

CLAUDIUS MANAMELA

And

BRIGHTON NANGA

And

SIBONGILE MANAMELA

Versus

ROSEWELL ZULU

And

APOSTOLIC FAITH MISSION OF AFRICA INTERNATIONAL

And

CLEMENT NYATHI

And

APOSTOLIC FAITH MISSION OF AFRICA

IN THE HIGH COURT OF ZIMBABWE
MABHIKWA J
BULAWAYO 18 JULY 2018

Opposed Application

1st & 2nd applicants in person
T. Masiye-Moyo for 1st, 2nd & 4th respondents

MABHIKWA J: On 30 January 2018, the applicants caused to issue legal proceedings, an application, out of this Honourable Court – “In the High Court of Zimbabwe, held in Bulawayo. The applicant sought an order that it be declared that:

- 1) That the President of the Apostolic Faith Mission of Africa International is Reverend Zulu.
- 2) That the President of the Apostolic Faith Mission of Africa, is Reverend Clement Nyathi.

On the day of the hearing on 10 July 2018, 1st applicant quickly made what he termed an application for the matter to be removed from the roll. That application which must have taken everyone by surprise was vigorously opposed by 1st, 2nd and 4th respondents.

The court may mention at this stage that for all intents and purposes it became clear as the matter progressed that this was an application (i.e. the main application and the “mini” application for removal from) were being orchestrated by the 1st applicant. The 2nd applicant despite being presenting court and allegedly appearing in an individual capacity, said virtually nothing apart from bending over for a second to say he was associating himself with 1st applicant’s submissions and this only when asked by the court.

Third respondent was not even present although upon inquiry by the court, the 3 applicants were said by the 1st applicant to be appearing purely in their individual capacity. First applicant then told the court that for some reason, 3rd applicant had failed to attend court. It was however clear that 1st applicant, as he went on over drive in submissions, was really speaking on behalf of all 3 applicants and moreso supposedly on behalf of a “church”.

This court had to discover later on as will be shown later, that the 3rd applicant is his wife as shown by various other matters brought before the courts. As the 1st applicant insisted, the court decided not to shut him out as an unrepresented litigant but to give him a long ear so to speak. The court still asked him however to be clear on what application exactly he was making in terms of what legal basis he was making it and the reasons why he was making it.

First applicant then said that this matter was heard before Mr Justice BERE who clearly recused and also clearly stated that no Judge from the Bulawayo High Court would hear the matter. He said that Justice BERE thus and then recused himself on his behalf and on behalf of all Bulawayo High Court Judges. He went on to say both parties were therefore of the view that matter would be transferred elsewhere and where shock to be told that they were appearing before me. He went on to say both parties would still press that no Bulawayo High Court Judge should hear the matter hence the application for its removal from the roll.

The court later learnt, from a copy of an order produced by *Mr Masiye-Moyo* for 1st, 2nd and 4th respondents and after reading a ‘swarm’ of other matters by the same litigants that firstly my brother Mr Justice BERE as he then was did not recuse himself from, this matter. Secondly, and in any case, he did not and could not have legally recused himself on behalf of all other Bulawayo Judges. He clearly recused himself on his own behalf only.

Thirdly, both parties, the 1st applicant seemed to mean that the applicants and the respondents were all anticipating that the matter would be transferred elsewhere or would still pursue for that position. Clearly that was not the case, he must himself have been taken by surprise, not only the respondents but also the 2nd applicant. Third applicant was not in attendance anyway.

When the court sought to confirm whether indeed a transfer of the matter was the expectation and wish of both parties, *Mr Masiye-Moyo* emphatically disagreed and submitted that the court is being misled. *Mr Moyo* also shed light on the plethora of cases, mostly applications brought before the courts by the 3 applicants and/or their group. He further submitted that the applicants merely make a flurry of accusations unfoundedly with the sole purpose of diverting the court from its core business and mandate to properly deal with issues before it.

Ultimately, 1st applicant in fact then and again went over drive in his accusations, adding to the list *Mr Moyo* himself and the Registrar’s officer. He even accused all Bulawayo Judges of “discussing” these matters before going into court. He could not back down even after being reminded that the Judge in this hearing had just come from Harare. Unclear and unheralded as it sounded, 1st applicant was directed to file his clear and written application before 18 July 2018 and serve it on the defendants’ counsel. He did not by close of business on 17 July 2018. The application/request had no merit and in any case was vigorously opposed. It is dismissed.

Coming to the main application, the court had sought to look at all the other matters involving the parties that kept on coming up in this application to have a better understanding of what was going on. This was moreso because from the reading of the papers, one was left

wondering why such a matter was brought to court by way of an application in the 1st place. In fact it had been initially brought as an urgent chamber application.

I must say that the respondents at page 68, point 18.4 of their opposing affidavit also make the same point that the application procedure should not be used in matters that are as contentious as this one.

Secondly, the applicants in their notice of application state that the application is made in terms of Order 30 of the High Court Rules 1971. Order 30 provides for interpleader applications. The facts in this application have nothing to do with an interpleader absolutely.

In addition to the court's reservations as well as point 18.4 the respondents' opposing affidavit my brother KAMOCHA J (retired), stated on 5 February 2017 in case number HC 302/17 that:

“This matter appears to have apparent and numerous disputes of fact about the ownership of the church and those can only be settled through a fully fledged trial.”

He dismissed the application.

This court managed to get 10 cases from this honourable court involving these parties at times with other members of the church (s) involved. But there appears to be about half a dozen more when considering those at the High Court, Harare, the Supreme Court and Constitutional Court as well as the Magistrates' Court. 95% or more have been brought by the applicants or with their involvement.

There is no doubt after reading a majority of those cases that the applicants have taken it upon themselves to throw applications of whatever nature to these courts like confetti at a wedding. Indeed like my brothers and sister Judges before, it is like a hobby to them.

In my view, they seem like people who sit over coffee laughing and agree to file yet another application in the hope that they may get a contradicting decision, laugh their lungs out and use it.

I would not agree more with my brother MATHONSI J in case number HB-236-17 that, “is common ground that when the church split in 2014, Manamela went with the group that totally moved away from the church premises. ... Quite clearly, Manamela wants to use the court to allow him to get into the premises which he left in 2014.”

The Judge went on to highlight what has been highlighted in various judgments involving the same litigants that from the checkered history of the matter the applicants file application in the courts seeking literally the same relief, that of being allowed to “sneak back” into the church premises they abandoned out of their free will. This has become their pastime. The current application is no exception. MANGOTA J and the Supreme Court have stated the same.

In the current application, the applicants curiously make an application which seemingly brings no benefit to them but to one of the respondents in their application. This is 3rd respondent a Reverend Clement who for obvious reasons does not oppose the application and makes no appearance. A reading of the plethora of the other cases shows that 3rd respondent is in fact part of the applicants only thrown in the current case among the pigeons so to speak.

To that extent, this court would agree with *Masiye-Moyo* that the intention is to pool wool over the court’s face. The court will agree that this application is more of application made on behalf of Clement Nyathi, who was lost all matters involving and concerning the leadership of the church and control of the assets thereof. There are nothing more than foot soldiers of Clement Nyathi. They have lost almost all the matters.

The court will re-iterate my brother MATHONSI J’s warning that a litigant or litigants cannot be allowed to enjoy filing frivolous applications at the same time abusing the court and other litigations. This court will add a warning to the 1st applicant in particular that it cannot allow a situation where officers of the court, legal practitioners included are just scandalised by spurious allegations completely unfounded and unsubstantiated. Surely the allegations against BERE JA as he then was, were quite stinging, a pattern developed when in this case, similar allegations were made on *Mr Masiye-Moyo* and the Registrar all this because the applicant want

at all cost to achieve a particular objective at a particular time. The court can only register its disdain for such an attitude to litigation and may not appear to condone it in future.

These courts are not meant for past-time games but for the genuine resolution of genuine disputes by genuine litigants.

In the result, the application be and is hereby dismissed.

Applicants be and are hereby barred from commencing litigation whatsoever in any court of Zimbabwe in connection with, or concerning the 1st respondent or the respondent church whether described as Apostolic Faith Mission of Africa or Apostolic Faith International, without the leave of a Judge or the High Court of Zimbabwe.

The applicants be and are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay the costs of suit of this application on an attorney and client scale.

Masiye-Moyo & Associates, respondents' legal practitioners