**REVEREND CLEMENT NYATHI**
**And**
**REVEREND JAMES FIDELIS MORRIS**
**And**
**REVEREND JOSEPH MATONGO**
**And**
**REVEREND ABEL HELE MEPITULANGOGAJA**
**And**
**REVEREND PHIBION TAGARIRA MANYOWA**
**And**
**THE APOSTOLIC FAITH MISSION OF AFRICA**

**Versus**

**THE COMMISSIONER GENERAL**
**ZIMBABWE REPUBLIC POLICE**
**And**
**THE OFFICER IN CHARGE NJUBE POLICE STATION**
**And**
**TONY TSHUMA**
**And**
**ELLIOT NCUBE**

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 16 JUNE 2015 & 3 JUNE 2016

**Urgent Chamber Application**

*Mr Mugiya* for the applicants
*V. Majoko* for 3rd & 4th respondents

**MAKONESE J:** On 10 May 2016 this matter was placed before me with a request that I provide reasons for an order I granted on 16 June 2015. The order I granted is in the following terms:

> "Interim relief granted
>
> This order shall operate as a temporary interdict directing 1st and 2nd respondents to render to the Sheriff such assistance as he may require to carry out his duties in terms of the order granted under case number HC 2700/14."

It has now been brought to my attention that an appeal was noted against this interim order on 23 June 2015. I observe that in the pending appeal it is contended that an appeal is noted against "the whole judgment of the court *a quo*." I will not dwell on the rest of the issues raised in the notice of appeal, as that matter is now pending in the Supreme Court. It seems to me that the appeal was filed without a full appreciation that in fact I issued an "interim" order and that there was in fact no "whole judgment". Be that as it may, I am now required to furnish reasons for the granting of the order which I now proceed to do.

Prior to the 16th June 2015 when I granted the interim order, the parties had filed numerous applications in this court. At least no less than eight applications had been filed in this matter prior to the granting of the order in issue. The primary cause for these applications is that serious fights were raging regarding the disputed leadership in a church known as The Apostolic Faith Mission of Africa, whose main headquarters was situated in Bulawayo. It was alleged by both sides that their leaders were legitimate and authentic. On 11 June 2015 under case number HC 2700/14, MOYO J granted an order whose operative part provided *inter alia* as follows:

> "1. The 1st and 2nd respondents as well as their agents be and are hereby interdicted from interfering, visiting or using the 6th applicant's properties wherever situate without the express authority and or consent of the applicants'
> 2. The 1st and 2nd respondents as well as their agents are barred from presenting or purporting to act as the 6th applicant either to the 6th applicant's members or to the members of the public.
> 3. The 1st and 2nd respondents and their agents are ordered to release and return the control of the 6th applicant's properties wherever situate to the applicants and to surrender the 6th applicant's affairs and activities to the applicants forthwith. The 6th applicant's properties shall include but not limited to those listed on the order granted by this court on HC 2166/14."

When the urgent chamber application was placed before me I noted that the respondents had been served with the order under case number HC 2700/14 on the 13th June 2015. What concerned me were the comments on the Deputy Sheriff's return of service which were in the following terms:-

*"Attempted execution failed to fully execute the court order due to resistance of respondent's agents. Reported the matter to police who said cannot assist in driving the agents out because they are not cited in the court order."*

In terms of Order 32 Rule 242 of the High Court Civil Rules, 1971 –

"(1) A chamber application shall be served on all interested parties unless the defendant or respondent, as the case may be, has previously had due notice of the order sought and is in default or unless the applicant reasonably believes one or more of the following:-
(a) that the matter is uncontentious in that no person other than the applicant can reasonably be expected to be affected by the order sought or object to it;
(b) …
(c) that there is a risk of perverse conduct in that any person who would otherwise be entitled to notice of the application is likely to act so as to defeat, wholly or partly, the purpose of the application prior to an order being granted or served.
(d) that the matter is so urgent and the risk of irreparable damage to the applicant is so great that there is insufficient time to give due notice to those otherwise entitled to it;
(e) that there is any other reason, acceptable to the judge, why such notice should not be given."

It seems evident to me that the comments on the Deputy Sheriff's return of service of 13th June 2015 left no doubt that the respondents and his agents or followers were aware of the order granted under case number HC 2700/14 and that they resisted its enforcement. The respondents conducted themselves in a manner that indicated an unwillingness to comply with an order of the court. Faced with that situation the court was obliged to give such order as would ensure compliance with its orders. It was clear that service of the urgent chamber application would likely lead to perverse conduct and that the matter needed to be dealt with urgently. I have already indicated that the respective parties to this dispute had filed several applications against each other. It is beyond dispute that there were running battles between the parties in this matter. Given the urgency of the matter and the history of the extremely volatile circumstances surrounding the matter I found it prudent to grant an "interim" order. I was acutely aware that the order I granted was to provide interim relief and that the respondents could, if so disposed file a notice of opposition within the period stipulated in the order. Further, and in any event the

respondents could in terms of the Rules, anticipate the matter and set it down for argument. There was therefore no prejudice to the respondents.

In the matter of *G R Engineering (Pvt) Ltd and Godfrey Chinhengo* v *Mire Engineering (Pvt) Ltd* HB-29-05, the court held at page 1 of the cyclostyled judgment as follows:

> "The rationale of an *ex parte* application is to curb the expected perverse conduct on the part of the respondent which would result in irreparable harm on applicants, ultimately leaving them with no suitable remedy. It is on this basis that I find that the matter is urgent."

A clear reading of Rule 242 reflects that chamber applications are ordinarily to be served on all interested parties. The rules then make specific provisions when such service may be dispensed with. The court thus has a discretion whether or not to grant an order *ex parte.* In the circumstances and in pursuance of the provisions of Order 32 Rule 242 I was inclined to grant the order to ensure that respondents complied with the orders of the court. Assuming that the respondents did not agree with the terms of the order they had the option to oppose confirmation of the provisional order.

I accordingly granted the interim relief as prayed.

*Messrs Mugiya & Macharaga Law Chambers c/o Muzvuzvu & Mguni Law Chambers,* applicant's legal practitioners
*Messrs Majoko & Majoko,* 3rd & 4th respondents' legal practitioners