

UNITED PENTECOSTAL CHURCH OF ZIMBABWE**Versus****SAMUEL MUGWIJI****And****EDWARD FISH GWEBU****And****PRIDE NKHOKWARA**IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 19 & 28 JUNE 2018**Opposed Application***L. Mcijo* for the applicant
K. Ngwenya, for the respondents

MAKONESE J: The applicant seeks a final interdict against the respondents. The order sought is in the following terms:

“It is ordered that:

- (a) The respondents and all those who fall under them be and are hereby interdicted from attending and interrupting with any of the meetings conducted by applicant.
- (b) The respondents and all those who fall under them be and are hereby interdicted from using the applicant’s name known as United Pentecostal Church or its abbreviations known as (U.P.C.Z.).
- (c) The respondents and all those who fall under them be and are hereby interdicted from using any of the applicant’s buildings, specifically the property known as stand number 57875 New Lobengula, Bulawayo and also 258 Samora Machel, Eastlea, Harare.
- (d) The respondents and all those who fall under them be and are hereby interdicted from conducting any demonstrations against applicant’s members, leaders and any individuals associated with applicant.
- (e) The respondents be and are hereby ordered to pay costs on a legal practitioners client scale.”

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In essence, the application before me is a prohibitory interdict against the respondents who allegedly continue to perpetuate unlawful activities that interfere with the smooth running of the activities of the United Pentecostal Church of Zimbabwe (hereinafter referred as the “Church”). The church has instituted these proceedings, represented by Clifford Makandise pursuant to a board resolution dated 27th February 2017. The resolution was authorized by the National Board in accordance with the constitution of the church. The deponent to the founding affidavit complains that the respondents working in cahoots with a Pastor A. U. Nyandoro, an errant pastor, have been leading and continue to lead a group of church members who are working against the church’s constitutionally recognized National Board in a bid to replace the National Board, as well as the Executive Board. This conduct violates Article V, section 2(9) and Article V, section 8 (2a-c) of the Church Constitution. The respondents have created parallel structures within the church and have assumed the duties of the National Board and Regional Presbyters by conducting and co-addressing board meetings. Further, in April 2017, the respondents prepared a programme for an Easter Conference with the aim and object of usurping the functions of the Executive Board, in violation of Article IV, of the Church Constitution. The respondents are accused of gross mis-management of church funds. The respondents have abused and continue to abuse applicant’s building situate at New Lobengula , Bulawayo, by failing or neglecting to pay the water and rates bills, despite receiving rentals from tenants occupying the building.

Following the persistent unlawful and disorderly behaviour of the respondents, a disciplinary hearing was held on the 6th of May 2017. The respondents refused to attend the hearing and subsequently the respondents and their group of followers were dismissed from their Ministerial duties and were ex-communicated from the church. The decision was contained in a letter dated 8 May 2017, addressed to the respondents.

The respondents have opposed those proceedings and in doing so have raised preliminary points which must be dealt with before proceeding to the merits.

Applicants have no locus standi to bring this action

The respondents argue that the applicant is a church organisation, and thus an artificial legal person capable of suing and being sued on its own. The respondents contend that Clifford Makandise purports to act on behalf of the church on the basis of a “fake” resolution passed at a meeting held on 27th February 2017 at Kwekwe. The respondents allege that such a meeting never took place and that the resolution is a creation by Clifford Makandise and others. This is denied by the applicant who state that following the meeting of the 27th February 2017 a resolution was indeed passed in terms whereof the deponent to the founding affidavit was authorized to act on behalf of the church. The meeting was properly constituted and there are minutes of the meeting which lends support to the fact that the meeting in fact took place. The resolution refers to the Articles of the Constitution granting permission for the resolution. I find no merit in this first preliminary point and therefore will not hesitate to dismiss it.

That there are material disputes of fact

In broad terms a matter will be dismissed on this ground where there exists material disputes of fact which cannot be resolved on the papers. See *Masukusa v National Foods Ltd & Anor* 1983 (1) ZLR 232. In this case, the court held per McNALLY J (as he then was) that proceedings should not be initiated by notice of motion when there is likely to be a conflict in the evidence or where the claim is illiquid. The courts will take a robust view of conflict of facts, and where the issue can be resolved on the papers, despite apparent conflicts, the court will proceed to determine the matter. I must hasten to point out that the court has a wide discretion whether or not to proceed by way of motion proceedings where the disputes of fact alleged are not such that the dispute cannot be resolved without the leading of *viva voce* evidence. I do not find in this instance that there are material disputes of fact. Nothing of substance has been raised by the respondents in their opposing affidavits. The record is replete with minutes of meetings showing that the respondents are operating outside the Constitution of the church. The respondents allege that the Constitution of the Church was never adopted and that the National Board has no powers to suspend them. In the same breath the respondents contend that they

have a right to carry out their functions in terms of the Constitution. The respondents merely state that they are not doing any wrongfulness without indicating that their actions are grounded on any provisions of the Constitution. I am convinced that the disputes are capable of resolution on the papers and that this preliminary point lacks merit. I dismiss it.

On the merits

The respondents dwelt on the preliminary preliminary points to a great deal and made brief comments on the merits. What I can make out of the respondents' case as crystallized in the heads of argument is that Clifford Makandise has no authority to represent the church. The further argument is made, without substantiating it, that the Constitution referred to by the applicant is not valid. The respondents allege that the Constitution attached to the papers is not the Constitution of the applicant as it was never signed and adopted by all the members of the Board as required.

The background to this dispute is fairly narrow in nature. The respondents lead a group of church members that has set up parallel structures in the church. The minutes of the church attached to the papers indicate that the respondents are openly rebellious to the church and its founding objectives. The respondents deny that the church Constitution exists. Put differently, the respondents refuse to be bound by the Church Constitution.

The issues for determination in this matter may be summerised for convenience as follow:

- (a) whether or not the applicant has a clear right;
- (b) whether or not the respondents have perpetrated acts that defy the applicant's Constitution;
- (c) whether there is a reasonable apprehension that they will do so.
- (d) whether or not the applicant has other remedy available;

I shall deal with each of the issues in detail as follows:

Whether or not the applicant has a clear right

The first requirement for a final interdict is to establish whether or not the applicant has a right in the form of a clear right not to have its activities and affairs interrupted by the respondents. The right contended for must be a legal right, including but limited to contract, delict or any other legal right at law. Most importantly the right must be enforceable. The requirements for the grant of a final interdict are well set out in *ZESA Staff Pension Fund v Mushambadzi* SC-57-02. See also *Setlagelo v Setlagelo* 1914 AD 221.

In this matter the applicant is a church duly constituted with a Constitution. It has the capacity to sue and to be sued in its own right. Its constitution spells out its purpose, doctrine, membership, leadership roles as well as procedure on legal issues. The respondents were excommunicated from the church by the National Board in terms of the Constitution. The applicant has the right to uphold and enforce its own Constitution as well as to carry out its mandate without any interruption. The respondents voluntarily chose to be affiliated with the applicant and in terms of Article IX of the applicant's Constitution bound themselves to the church and its Constitution. It follows that where there is an apprehension of violation of the Constitution by its members the applicant has a clear right to seek an interdict against them. The respondents cannot force themselves to be affiliated to the applicant. Applicant has the right to have the respondents prohibited from continuously interrupting the affairs and activities of the church as well as using its name.

Whether the respondents have perpetrated actions defying the Constitution

It is apparent that the respondents have been perpetrating perverse acts that clearly violate the applicant's Constitution. The respondents have been leading a group of errant pastors and mis-managing the finances of the church. They hold on to a church building in New Lobengula, Bulawayo, and recklessly fail to pay the rates and water bills for that property. The respondents were removed from church after various acts of insubordination. The respondents continue to perpetrate acts against the Constitution with the intention of disrupting the activities of the

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church. In *Church of the Province of CA Diocesan Trustees, Harare Diocese* 2012 (2) ZLR 392 (S), MALABA (DCJ) (as he then was) laid down the principle as follows:

“The principle is that, in the absence of express provision in the constitution of a voluntary association such as a church, property held in trust must be applied for the benefit of those who adhere to the fundamental principles of the association. Related to this principle that a member of a voluntary association who leaves the organisation, whilst others remain must leave the property with those who have not resigned members ...”

From the papers filed of record there can be no doubt the respondents and those that follow them have an intention to break-away from the main church. They must therefore, be interdicted from abusing the church funds, property and name.

Whether or not there is any other remedy

I have no doubt that the applicant has no suitable remedy in this matter, save for the relief sought in the order. The continued interruptions by the respondents are prejudicial to the applicant. The applicant is unable to effectively carry out its mandate as enshrined in the Constitution. An interdict against the respondents is the only suitable and available remedy.

In the circumstances, and for the foregoing reasons, the following order is made:

1. The respondents and all those acting under them or falling under them be and are hereby interdicted from attending and interrupting any proceedings conducted by the applicant.
2. The respondents and all those who act through them or fall under them be and are hereby interdicted from using the applicant's name known as United Pentecostal Church of Zimbabwe or its abbreviations (U.P.C.Z).
3. The respondents and all those who act through them or fall under them be and are hereby interdicted from using any of the applicant's buildings, specifically the property known as stand 57875 New Lobengula, Bulawayo and 258 Samora Machel, Eastlea, Harare.

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4. The respondents and all those who act through them or fall under them be and are hereby interdicted from conducting any demonstrations against applicant's members, leaders and any individuals associated with the applicant.
5. The respondents be and are hereby ordered to pay the costs of suit.

Liberty Mcijo & Associates, applicant's legal practitioners
T.J. Mabikwa & Partners, respondents' legal practitioners