

BETHLEHEM APOSTOLIC CHURCH
and
BISHOP ZACHARIA CALEB GEMU N.O
versus
REPHIO CHIRUMBWA
and
GEORGE SAIZ
and
EMMANUEL HOVE
and
DAVID NJANJI
and
JOHN MUHOMBA
and
PATRICK ALFANDIKA
and
TINASHE MASIKATI
and
MIKE MURONDA
and
MOSES MURONDA

HIGH COURT OF ZIMBABWE
MANZUNZU J
HARARE, 10 September 2018

Urgent Application

N. Magiya, for the applicants
M.K. Chigudu, for the respondents

MANZUNZU J: This is an urgent application which was argued before me on 11 April 2018. After hearing Counsels for the applicants and respondents I handed down an *ex tempore* judgment and issued an order in the following terms:

“IT IS ORDERED THAT:

1. The respondents are ordered to restore the status quo ante which was obtaining prior to the 29th of March 2018 and restore the applicants into the church temple and premises at Stand No. 3874 Caledonia, Harare forthwith.
2. The respondents are ordered to release and return the temple keys to the applicants within 24 hours of the date of this order.

3. The respondents are to pay costs of suit on a client-attorney scale, jointly and severally, one paying, others to be absolved.”

The respondents have requested for the written reasons for the order.

These are they:

The two applicants filed an urgent application against the 9 respondents seeking an order in the following terms:

“IT IS ORDERED THAT:

1. The respondents are ordered to restore the *status quo ante* which was obtaining prior to the 29th of March 2018 and restore the applicants into the church temple and premises at Stand No. 3874 Caledonia, Harare forthwith.
2. The respondents are barred from accessing the applicants’ premises including at Stand No. 3874 Caledonia, Harare unless with the consent of the applicants.
3. The respondents are ordered to release and return the temple keys to the applicants within 24 hours of the date of this order.
4. The respondent are to pay coasts of suit on a client -attorney scale, jointly and severally, one paying, others to be absolved.”

The applicants are therefore seeking for a spoliation order.

There is a leadership wrangle within the Bethlehem Apostolic Church. Disputes started when the then Bishop of the church Alfred Zamnkosini resigned from that position on 12 June 2015. A number of litigation has been filed either in this court or the Magistrates’ Court. One such case is HC 3350/17 in which the two applicants were the plaintiffs suing Alfred Zamnkosini (former bishop) and Rephio Chirumbwa (1st respondent in this matter). TSANGA J granted an order on 17 October 2017 in the following terms:

“IT IS ORDERED BY CONSENT THAT:

1. Parties be and are hereby ordered to return to the status quo as at the time that 1st defendant tendered his resignation letter on the 12th of June 2015.
2. The 2nd plaintiff who was the archdeacon at that time, be and is hereby ordered to return the position of archdeacon and act as the bishop of the church until 24 February 2018, when the plaintiff holds its annual general meeting in terms of the constitution.
3. Parties are hereby directed to appoint a bishop at the annual general meeting to be held on the 24th of February 2018, in terms of the 1st plaintiffs’ constitution.
4. Parties be are hereby directed to worship together as they used to as at the 12th of June 2015, when 1st defendant resigned.
5. Each party to bear its own costs.”

Parties were directed to appoint a bishop on 24 February 2018 in terms of the Church Constitution.

According to the second applicant there was compliance with this directive on 24 February 2018 with the result that he was appointed the bishop the position he held in an acting

capacity from 17 October 2017. He said he was then handed all church property and the keys to the church building. He further alleges that on 29 March 2018 the respondents came to the church and forcibly evicted him and other church members and took away the keys.

The respondents in opposition, dispute that the second applicant was elected bishop. They alleged a plethora of irregularities in the process which cannot allow this matter to proceed as an application because of several material disputes.

But what is the matter before the court? It is not about the propriety or otherwise of the process of appointing the bishop. The respondents claim that the first respondent was elected bishop.

This is an application seeking a spoliation order. Unfortunately the parties appeared to have been driven by their differences and concentrated more on who was legitimately appointed the bishop. But that is not the matter before this court.

The requirements for spoliation are well known.

There must be peaceful and undisturbed possession. Secondly, the applicant must have been despoiled unlawfully. The second applicant was, after the order of 17 October 2017, in peaceful and undisturbed possession of church property as the acting bishop. That cannot be denied. However, we did not hear if second applicant lawfully parted with such possession after the elections. The second applicant claimed was elected bishop. In the same breath first respondent is said to have been elected bishop. It is clear the result of that election is disputed. Although the respondents deny despoiling the second applicant, the scale of probabilities favour the second applicant; why? Because all along he was in possession as the acting bishop before 24 February 2018. He continued with such peaceful possession after 24 February 2018. If indeed he was still in that peaceful possession why would he complain that he was despoiled by the respondents on 29 March 2018. The only probable conclusion is that he was despoiled unlawfully.

The court was inclined to grant the order in favour of the applicants with amendment by deletion of para 2 from the draft order.

The restoration of possession is not a determination of the parties rights as to who was elected the bishop of the church. That dispute of the outcome of the election is for another day. For these reasons I granted the restoration order with costs.

Moyo & Jera Legal Practitioners, respondents' legal practitioners