

ZPRA VETERANS TRUST	Applicant
Versus	
FALLEN HEROES TRUST	1st Respondent
And	
GEORGE RUTANHIRE	2nd Respondent
And	
THERESA MAKONE, N.O.	3rd Respondent
And	
KEMBO MOHADI	4th Respondent
(Co-Ministers of Home Affairs)	
And	
SEKAI HOLLAND, N.O	5th Respondent
And	
MOSES MZILA NDLOVU, N.O	6th Respondent
And	
JOHN LANDA NKOMO, N.O.	7th Respondent
(Co-Minister of State: National Healing, Reconciliation & Intergration)	
JOINT MONITORING & IMPLEMENTATION COMMITTEE (JOMIC)	8th Respondent

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 6 APRIL AND 7 APRIL 2011

Mr V.L. Nkomo with Mr S. Mazibisa, for the Applicant
No appearance from all the Respondents

JUDGMENT

MATHONSI J: This is an application brought on a certificate of urgency and the Applicant seeks a provisional order in the following terms:

"TERMS OF THE FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms:

1. The 1st Respondent, FALLEN HEROES TRUST and 2nd Respondent, GEORGE RUTANHIRE be and are hereby interdicted from conducting any exhumation of the remains of any persons who died or disappeared during the pre-independence or post –independence military or political hostilities in Zimbabwe, outside the mandate, framework or authority of a process set up and agreed upon by the 3rd to 8th Respondents and involving all stakeholders and interested parties.

2. The 3rd and 4th Respondents, co-ministers of Home Affairs, be and are hereby directed to ensure there are no unauthorised exhumations of the remains of any persons who died during the pre-independence or post – independence military or political hostilities in Zimbabwe outside the mandate, framework or authority of a process set up and agreed upon by the 3rd to 8th Respondents and involving all stake – holders and interested parties.

3. The 5th, 6th and 7th Respondents co-ministers of State: National Healing, Reconciliation and Integration, be and are hereby directed to come up with a legal process, after consultation with all stakeholders and interested parties countrywide, which shall be the framework for any exhumation of the remains or persons who died or disappeared during the pre-independence or post - independence military or political hostilities in Zimbabwe.

4. The 8th Respondent, Jomic, be and is hereby directed to oversee and ensure that the 1st to 7th Respondents comply with the terms of this order.

5. The Respondents, jointly and severally, the one paying the other to be absolved, be and are hereby ordered to pay the costs of suit.

INTERIM RELIEF GRANTED

Pending the finalisation of this matter, Applicant be and is hereby granted the following relief:

1. The 1st Respondent, FALLEN HEROES TRUST and its members, and the 2nd Respondent, GEORGE RUTANHIRE, be and are hereby ordered and directed, jointly and severally, to forthwith stop and desist from conducting any exhumation of the remains of persons found at a disused mine shaft in Mount Darwin, Mashonaland Central and anywhere else in Zimbabwe.

2. The 3rd and 4th Respondent, Co-Ministers of Home Affairs, be and are hereby directed to ensure that the 1st and 2nd Respondents forthwith comply with the terms of this interim order.”

When this application was initially placed before me and upon realising that it raised issues of national interest affecting a lot of people including relatives of those who died and were buried during the war of independence and disturbances which may have occurred after independence, I directed that it be served upon all the Respondents together with a notice of set down to enable them to respond to the application.

At the commencement of hearing Mr Nkomo appearing for the Applicant submitted certificates of service of both the application and the notice of set down upon all the 8

Respondents. Despite such services, none of the Respondents attended the hearing. I therefore have not had the benefit of hearing their side of the story.

The Applicant is an association of veterans of the war of liberation of Zimbabwe who fought the war under the Zimbabwe People's Revolutionary Army (ZPRA), the military wing of the Zimbabwe African People's Union (ZAPU). It is registered as such in terms of the Private Voluntary Organisations Act, Chapter 17:05. In terms of its constitution which was registered with the Register of Deeds on 15 September 2009, one of its objectives is;

“to rehabilitate, maintain and propitiate the war time graves, shrines and monuments as a legacy of the liberation struggle.”

In his founding affidavit, Lazarus Ncube, the chairman of the Applicant alleged that the 1st and 2nd Respondents have been involved in a chaotic and non-scientific exhumation of the remains of people who died and were thrown into a disused mineshaft at Chibondo village in Mount Drwin. It is further alleged that no forensic investigations and anthropological analysis of the remains has been made as no experts have been involved in the process.

It is the Applicant's case that the exhumations do not meet the minimum standard required by international instruments for such an undertaking and reliance is placed on the United Nations Model Protocol on the Forensic Investigation of Deaths suspected to have been caused by a Human Rights Violation. When all this has been happening the 3rd and 4th Respondents whose ministry is charged with superintending national monuments have stood akimbo remaining disinterested on lookers even as 1st and 2nd Respondents have no lawful authority to undertake the exhumation exercise.

According to the Applicant, the organ on national healing reconciliation and integration and the 8th Respondent, both established in terms of the Global Political Agreement which brought about the government of national unity have not shown any interest whatsoever in the activities of the 1st and 2nd Respondents which, in their present form, appear to be an interference with or tampering with crime scenes. Applicant is of the view that if the exhumations are allowed to continue they will result in the obliteration of crucial evidence which might be useful and of national interest.

The exhumations have been undertaken without consulting the Applicant and other stake holders and are not even a national effort. Mr Nkomo for the Applicant strongly argued that the Applicant has a direct interest in the issue given that some of its fallen heroes could have been thrown into the mine shaft being tampered with by the 1st and 2nd Respondents. He insisted that ZPRA forces died and / or disappeared during and after the liberation war in Mashonaland West and Central. A ZPRA 21 Infantry Battalion which also operated in Mount Darwin had a number of soldiers who may be lying at Chibondo Village, Mount Darwin.

The exhumation process that is going on has excluded the Applicant and other interested parties and the government is not involved making it a private adventure of the 1st and 2nd Respondents. As already stated, none of the Respondents have contested these claims. In the absence of any opposition, I have no reason to disbelieve the Applicant and I am indeed satisfied that the Applicant has made out a case for the grant of the interim relief sought.

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

1. The 1st Respondent, FALLEN HEROES TRUST and its members, and the 2nd Respondent, GEORGE RUTANHIRE, be and are hereby ordered and directed jointly and severally to forthwith stop and desist from conducting any exhumation of the remains of persons found at a disused mineshaft in Mount Darwin, Mashonaland Central and anywhere else in Zimbabwe.

1. The 3rd and 4th Respondents, Co-Ministers of Home Affairs, be and are hereby directed to ensure that the 1st and 2nd Respondents forth with comply with the terms of this interim order.

Cheda & Partners, Applicant's Legal Practitioners