

AFRICAN APOSTOLIC FAITH MISSION IN ZIMBABWE  
versus  
ELIAS MOFFAT CHINYUKU

IN THE HIGH COURT OF ZIMBABWE  
PHIRI J  
HARARE, 13 October 2016 & 12 June 2018

### **Urgent Chamber Application : Reasons for the ruling**

PHIRI J: On the 13<sup>th</sup> October, 2016 this court granted a provisional order couched in the following terms;

#### Interim Relief Granted

That pending the confirmation or discharge of the provisional order, the following interim relief is granted:

1. "It be declared that the respondent as well as his agents be and are hereby interdicted from holding their convention in the name of applicant at Concension or at any other place in Zimbabwe as from the 14<sup>th</sup> up to the 16<sup>th</sup> of October 2016 until this application has been determined to finality.
2. The holding of any future church sessions, conventions or meetings under applicant's name at the behest of the respondent or his agents be declared unlawful pending the finalization of this application.
3. The respondent be and is hereby barred from presenting or purporting to act as the General Secretary of applicant, either to its members or to members of the public pending the final determination of this case.
4. The wearing of the applicant's green and pink uniform by members aligned to respondent or his agents at any other place in Zimbabwe without the authority of applicant's current leaders be declared unlawful pending the final conclusion of this case.
5. The Sheriff of the High Court be and is hereby empowered to ensure that the respondent complies with the contents of this High Court order in full pending the final determination of this urgent chamber application."

This court has been asked to provide its reasons for the granting of that order and the following are the reasons.

#### The Court Application

The court application was at the instance of the African Apostolic Faith Mission of Zimbabwe. Its founding affidavit was deposed by one Jona Ndalama Kapaiza, he being duly authorised by the applicant's interim mission board. The board was referred to as the applicant's highest governing body.

The applicants contended that they were governed by a constitution which was annexed to the founding affidavit as annexure “E’.

Also annexed to the founding affidavit was a memorandum of agreement between the African Apostolic Faith Mission in Zimbabwe and “The apostles church”.

Clause 6 of the aforesaid constitution states the following;

Para 1 of the “Unsigned” Memorandum of Agreement states the following:

“1 That both parties shall join hands and work together as one church using one name and under the leadership of Bishop C.K Chiumbu.”

The applicant’s founding affidavit was supported by supporting affidavits of Pastors Paminus Musindo, Pastor Albert Kwaramba and Bishop Cephass Kachada Chiumbu.

During the hearing of the urgent application this court had to adjourn the hearing to enable Bishop Cephass Kachada Chiumbu to be called to verify whether or not indeed he had the overall “supreme power and control” over the affairs of the applicant.

I was satisfied that *prima facie* the Bishop was the supreme governing authority of the applicant.

### The Dispute

Applicant contended that the respondent was dismissed from its church membership and leadership after he among other complaints, principally violated one of the church rules by calling a separate convention to be held at “Rudaviro Farm” in Chegutu instead of subscribing to and attending a convention called by the Bishop at “Ameva Secondary School in Chegutu.”

Applicant submitted that in terms of s 17 of its constitution it was the Bishop who was authorised to call for the convention.

Respondent allegedly held a convention from the 6<sup>th</sup> up to 13<sup>th</sup> August 2016.

The result was that the applicant’s mission board and its Bishop severed ties with the respondent and his followers, and, dismissed him from their church and his leadership position.

At various places across the country applicant alleged that respondent intended to hold other conventions using the applicant’s name.

The applicant attached to this application its Board Resolutions and correspondence addressed to the respondent and, dismissing him from office.

A new Interim Board was put in place to administer and run the affairs of the Board.

The applicant contended that the respondent allegedly distributed letters to the whole church calling for a further conversation which was not sanctioned by the Bishop and the applicant's Board. In so doing he was using the applicant's name in violation of his dismissal.

Accordingly the applicant's approached this court for an interdict barring the respondent from using its name and or holding any future church sessions, meetings or conventions under the applicant's name.

### The Law

The well-known requirements for the granting of an interim interdict are set out in the case of *Setloego v Setloego* 1914 A.D. and refined 34 years later in the case of *Welster v Mitchell* (1) SA 1186 (WLD):

“The test requires that an applicant that claims an interim interdict must establish:

- (a) a *prima facie* right logo if it is open to some doubt
- (b) a reasonable and imminent harm to the right if an interdict is not granted.
- (c) The balance of convenience must favour the grant of the interdict and
- (d) The applicant must have no other remedy.”

Also see the case of *National Treasury and Ors v Opposition to Urban Tolling Alliance and Ors* 2012 (6) SA 223 (CC).

### Court Findings

This court finds that the applicant has on a balance of convenience, presented a strong case for the interim relief prayed for has been established.

The applicant has successfully established that this matter is urgent as the continued use of its name by the respondent would prejudice the applicant in its activities.

The applicant has also successfully established that it has the *prima facie* right to govern the affairs of the African Apostolic Faith Mission in Zimbabwe under the auspices of its Bishop, (C.K. Chiumbu) and its Interim Mission Board.

The applicant has also successfully established that the conduct of the respondent in so continuing to use its name and letter heads, and or the calling of the holding of church conventions, purportedly under the name of the applicant, infringes on the applicant's rights.

Accordingly this court holds that the applicant is entitled to the interim relief that it sought in terms of the Draft Order filed of record.

*Jona Ndalama Kapaiza*, applicant's legal practitioners  
*Mhishi Legal Practice*, respondent's legal practitioners