

HB 29-17
HC 383-17
XREF HC 266/17
XREF HC 302/17

CLAUDIOUS MANAMELA
and
BRIGHTON NANGA
and
SAZIWE DUBE
and
ENOCK MARUME
versus
THE COMMISSIONER GENERAL
ZIMBABWE REPUBLIC POLICE
and
THE OFFICER ON CHARGE NJUBE
POLICE STATION BULAWAYO
and
APOSTOLIC FAITH MISSION OF AFRICA

HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 14 FEBRUARY 2017, AND 23 FEBRUARY 2017

Ex Parte Chamber Application

Applicant in person
Mrs Hove with *Mr Chivayo* for 1st and 2nd respondents
Mr Masiye-Moyo with him Pastor Ndlovu for 3rd respondents

KAMOCHA J: The interim relief sought in this matter was couched in the following fashion:

“Pending determination of this matter, the applicant (*sic*) is granted the following relief:

1. All 3rd respondent members are interdicted from barring or blocking any other church member from entering the 3rd respondent premises wherever situated.
2. All 3rd respondent members are interdicted from inciting violence, threats of violence, assault or act on an (*sic*) unlawful manner within the 3rd respondent premises wherever situated.

3. Z R Police is empowered to arrest and detain and charge fine of US\$100-00 or three months imprisonment to any church member who incites violence, threats of violence, assault or act in any unlawful manner that disturb other church members peace of worshipping wherever 3rd respondent premises situated.
4. Z R Police is empowered to use minimum force on all 3rd respondent premises wherever situated when necessary to give peace and order.
5. This order shall operate at all 3rd respondent premises wherever situated.
6. This order shall remain operational notwithstanding any appeals or applications as may be noted by any party hereto till 3rd respondent leadership matters are fully finalized.
7. No order as to costs.”

On 31 January 2017 the applicant Claudious Manamela and Brighton Nanga filed a similar application on a certificate of urgency seeking the same redress. After reading the papers filed of record this court concluded thus:

- “(1). This matter appears to have apparent numerous disputes of facts about the ownership of the church. These can only be settled through a fully fledged long trial. The applicants should prepare themselves for such contest in court.
- (2) Those who resort to violence should be prosecuted for the offences they allegedly committed and should be punished accordingly.
- (3) Accordingly this matter does not deserve to jump the queue and is hereby dismissed.

While that application had two applicants the present one has an increased number of four. The number of respondents is the same in both applications. The first respondent in the first matter is different from the second matter. The substance in both applications is the same and so is the redress being sought.

The matter is clearly *res judicata*.

The present application was only signed by the first applicant Claudious Manamela but all the other three applicants did not sign it as required by Order 32 rule 227 (2)(b) of the rules of this court which recites that

“(2) every written application and notice of opposition shall—

(a) -----

(b) be signed by the applicant or respondent, as the case may be, or by his legal practitioner,”

Manamela is not a legal practitioner to have signed on behalf of the other three applicants,

Further two of applicants did not file their supporting affidavits.

My sister MOYO J in a case where Manamela had a similar dispute relating to the same church held that Manamela had no *locus standi* in the matter. There is no reason for me to hold otherwise.

The factions of the Apostolic Faith Mission of Africa have taken each other to court many times. Some matters have been brought to finality by the Supreme Court. However, there are still two which are still pending in Harare in cases HH 12163/15 and HH 385/16. These two matters have been consolidated and are being dealt with at the same time. A decision will be made about who seceded from the church and the court will determine the rights of each faction in the church. This application is in respect of the same issues. This matter is therefore clearly *lis pendens*.

It is common ground that when the church split in 2014 Manamela went with the group that totally moved away from the church premises. There then followed a series of court cases in which Manamela’s group came out second best losing all five cases on appeal.

It was submitted by the church that because he lost the five cases on appeal he was desperate to get back inside thereby causing chaos as he tries to come back.

Applicant has claimed no right either clear or *prima facie*. Those are the rights the court in Harare is still to determine by hearing evidence.

Quite clearly Manamela wants to use the court to allow him to get into the premises which he left in 2014.

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At the end of arguments by the parties the court dismissed the application with costs on the ordinary scale and indicated that the reason would follow. These are they.

Attorney General's Office Civil Division, 1st & 2nd respondents' legal practitioners
Messrs Masiye-Moyo & Associates, 3rd respondents' legal practitioners