

KADOMA AGRICULTURAL SHOW SOCIETY
And
GIFT NDHLOVU
And
THERESA CHINGALE
And
CHRISPEN DIRAO
And
TALENT GARIKAI
And
LUCKSON MUNYAI
And
LOCADIA DUBE
And
ACKIM MHENE
And
HARDBOY MANDAVA
Versus
PATSON MADERA

HIGH COURT CHINHOYI
BACHI MZAWAZI J
CHINHOYI, 31 OCTOBER – 27 NOVEMBER 2024

Opposed Application

M. Chikono, for the applicants
J. T. Sande, for the respondent

BACHI MZAWAZI J:

Facts

1. The 2nd to the 8th applicants and the respondent are all members of the 1st Applicant, a legal entity. Through an extant judgment of this court in case number HC89/2022, the 2nd to the 8th applicants are the legally recognized executive members of the 1st applicant until their term of office lapses or is terminated in accordance with their written Constitution. The said judgment also nullified the suspension of the respondent from

his position as chairperson of the applicant's executive committee that had been done by the applicants as ultra vires their governing Constitution. What it entails is that from a clear reading of and the plain grammatical interpretation of the judgment the said applicants and the respondent are the executive committee of the 1st applicant until their terms of office are terminated in terms of the provisions of their constitution. ¹

2. From the onset it is evident that the parties have been in acrimony. They did not honour the above stated order of the court as they existed and operated separately. The respondent is said to have unilaterally elected a new executive committee and has been dominantly, at the exclusion of the 2nd to the 8th applicants, running the affairs of the 1st applicant.
3. It is also succinctly clear from that background, that neither of the parties has taken their Constitutional route to solve their numerous power-hungry disputes resulting in several counter-lawsuits both in the Magistrates court and this court with no finality in sight. This is one such court application whereby the 2nd to the 8th applicants are seeking a final interdict prohibiting the respondent from interfering in any manner with the 1st applicant's activities including the running of shows at the showgrounds situate at Kadoma at all times and preventing the 2nd to 9th applicants and their subordinates from entering the 1st applicant's facilities or utilizing the same for the benefit of the 1st applicant.
4. The terms of the order sought are couched as follows:
 - a) The application for an interdict be and is hereby granted.
 - b) The respondent, personally or through agents, directly or indirectly be and is hereby ordered not to interfere in any manner with the applicant's activities including the running of shows at the showgrounds situate at Kadoma at all times.
 - c) The respondent and all those purportedly acting through him be and are hereby ordered not to prevent the 2nd to 9th applicants and their subordinates from entering the 1st applicant's facilities or utilizing the same for the benefit of the 1st applicant.

¹ Zambesi Gas Zimbabwe Ltd v N.R. Barber Ltd SC 3/2020

- d) The respondent and his agents be and are hereby ordered to restore possession of the guardroom, offices, receipt books, date stamps, banking details in the name of the 1st applicant and letter heads belonging to the 1st applicant.
- e) The respondent be and is hereby ordered to pay costs on a higher scale of legal practitioner and client.

Points in limine

5. The respondent in retaliation raised five points in limine. They abandoned one and motivated four. Their argument that the applicants lack *locus standi* to interdict the respondent as the existing chairperson is well articulated but misplaced. Whilst I agree with Ms Tarugarira –Sande, counsel for the respondent, that there was and still is need for the parties to act through a duly conducted general meeting in line with the governing constitution, it generally does not oust the applicants’ right to institute legal action or seek legal recourse. GOWORA CCJ in *Museredza and Others v Minister of Agriculture, Lands, Water and Rural Settlement and 10 Others* CCZ 1 /22, had this to say in respect to *locus standi in judicio*,

“In law, standing or *locus standi* is a condition that a party seeking a legal remedy must show that they have by demonstrating to the court sufficient connection to and harm from the law or action challenged to support that party’s participation in the case.”¹

6. In *Sibanda & Ors v The Apostolic Faith Mission of Portland Oregon (Southern African Headquarters) Inc* SC 49/18, HLATSHWAYO JA considered the principle of *locus standi* and stated the following:
 - i. “It is trite that *locus standi* is the capacity of a party to bring a matter before a court of law. The law is clear on the point that to establish *locus standi*, a party must show a direct and substantial interest in the matter”
7. See *United Watch & Diamond Company (Pty) Ltd & Ors v Disa Hotels Ltd & Anor* 1972 (4) SA 409 (c) at 415 A-C, *Matambanadzo v Goven* SC 23-04, *Zimbabwe Teachers Association & Ors v Minister of Education* 1990 (2) ZLR 48 (HC) and *Mupungu v Minister of Justice, Legal and Parliamentary Affairs And 6 Others* CCZ 7 /2021.
8. In that regard, by virtue of being the executive members and on behalf of the 1st applicant the rest of the applicants have direct and substantial interests in the 1st

applicant and do have the right to bring legal action against an errant member of the society. They do have the right to seek legal protection pending an action to be taken through their domestic channels. I am persuaded by the applicants' argument on this point, that, the applicants have a real and direct interest in the affairs of the 1st applicant, as declared by this court in the above cited judgment HC89/22, hence they have *locus standi* to institute legal action for as long as it is within the parameters of their Constitution.

9. Counsel for the respondent failed to provide the relevant Constitutional provisions of their society that states who has the right to sue or not and the persons who are immune from litigation.² I am not persuaded by the respondent's further objections that there are other cases pending before this court and the magistrates court on the same cause of action or that the subject matter of this application is *res judicata*. Case, CHN CG 254/23, though one for an interdict, was meant for a specific event which had since passed that needed to be barred. The current case is indeed for an interdict but for future events, as the 1st applicant's main mandate is operating agricultural annual shows which are perennial justifying this new action.
10. Cases, HCH 2864/23 and HCCC 50/24 that have been referred to as pending are for a declaration of rights and contempt of court respectively. Notably, this current application before this court is for an interdict intended to prohibit unlawful acts. I am not convinced that the respondent's arguments on these points are sustainable. The two objections are in turn dismissed.
11. The same applies to the respondent's last preliminary point, on the competency of the relief sought, my considered view is that the relief if successful is competent.³ It is not against past invasions as suggested by *Ms Sande* for the respondents. Judicial notice has been taken that the thrust of this application was to bar the Agricultural Show which

² See *Sibanda & Ors v The Apostolic Faith Mission of Portland Oregon (Southern African Headquarters) Inc* SC 49/18 & *Matambanadzo V Goven* SC23 -04

³ Requirements for a special plea of *re judicata* were laid out in the case *Wolfendon v Jackson* 1985 (2) ZLR 313 (S), that is the action must be between the a) same parties b) the same cause of action c) same relief sought. *Mhungu v Mtindi* 1986 (2) ZLR 171 (SC) speaks to the requirement and the *lis pendednis de*..... Of Herbstein and Van Winsen in the Civil Predio of Super Courts in South Africa 3rd ed at page 269 et seq page 268 See, *Gwale v National Railways of Zimbabwe* 2002 (1) ZLR 679 (S), *Banda & Ors v Ziso* 1999 (1) ZLR 340 (S) at 342.

has already taken place. Nonetheless, the interdict sought is also against continuous invasions.

The Merits

12. On the merits, it is established law that for an application for a final interdict to succeed the applicant must show that they have a clear right. There must be well grounded basis for believing that irreparable harm or injury will be suffered if the interdict is not granted. In addition, the balance of convenience must favour the applicant. Lastly that no alternative satisfactory remedy is available to the applicants⁴. The 2nd to the 8th applicants were declared the recognized executive members of the 1st applicant by an extant order of this court. They are the executive committee, thus, they do have the right to bring an action against any errant executive member of the society. See *Makoni v Makoni & Anor HC 820 of 2014*.
13. The respondent unless removed from office through a general meeting is still the chair person. He cannot be a chairman without a following. He works hand in glove with the executive committee. Clause 10 of the parties' constitution spells out the composition of the executive committee which comprises of the chair person and all the posts of the 8 applicants. They are a team or a body, they operate as such with defined rolls within the parameters of the constitution.
14. The respondent does not make or take unilateral actions unsanctioned or not in consultation with the executive committee. Any actions done outside the scope of the constitution are null and void. Uncontested submissions supported by evidence reveal that the chairperson is running the affairs of the 1st applicant like a one-man band. He has conducted several agricultural shows at the exclusion of the committee and without resolutions passed in meetings as directed by their constitution. These actions evidenced by the numerous countersuits constitutes harm of a continuous nature. They deserve censor.
15. Given this background there is indeed harm, continuous in nature, as the respondent, is on the other hand not following due process by barring them from entering the Society's

⁴ Setlegelo v Setlegelo 1914 AD 221 – Makoni v Makoni & Anor HC 208-2014.

business premises and participating in the activities of the 1st applicant. The applicants are in turn not following the route dictated by the 2022 judgment that recourse lies in a general meeting as stipulated by their Constitution of the society.

16. The applicants have satisfied the first two requirements for the relief they are seeking. However, I am not satisfied that they have met the third requirement. The court is of the view that there is another remedy open to the parties, other than endless litigation without addressing the main issue. That is the invocation of the provisions of the Constitution, to conduct a general meeting and let the respondent's tenure of office and any other office bearer's for that matter, be decided in that General meeting.⁵
17. Not only did the parties fail to abide by their constitution they have also failed to honour an order of this court. There is an extant judgment of this court which directed the parties to go through the annual general meeting routine amongst other pertinent issues in order to resolve their disputes once and for all. This court cannot sanitize the actions of litigants who disregard the terms of the orders by this court.
18. The onus to prove all the three requirements for an application for an interdict to succeed is borne by the applicants. They have failed to do so. Their application cannot succeed. See *Movement for Democratic Change (Tsvangirai) and Ors v Lilia Timevious & Ors SC 9/22*. Nonetheless, I am disposed towards directing that unless and until both parties have complied with the order by Muzofa J in case HC89/2022, no party should single handedly carry out the operations, manage the properties or benefit from the business of the 1st applicant before the annual general meeting conducted in terms of their constitution.

Moyo Chikono & Gumiro, the applicant's legal practitioners

Tarugarira Sande Attorneys, the respondent's legal practitioners.

⁵ Clause 9 to 11 of the Constitution