

ZIMBABWE CONGRESS OF TRADE UNIONS
versus
OFFICER COMMANDING POLICE HARARE CENTRAL DISTRICT
CHIEF SUPRITENDENT N. SAUNYAMA (N.O)
and
COMMISSSIONER GENERAL OF POLICE
and
CO-MINISTERS OF HOME AFFAIRS

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 12 & 18 September 2013

Urgent chamber application

J. Bhamu, for the applicant
M.Chimombe, for the respondent

MATHONSI J: The applicant is the registered conglomeration of trade unions and is engaged in the furtherance of its members' interests. The first respondent is the regulating authority for Harare Central in terms of the Public Order and Security Act [*Cap 11:17*] (the Act) while the second and third respondents are the Commissioner General of Police and the Co-ministers of Home Affairs under whose authority the first respondent falls.

The applicant has approached this court on a certificate of urgency seeking the following relief:

“TERMS OF THE FINAL DRAFT (SIC)

IT IS THEREBY OREDERD THAT:

1. There is no lawful basis for the first and second respondents to purport to deny authority for the holding of a procession planned by the applicant for any of its activities.
2. The letter by the first respondent not authorising or approving applicant's activities be declared to (be) null and void of no legal consequence.
3. The second respondent be and is hereby perpetually interdicted from interfering, prohibiting or banning processions and gatherings held by the applicant.
4. Respondents pay the costs of this application on a legal practitioner and client scale, jointly and severally, the one paying the other to be absolved.

TERMS OF THE INTERIM RELIEF GRANTED (SIC)

1. That the commemorations and procession on this 14th of September 2013 are to go ahead as planned with or without police escort.
2. The respondents or anyone acting on respondents' instructions be and is (sic) hereby interdicted from interfering or stopping the commemorations and

procession as planned by the applicant on the 14th of September (2013) in Harare.”

On 15 August 2013, in the normal conduct of its trade union activities, the applicant wrote a letter to the first respondent notifying him of its intended commemoration activities due on 14 September 2013. That letter reads in pertinent part thus:

“RE:SEPTEMBER 13TH COMMEMORATION

We refer to the above.

We hereby notify you that the ZCTU will be hosting a commemoration of Trade Union Rights on Saturday 14 September 2013 at Globe House Jason Moyo Avenue, 2nd Floor.

As a build up to this event workers decided to offer their services to the community by way of cleaning Copacabana bus stop area. We also intend to start cleaning at 09:30 hours and finish at 13:00 hours. After cleaning there will be a march that will start at 13:30 hours. Please see the attached diagram of route and direction. We expect about 150 people to attend the event and the programme will start from 09:30 hours to 13:30 hours and the rest of the programme will proceed at offices at 51 Globe House till 16:00 hours.

Your usual co-operation in this regard will be greatly appreciated.

Yours sincerely

J. Moyo

Secretary General”

The first respondent gave his “usual co-operation” in a letter dated 20 August 2013 which reads in part:

“RE: SEPTEMBER 13TH COMMEMORATION

1. The above subject matter is pertinent.
2. Your notification letter to host a commemoration on Trade Union Rights on the 14th of September 2013 at Globe House Jason Moyo Avenue, 2nd floor starting with a clean up at Copacabana and a march from 09:30 hours to 13:30 hours has been noted.
3. Your march shall start from Chinhoyi Street into R. Mugabe, into First Street, then J. Moyo to Globe House for the event.
4. Please confine your clean up, route and event to the above stated venues and times outlined. We will monitor.
5. You are expected to co-operate with the police and other government agents.

SAUNYAMA N.J

Chief Superintendent Officer Commanding Police
Harare District”

The first respondent's co-operation however quickly ran out for unexplained reasons even before the date of the event arrived because on 3 September 2013 he made an about turn writing to the applicant in the following;

“RE SEPTEMBER 13TH COMMEMORATION

1. The above subject matter is pertinent.
2. Please note that the permission that was since (sic) granted to your notification letter to hold a clean up event and march on the 14th September 2013 from 09:30 hours to 13:30 hours has been withdrawn due to security reasons:
 - i)- the political situation is not yet conducive for such events as unscrupulous elements might take advantage and hijack the whole programme.
 - ii)- Intelligence at hand indicates that there are some people who are waiting to hijack any march or procession.
3. You can however go ahead with gathering at Globe House for your commemoration.
4. Any inconveniences caused are sincerely regretted.

SAUNYAMA N.J Chief Superintendent
Officer Commanding Police
HARARE CENTRAL DISTRICT.”

It is these latest developments which have necessitated this approach to the court by the applicant which protests that it has organised the commemoration of Trade Union Rights on behalf of its affiliates. The event is central to the applicant and its members as it is an expression and celebration of not only the advancement of workers the world over, but also the enjoyment of their freedom of expression and association as well as the fight for the realisation of workers rights.

The applicant maintains that the procession which the first respondent is interfering with show- cases the pride of workers with the communities they live in and for that reason it has expended a lot of time, money and other resources preparing for and co-ordinating the procession . After receiving the first respondent's initial letter allowing the procession the applicant says it intensified preparations by inviting its members and organising logistics.

It has been argued on behalf of the applicant that as a registered trade union, it does not require the authority of the first respondent to hold the procession which is for *bona fide* trade union purposes and as such is exempted from the provisions of the Public Order and Security Act [*Cap 11:7*] requiring notice to be given to the police. For that reason, the applicant should be protected from the first respondent's interference in the conduct of its trade union business.

The applicant fears that the police will interfere or disrupt its activities they have purported to impose a ban on the procession. It therefore seeks interim relief interdicting such interference afore said.

In his opposing affidavit the first respondent states that he has received intelligence that there are some unscrupulous elements waiting to hijack the situation and that as the march will be conducted across greater Harare by a huge crowd this will compromise security and disturb business and traffic. He goes on to say that since the activities will not be confined to the applicant's offices, this brings them under his control and regulation by virtue of the provisions of the Act.

The first respondent has not elaborated on the nature of the intelligence electing to remain vague. Regarding the disturbance of business and traffic surely these claims cannot be taken seriously because it is the duty of the police to manage the situation. In any event it is not the first time that processions have been conducted in town. It would appear from the wording of the first respondent's letter of 3 September 2013 and the opposing affidavit that he is wallowing under the misunderstanding that he has power and authority to grant "permission" to the applicant for the holding of a procession. This misconception presumably arises out of a misreading of Part IV of the Public Order and Security Act which sets out the procedure to be followed by an organiser of a procession or public demonstration, including the giving of notice in terms of s25 to the regulating authority, of the procession or public demonstration.

I have already stated that the applicant is a genuine and registered trade union. The procession which it has organised is for *bona fide* trade union business which is in the interest of its members and or affiliates. For that reason it enjoys an exemption from the provisions of the Act relating to notification being given to the regulating authority. This is by virtue of the provisions of s 26A as read with the schedule to the Act.

This court has, in the past had occasion to state that sec(s) 23, 24, 25 and 26 of the Act governing the holding of public gatherings have no application where, a gathering or commemoration is organised for *bona fide* trade union business because they enjoy an exemption; *ZCTU v Police Kwekwe and Ors* 2010 (1) ZLR 277 (H) 280 C-D. This court concluded at 280 E-F that:

"Therefore by purporting to regulate the conduct of the workers' commemoration, the first respondent was engaging in an exercise in extreme futility as he possessed no

such power. To the extent that the commemoration was organised by the applicant for *bona fide* trade union purposes, which it was, the applicant was not required to follow the procedure set out in sec(s) 23, 24, 25 and 26 of the Act as it enjoyed an exemption.”

See also *ZCTU v Officer Commanding Harare District and Anor* 2002 (1) ZLR 323 (H) 323 G-H.

Clearly therefore the first respondent could not withdraw permission which it did not have authority to give in the first place. It is the constitutional duty of the police to maintain law and order as the citizens of this country go about the enjoyment of their rights including the rights of trade unions to engage in commemorations and processions which further their interests. The police should therefore protect the applicant’s members as they go about their activities on 14 September 2013 as opposed to preventing and curtailing the enjoyment of their rights.

Accordingly, I grant the provisional order as amended, the interim relief of which is as follows:

Pending determination of this matter the applicant is granted the following relief:

1. The commemorations and procession organised by the applicant for 14 September 2013 are allowed to go ahead without hindrance from the respondents.
2. The respondents are directed to provide police escorts to ensure the security of the applicant’s members during those activities.
3. The respondents or anyone acting on their instructions are hereby interdicted from interfering or stopping the commemorations and procession as planned by the applicant.

Zimbabwe lawyers for human rights, applicant’s legal practitioners
The Civil division of the Attorney General’s office, respondent’s legal practitioner