

ZIMBABWE CONGRESS OF TRADE UNIONS  
and  
GEORGE NKIWANE  
and  
JAPHET MOYO  
versus  
LOVEMORE MATOMBO  
and  
BLESSING MUJURU  
and  
SHYLET GUTU  
and  
L NDABA  
and  
ELIJAH CHIRIPASI  
and  
JORBERT MUDUMWE  
and  
HONEST MASADZA  
and  
CLIFFORD NKALA  
and  
ANGELINE CHITAMBO  
and  
MIKE SAMBO  
and  
RAYMOND MAJONGWE  
and  
BRIGHT CHIBVURI  
and  
EMELDA MHURIRO

HIGH COURT OF ZIMBABWE  
BERE J  
HARARE, 15, and 16 December 2011

*A Muchadehama*, for the applicants  
*C Mucheche*, for the respondents

BERE J: Despite the bulky paper work involved in this case coupled with the detailed and well thought submissions made by the two counsels I prefer to follow a simplified version of this case and put it in the following terms:

Following a series of meetings which were chaired by the first respondent as president of ZCTU and which commenced in 2010 and which meetings included basically all the

parties now soaked in this litigation the parties unanimously agreed that the organization would hold its General Conference between 19 and 20 August 2011.

The period between 2010 and the holding of the general conference in question was punctuated by other meetings by the applicant's members and all appeared to be on course for a smooth election of new office bearers who would continue to steer the organization.

The evidence tendered suggests that on 13 August 2011 the applicant held a special general council meeting at Jameson Hotel, Harare which was chaired by the first respondent and the meeting dealt with *inter alia* the nomination of those desiring to participate in the impending elections to be held between 19 and 20 August 2011 General Conference. The first respondent was one of the presidential nominees of the first applicant in this matter. The second, ninth and eleventh respondents were also nominated for the other posts on offer.

In the run up to the elective process of 19 to 20 August 2011 there were concerns among the first applicant's members, of four of its unions. There were differences over the verification exercise of the membership of these four unions.

It would appear that a way forward was suggested to deal with the challenges involved with the verification of the membership of the four unions and this appears not to have gone well with the first respondent on one hand and other members of the first applicant.

The result of all this was that the first respondent and the other respondents did not attend the elective process which ushered in the organization's new leadership alleging that the whole process was flawed.

Subsequently, and to be precise, on 1 September 2011 the first respondent and the other respondents initiated action in this court under HC 8572/11 seeking among other things to nullify the election of the second, third applicant and other elected members from assuming the leadership of the first applicant.

In that action the respondents (in this matter) alleged that the new leadership must not be recognised because they were ushered in in circumstances which were in clear violation of the first applicant's constitution.

In that case they also sought to have the now applicants interdicted from masquerading as union leaders. That process is in full swing and a determination will be made in this court.

The applicants in this case allege they have assumed office as a consequence of the elective process of the congress of 19 to 20 August 2011 which was not attended by the

respondents. They deny that they violated the constitution as alleged and believe everything that took place at the elective conference was above board since those who attended constituted a sufficient quorum to allow the business of the day to proceed even in the absence of the respondents, who however did not withdraw their nominations, with the result that despite their absence they participated in the resultant elections.

They now wish to be allowed to continue with their functions as the new executive arm of the ZCTU unimpeded by the conduct of the respondents who have vowed not to recognise them and continue to hold on to the leadership of the ZCTU.

It is not in dispute that the respondents have continued to hold themselves out as the true leaders of the ZCTU despite the results of the General Conference of 19 to 20 August 2011 pointing otherwise.

Faced with this predicament the applicants in this matter have filed this urgent application.

Having taken a global perspective of the whole case particularly motivated by the existence of two diametrically opposed camps each claiming to be the legitimate leader of the ZCTU I concluded that the matter requires to be dealt with on an urgent basis to create some semblance of order within the first applicant structures pending the determination of the dispute among the parties involved. I reasoned that if the two parties are allowed to continue in the manner they are currently doing the whole organization would be torn apart. Thus the urgency of the matter could not be over emphasized.

I was urged by counsel for the respondents to accept that this matter is characterised by material dispute of facts and is therefore not capable of being resolved on the papers filed.

The arguments in support of this as seen by counsel are clearly spelt out in counsel's detailed submissions in the filed heads of argument.

Counsel's argument in this regard centred around the verification of the membership process of four of the first applicant's unions as well as the interpretation of the constitutional provisions allegedly violated. There were also concerns about which Constitution of the first applicant is currently in place.

With due respect I got the impression counsel was unconsciously pushing me to determine issues that are not before me. The issues raised by counsel in this regard are outside my focus and scream for determination in case number HC 8572/11.

What has prompted this urgent application and the remedy sought is well captured in the provisional order sought by the applicants.

I did not hear the respondents disputing or controverting any of the issues raised in the interim relief sought by the applicants including the threatened holding of their own General Conference which incidentally is supposed to be held today.

If anything I clearly heard them vowing to continue with all the functions associated with the leadership of the ZCTU because they strongly believe they are the true office bearers.

It is this conduct by the respondents which the applicants want curtailed by an order of this court until such time a proper determination is made in the action that the respondents have initiated in this same court under HC 8572/11.

I am more than satisfied that this is a clear case which can be resolved on the papers filed of record as expanded by the submissions made by the applicant's counsel. This is a clear case of "illusory dispute of fact" as commented by GUBBAY JA in the much celebrated case of *Zimbabwe Bonded Fibreglass (Pvt) Ltd v Peech* 1987 (2) ZLR 338.

**Do the second and third applicants have *locus standi* to bring this action?**

My view is that *prima facie*, these applicants have the necessary *locus standi*. They are in office as a result of the ZCTU General Conference of 2011 and until that process has been set aside in HC 8527/11, the applicants must continue to be seized with the running of the organization.

The respondents are within their rights to challenge the unconstitutionality or otherwise of the process that ushered in the second and the third respondent into leadership. Respecting a process does not equate to accepting the outcome of that process.

It must dawn on the respondents that the mere fact that they do not agree with the elective process of 19 to 20 August 2011 is no good reason for refusing to graciously pave way for those elected at the congress. But the respondents cannot be the complainants, prosecutors and the judge in this case. Doing so would create chaos in the ZCTU and such a scenario must not be allowed to continue unchecked. They have done well to bring their complaints for determination. They must allow that process to take place.

If the respondents are allowed to continue with their belligerent attitude as exhibited, that in my view would amount to allowing them to embark on self-help exercise. That rule of the jungle has no place in civilised communities and the ZCTU does not deserve that. Once they have lodged their complaint, they must pave way for a third party in the form of a court to determine the authenticity or otherwise of their concerns. They must not be allowed to take

the law into their own hands by declaring themselves as the leaders of ZCTU when they know they participated and lost in the election of August 2011.

### **The Prohibited Interdict**

The requirements of such a remedy have been clearly set out by both counsels and I do not wish to re-state the law.

### **Do the applicants have a *prima facie* right?**

The reality is that the first applicant held its elective congress on 19 to 20 August 2011 and new leaders were ushered in.

These newly elected leaders have assumed office and the very strong view that I take is that the old leadership of the ZCTU which includes the first respondent and others must give space to them, the new leaders must be given space to operate in an enabling environment until the court decides otherwise in HC 8572/11. It is clear to me that the *prima facie* right of the second and third applicants is beyond reproach..

### **Have the Applicant suffered actual injury or do they have reasonable apprehension that they may suffer injury**

The harm to the applicant clearly manifests itself in the uncompromising attitude exhibited by the respondents that they will not give space to the second and third applicant among others because they believe the process that brought about them was flawed.

The first respondent has the guts and audacity to declare himself the de jure President of the ZCTU, despite there being sufficient evidence to suggest that from 2010 he has been part and parcel of the processes that culminated in the Congress of 19 to 20 August 2011 which ushered in the ZCTU's new leadership.

The chronology of events as narrated by the second applicant through his founding affidavit shows a clearly defined movement towards the preparatory exercise that resulted in the congress that ushered in the second and third respondents, among others into the leadership of ZCTU. The first respondent, and all the other respondents actively participated in that process to the stage of being voted for and losing. But despite this, they still want to maintain a grip on the organization.

This is not healthy for ZCTU as an organization. The confusion created by the first respondent and his camp is potentially dangerous to the organization. All these respondents are consciously involved in an attempt to cause confusion within the organization and if not curtailed, chaos will reign supreme. The result of all this is harmful to ZCTU.

Flowing from this I am unable to imagine any other remedy which would protect and or secure the rights and interests of the applicants in this matter.

It is clear to me that unless the remedy sought is granted the applicants would not be able to discharge their functions. The respondents must for the time being graciously step aside and allow sanity to prevail in ZCTU. If they have a good case, the remedy they have sought in the main application will deal with that. But the law of the jungle cannot be allowed to reign supreme at this stage.

In the final analysis, I hereby grant the provisional order sought as amended.

*Mbidzo Muchadehama & Makoni*, applicants' legal practitioners

*Matsikidze & Mucheche*, respondents' legal practitioners