Archbishop Ernest Paul Mwazha is the leader of the church unless and until his death or incapacitation. A few hours after the Supreme Court judgment applicants held a Priest Hood Council meeting and installed first applicant as their leader against the Supreme Court judgment.

Up to now first applicant deposes to an affidavit saying that he is the leader of the church. The issue of contempt is subject of HC 6128/21.

On 28 October 2022 MANYANGADZE J granted an interdict barring the applicant/s from holding a church service at the Ndarikure Shrine. They defied this order and even say it at p 19 of the affidavit that they held a meeting at Ndarikure Shrine on 29-31 October 2021. This after service of the order at the Shrine by the Sheriff.

The court is a court of law which cannot condone applicants' open defiance of the law. Citizens should obey the law first and argue afterwards. Applicants should have complied with the order pending a determination by this court. Without an explanation inference of disdain of the law is inescapable.

Applicants should have vacated the shrines as ordered and stop visiting them without authority.

In long oral submissions by both counsel with Advocate *Uriri* advancing his case further made the following submissions:-

The applicants have conceded that the order in question was brought to their attention and the exigencies thereof explained to them.

Relevant to this particular point *in limine* respondents pray for an order for the court to withhold its jurisdiction on account of applicant's dirty hands until the applicants have purged their contempt. The factors as summarized above were broadened in the respondent's opposing affidavit under Factual Context para 8.

The applicants also filed an answering affidavit. Notably the response to the dirty hands principle is not detailed. I have read the answering affidavit which spans pages 3 to 6 and have been unable to glean much detail addressing the dirty hands doctrine as in respondent's opposing affidavit under para 3 to 3.5.

The response as given is that HC 6128/21 has been pending since last year and was removed from the roll on 30 June 2022. Further that none of the respondents resides at any of the shrines. Further that there is no basis to link any other person to applicants.

As pointed out earlier, respondents give details on what they allege are the applicants' dirty hands in para 3, 3.1., 3.2., 3.3., 3.4., 3.4.1., 3.4.2. and 3.5. The response by applicants in the answering affidavit is contained in para 5 in a skirting manner. Reference is made therein to para 4. The said para 4 relates to HC 6128/21 which may be relevant but certainly not the only relevant alleged order not adhered to. Clearly HC 537/22 by MANGOTA J is not covered in the answering affidavit. In oral submissions Mr *Madhuku* on this preliminary point submitted as follows:-

The order under HC 537/22 was snatched. There was some understanding between the parties that the main issue would be argued under the consolidated cases.

I note that not much emphasis was placed on the dirty hands doctrine as alleged by respondents. The papers (respondent's opposing affidavit) clearly cover a lot of space thus illuminating the issue as an important and relevant preliminary point. There is not much to counter the allegations. There is more emphasis on the alleged agreement to have the main issue dealt with as per alleged agreement by the parties.

But there are court orders that are alleged to not have been adhered to. Details are given and not countered.

I will, however, emphasize on the one being applied to be rescinded HC 537/22.

Order under HC 537/22 directs applicants not to visit first applicant's church (in this case first respondent) without consent of the leadership.

(2) not to convene meetings or visit first applicant's shrine or places of worship or organize any event there. Clearly applicant does not agree with the order of HC 537/22 that explains why this application and the rescission application. But are their hands clean? Applicants were served with HC 537/22 order on 4 July 2022 and stayed put. I find the rest of the contraventions of the other orders as specified largely uncontroverted. The answering affidavit is very tense and unhelpful. I will briefly touch on the law as regards the dirty hands principle.

In *Associated Newspapers of Zimbabwe Pvt Ltd v The Minister of State for Information and Publicity in the President's Office and Others* 2004(1) ZLR 538 CHIDYAUSIKU CJ said:

“This court is a court of law and as such cannot connive at or condone the applicant’s open defiance of the law. Citizens are obliged to obey the law of the land and argue afterwards.”

In *Deputy Sheriff Harare v Mahleza and Another* 1997 (2) ZLR 425(H) at 426 A-C the following was said;

“People are not allowed to come to court seeking the court’s assistance if they are guilty of lack of probity or honesty in respect of the circumstances which cause them to seek relief from the court. It is called in time honoured legal parlance the need to have clean hands. It is a basic principle that litigants should come to court without dirty hands.

If a litigant with unclean hands is allowed to seek the court’s assistance then the court risks compromising its integrity and becoming a party to underhand transactions. As stated by DAVISON J in *Underlay v Underlay* 1977 (4) SA 23 (W) at 24 E-F.

“It is fundamental to court procedures in this country and in all civilised countries that standards of truthfulness and honesty be observed by all parties who seek relief.”

Also see *Ex Parte Rhoprotis Ltd* 1975 (1) 302 RLR 305 A and *Mutetwa v Mutetwa* 1993 (1) 176 ZLR.

In *Beverly Building Society v Minister of Labour* 2002 (2) ZLR (H) 248 C-D it is stated thus:-

“On this approach the person must first obey the supposed invalid order and thereafter seek redress if any by way of an appeal or review. He is not to determine for himself whether the order ought not to have been made but should come to court for relief and advise that it is invalid.

Otherwise as observed by CONEY J in *State v Zunge (supra)* at 271E..... the conduct of legal proceeding would become chaotic”.

Also see *Mulligan v Mulligan* 1925 WLD 164, *Hendkinson v Hendkinson* (1952) 2 ALL ER 567 (CA).

I will apply the above principles to this case. This made in the light of feasible or no counter argument raised to the detailed averments of applicants flouting court orders. I find in the circumstances that the applicants have approached this court with dirty hands.

The *point in limine* of dirty hands is thus upheld.

In the light of this finding there is no need to consider the other *points in limine* nor the merits.

It Is Ordered As follows:

- 1) The court withdraws its jurisdiction on account of applicant's dirty hands.
- 2) Applicants to pay respondents' costs.

*Lovemore Madhuku Lawyers*, applicant's legal practitioners  
*Mushangwe & Company*, respondent's legal practitioners