

NATIONAL CONSTITUTIONAL ASSEMBLY

versus

ZIMBABWE INTERNATIONAL TRADE FAIR COMPANY

and

GRAHAM ROWE

HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 26 APRIL & 23 MAY 2002

T Ndlovu for the applicant
Tshuma for the respondent

CHIWESHE J: I dismissed this application with costs and indicated that my reasons would follow. These are they.

Applicant sought a provisional order couched as follows:- "Applicant be and is

hereby given leave to exhibit at the Zimbabwe International Trade Fair after duly

satisfying first respondent's financial and other requirements." In his founding

affidavit Justine Josiah Ndlovu who is the regional chairperson of the applicant states

that on 17 April 2002 he made a written request to first respondent to exhibit at the

Zimbabwe International Trade Fair beginning 23 April 2002. In his letter he explained the objectives of applicant's participation at the Fair, namely to promote

applicant's draft constitution and to promote gender issues with a particular bias

towards women's rights in the constitution. These objectives were to be achieved

through the distribution of literature to members of the public visiting the Fair. There

would also be video clip and picture exhibitions. Applicant's personnel would be at

hand to respond to general questions from the public. On 20 April 2002 a follow up

was made with first respondent's public relations manager one Ms Bhebhe who

advised that applicant was not a commercial entity and that therefore applicant should withdraw its request. However, applicant was dissatisfied with that response since other non-commercial entities such as the Zimbabwe Republic Police and the Zimbabwe National Army were exhibiting. Applicant then contacted the second respondent who advised him that applicant's request had been referred to Harare. However in the end no response was forthcoming by the time the Fair started, prompting the present application.

Applicant avers in paragraph 14 of its founding affidavit that respondents'

failure to respond to its request is in violation of sections 20, 21 and 23 of the

constitution of Zimbabwe "particularly considering that the objective of the Fair is to

allow free exchange of such things as ideas. Members of applicant, who are entitled

to enjoy these freedoms will needless to say be deprived of their rights as spelt out in

sections 20, 21 and 23 of the constitution". Further in paragraph 15 of the same

affidavit applicant states, "I am aware that constitutional issues may not be raised

against a private person or body but it is my sincere belief that respondents' actions or

in action is clearly calculated at depriving the applicant's membership of its rights of

association and protection from discrimination which are provided for under the constitution of Zimbabwe more so considering that first respondent had, through various media invited companies and entities such as applicant to participate at the

Fair."

Mr Tshuma representing respondents argued that there was no legal basis upon

which the application could be entertained. First respondent is a private organisation

and not a public institution. The applicant concedes that constitutional issues may not

be raised against a private person or body. That being the case the only basis upon

which applicant may engage first respondent is contractual. There is no contract

between the parties. It would be incompetent for the court to compel first respondent

to enter into any contract with the applicant. That would be a violation of a well

established principle of our law - freedom of contract. The first respondent is a

private organisation. It is free to set its own criteria as to who it wishes to engage. As

such it is not under any obligation to contract with applicant. It is not even under any

legal obligation to attend to applicant's request or explain its attitude towards any

such request. Whilst applicant has the right to disseminate its message and to associate with others, it cannot compel first respondent to associate with it and use its

premises to disseminate information.

It is common cause that first respondent's primary object in holding the Fair is

to promote trade. In doing so it may be necessary to publicise and promote the event.

That exercise may involve the participation of entertainment groups and other persons

not necessarily "commercial" in outlook.

The discretion as to who is invited rests with first respondent. Reference in

this application to the presence of invitees such as the Zimbabwe Republic Police or

the Zimbabwe National Army as a basis upon which the courts should intervene in favour of applicant is therefore irrelevant and without merit.

It was for these reasons that the application was dismissed with costs.

Chiweshe J