

THE ZIMBABWE CONGRESS OF TRADE UNIONS
versus
THE OFFICER COMMANDING POLICE HARARE DISTRICT
and
THE COMMISSIONER OF POLICE

HIGH COURT OF ZIMBABWE
CHINHENGO J
HARARE 11 April 2002

Urgent Application

Adv. A.P. de Bourbon, for the applicant
Miss Zengeni, for the respondents

CHINHENGO J: This application was brought before me as an urgent matter on 9 April 2002. I directed that the respondents could file their notices of opposition and opposing affidavits by 2.00p.m. on 10 April and that the respondent could file its answering affidavit by 9.00a.m. on 11 April. I also directed that the matter be set down before me in chambers at 10.30a.m. on 11 April 2002. The Attorney-General's Office had received the application on 8 April and, despite my directions, it had not done anything until 8.45a.m. on the date of the hearing, when the application was given to *Miss Zengeni*. I sympathise with *Miss Zengeni* in her predicament because she had to be ready to argue the matter within about two hours.

The applicant (hereinafter called "the ZCTU") is registered as a trade union in terms of s 33 of the Labour Relations Act [Chapter 28:03] ("the Act"). To it are affiliated no less than

twenty nine trade groups or unions. The ZCTU represents the interests of workers and it champions and protects their interests. Its highest organ is the General Conference, which meets once every five years to elect the organisation's office bearers and to appoint its auditors. In between these meetings of the General Conference the powers of the ZCTU are exercised by its General Council, which is a representative body of the unions affiliated to the ZCTU. In terms of the ZCTU Constitution the General Council must meet three times in a year but it in fact meets more frequently to discharge its functions.

On 14 March 2002, the General Council organised a meeting of its members in order to attend to the business of the ZCTU. The meeting was aborted because the Zimbabwe Republic Police (ZRP), represented by Assistant Inspector Ndou, insisted that police officers should attend the meeting for the purpose of assessing whether the General Council's deliberations conformed with the requirements of the Labour Relations Act [*Chapter 28:03*]. The said Ndou is said to have stated that he and his fellow police officers were entitled, in terms of the Public Order and Security Act [*Chapter 11:17*] (POSA), to attend the meeting and if denied that entitlement he was to close the meeting by force and prevent it from taking place. According to the applicant, this attitude by the police was the first time that it had been displayed. The General Council objected to the police sitting at, or attending, its meeting but because Ndou and his team of police officers persisted in their demands the meeting was called off. The applicant averred that it incurred wasted costs of bringing delegates to the venue of the meeting and that

it incurred other costs as well.

On 25 March 2002, the applicant's legal practitioner sought from the first respondent a written assurance that the police would not interfere with, or demand attendance at, another meeting of the General Council set for 27 March. The letter by the applicant's legal practitioner, which comprehensively expressed the ZCTU's concerns, reads as follows:

"ZIMBABWE CONGRESS OF TRADE UNIONS - GENERAL COUNCIL MEETING AT QUALITY INTERNATIONAL HOTEL ON WEDNESDAY 27 MARCH 2002 AT 10.00.

We have been instructed by and act for and on behalf of our above referred client.

Our client is a policy making organ of the Zimbabwe Congress of Trade Union, an umbrella body of registered trade unions.

Our client wishes to hold a meeting on 27 March 2002 at 10.00 am at Quality International Hotel.

The meeting is a purely and strictly trade union meeting convened to discuss and debate on ZCTU union affairs and business.

In the past, your officers and in particular Assistant Inspector Ndou and two others insisted that a meeting of the ZCTU Council was necessarily a political meeting and had to be convened and regulated in terms of the Public Order and Security Act Chapter 11:17 (POSA).

On 14 March 2002 and at the said venue Assistant Inspector Ndou advised our clients that they should in future seek police clearance, direction and regulation of their meetings and if they should proceed without such clearance they would face, head on, the full weight of the penalty provisions of POSA.

He went on to state that if they did apply for clearance, such clearance would not be denied unreasonably but conditions would be set for the minimum of which would be the presence of at least two police officers in plain clothes within the meeting room.

With respect, the position adopted by Assistant Inspector Ndou is wrong.

The following are the reasons why:-

- i. The ZCTU Council Meeting is exempt from POSA police regulations by paragraph (j) of the schedule to the said Act.
- ii. The ZCTU Council Meeting is not and cannot be a political meeting as unions are formed by and represent workers of diverse political affiliation and inclination.
- iii. The ZCTU Council Meeting is not and cannot for the purposes of POSA be a public gathering because it is held by council members **inter se** to the exclusion of members of the public who have no access to it at all.
- iv. It is an internal meeting of a lawful organisation which is entitled in terms of the Constitutional rights and freedom of the Citizen, to pursue discussions and debate without undue interference and or regulation.

It is not a public gathering.
- v. In terms of the African Charter on Human Rights, the United Nations Declaration of the Human Rights and various labour conventions to which Zimbabwe is a signatory the right of citizens to participate in trade union activities and the right of associations of such unions to free assembly is paramount and may not be interfered with or subtracted from without good cause.

We have been assured and instructed that the meeting does not and cannot pose a threat to the public order, peace or security of any of the citizen and is purely private trade union business.

We have been instructed to notify you of the meeting not in accordance with the provisions of POSA, because they do not apply, but out of abundance of caution and for courtesy as there have been threats to interfere or ban any future meetings purportedly in terms of Section 26 of POSA.

Please be advised that the organiser of the private labour meeting for 27 March 2002 is the Secretary General of the ZCTU.

We have been instructed to demand as we hereby do that you kindly confirm in writing that your officers will not, as threatened, prohibit or interfere in any way or make a forced attendance within the meeting room on the date, place and time herein above specified.

We will be most obliged to receive, by return of fax, your position by 4.30 pm today.

If we should not hear from you, it will be assumed the threats by your officers still stand and an application will be made to the High Court on an urgent basis for relief as may be appropriate in the circumstances."

A written response to this was received and it reads:

"With reference to your letter dated 25/03/2002 I wish to state that your meeting scheduled for 27/03/2002 at Quality International Hotel has not been prohibited. The meeting is held exclusively for bona-fide trade union purposes for the conduct of business in

accordance with the labour relations Act Chapter 28:01.

It is against this background that I doubt your sincerity. Why should you wish to exclude the Police in your deliberations if the issues to be discussed are purely labour issues. The Police are empowered to enter any such buildings where public gatherings are in progress in order to ascertain whether the deliberations being done thereat are in conformity with the requirements of POSA.”

It was not clear from the papers filed of record whether the meeting of 27 March was held. At the hearing, however, it was confirmed that that meeting was held and that the police did not interfere with it by attending.

The General Council intends to hold another meeting to deliberate on the business of the applicant on 12 April 2002. It is concerned that unless the legal position is clarified, the ZRP would again insist that its officers must enter the venue of the meeting, listen to the discussion thereat and ascertain whether or not the deliberations at the meeting conform to the Labour Relations Act.

The position of the applicant is clearly outlined in the founding affidavit. It believes that it is entitled to the fundamental rights and freedoms enshrined in the Constitution of Zimbabwe and in particular the freedoms of expression, assembly and association as set out in ss 11, 20 and 21 of the Constitution. It believes that the restrictions on public meetings contained in POSA do not apply to it at all, and that there is no other law which derogates from the fundamental rights and freedoms aforementioned and which allows the respondents to attend its meetings. It believes

that its freedom of expression, assembly and association would be compromised and prejudiced if persons who are not members of the applicant's General Council and other uninvited persons such as members of the ZRP attend their meetings perforce.

The applicant averred that the first respondent has again indicated that she will arrange for her subordinates to attend the meeting of the General Council to be held on 12 April, whether or not the applicant has invited members of the ZRP, and further that the first respondent has threatened that if police officers are prevented from attending she will stop the meeting from taking place. The respondents did not dispute these averments. The applicant is concerned that if that should happen and the meeting is not held, it will have again incurred wasted costs of organising the meeting.

The applicant has thus sought a provisional order with the following interim relief:

“That the respondents and their representatives are hereby prohibited from attending the meeting of the General Council of the applicant to be held on Friday 12 April 2002.”

It appeared to me that the interim relief sought by the applicant is not really interim in respect of the meeting of 12 April. If the interim relief were granted the meeting will be held without the rights of the respondents having been finally determined. And the same meeting cannot be held again. Once held it is the end of the matter. To grant the interim relief would be contrary to the decision of this Court in *Kuvarega v The Registrar-General and Anor* 1998 (1) ZLR 188 (H) where it was held that, because interim relief can be obtained on the mere

showing of a *prima facie* case, if the effect of the interim relief is to obtain the substantive relief sought then the litigant would obtain final relief without proving his case. In my view the substantive relief sought by the applicant in respect of the meeting of 12 April is to have it held without police interference. And if that is correct, then quite clearly the applicant will have obtained the substantive relief it sought on the basis of only a *prima facie* case established. But I think a closer scrutiny of the final relief sought by the applicant reveals that the applicant's main and abiding concern is that it should be able to hold its meetings now and in the future without police interference. The final relief sought is that:

“ TERMS OF FINAL ORDER SOUGHT

1. IT IS DECLARED THAT:-

- 1.1 By virtue of paragraph (j) of the Schedule to the Public Order and Security Act [Chapter 11:17] (No. 1/2002), section 24 of the said Act does not apply to any public gathering of the Applicant.
- 1.2 The First and Second Respondents are not empowered in terms of the Public Order and Security Act (No. 1/2002) [Chapter 11:17] or any other law to enter any public place, as defined in section 2 of the Public Order and Security Act, where the Applicant is holding a public gathering in order to ascertain whether the deliberations being done thereat are in conformity with the requirements of the said Act.

2. IT IS ORDERED THAT:-

- 2.1 The Respondents and their representatives be and are hereby prohibited from attending the meeting of the General Council of the Applicant to be held on Friday, 12 April 2002 or any other such

similar meeting to be held in the future.

2.2 That the First and Second Respondents jointly and severally, the one paying the other to be absolved, shall pay the costs of this application.”

At the hearing the parties agreed that, in order to avoid the difficulty I have mentioned, this matter should be dealt with to finality. With this agreement, even if I were to be wrong that the interim relief has final effect, that becomes irrelevant.

The applicant’s main contention is that it may hold its meetings without police interference because, as a registered trade union, its meetings are exempted from the provisions of s 24 of POSA.

It is necessary to analyse s 24 of POSA. It provides as follows:

“24 Organiser to notify regulating authority of intention to hold public gathering

(1) Subject to subsection (5), the organiser of a public gathering shall give at least four clear days’ written notice of the holding of the gathering to the regulating authority for the area in which the gathering is to be held:

Provided that the regulating authority may, in his discretion, permit shorter notice to be given.

(2) For the avoidance of doubt, it is declared that the purpose of the notice required by subsection (1) is –

- (a) to afford the regulating authority a reasonable opportunity of anticipating or preventing any public disorder or a breach of the peace; and
- (b) to facilitate co-operation between the Police Force and the organiser of the gathering concerned; and

(c) to ensure that the gathering concerned does not unduly interfere with rights of others or lead to an obstruction of traffic, a breach of the peace or public disorder.

(3) Any Saturday, Sunday or public holiday falling within the four-day period of notice referred to in subsection (1) shall be counted as part of the period.

(4) Where there are two or more organisers of a public gathering, the giving of notice by any one of them in terms of subsection (1) shall be a discharge of the duty imposed upon the other or others by that subsection.

(5) This section shall not apply to public gatherings of a class described in the Schedule.

(6) Any organiser of a public gathering who fails to notify the regulating authority for the area of the gathering in accordance with subsection (1) shall be guilty of an offence and liable to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”

The first respondent is the regulating authority in Harare where the applicant’s meeting is to be held. Subsection (2) above specifically provides that, for the avoidance of doubt, the regulating authority is notified of any public meeting for the following purposes: to afford the regulating authority a reasonable opportunity of anticipating or preventing any public disorder or a breach of the peace; to facilitate co-operation between the police and the organiser of the meeting; to ensure that the gathering concerned does not unduly interfere with the

rights of others or lead to an obstruction of traffic, a breach of peace or public disorder. These purposes are, in my view, exhaustively listed and no other purpose can be included in the list. The purpose which the respondents' representatives wish to pursue, i.e. to be able to ascertain whether the meeting is *bona fide*, is not covered by s 24 of POSA. Parliament must have recognised that the powers of the regulating authority must, for the public good, be strictly circumscribed by exhaustively listing the purposes for which the regulating authority is notified of any public meeting or gathering.

Subsection (5) of s 24 specifically exempts certain classes of public gatherings from the application of that section. Among them, as provided in paragraph (j) of the Schedule to s 24(5), is any public gathering:

“held by a registered trade union for *bona fide* trade union purposes of the conduct of business in accordance with the Labour Relations Act [*Chapter 28:01*].”

The respondents have not shown that the meeting to be held by the applicant, a registered trade union, on 12 April is not for *bona fide* trade union purposes. They made an unsubstantiated allegation that the meeting is not *bona fide* as required. It is apparent that they have nothing more than a suspicion. That is not adequate reason for the regulating authority to want to act and interfere with the applicant's meeting.

Another basis on which this matter may be examined are the definitions of “public gathering”, “public meeting” and “meeting” in s 2 of POSA. POSA does not require that persons who intend

to hold meetings which are not meetings as defined in that Act, or which are not public in nature, should give notice to the regulating authority in terms of s 24. In so providing Parliament appreciated that the law would be so Draconian as to be a blatant contravention of the rights and freedoms enshrined in the Constitution, hence it did not require any notice to be given in respect of such meetings. The three definitions in s 2 of POSA which are relevant in this regard are formulated thus:

“public gathering” means a public meeting or a public demonstration”.

“public meeting” means any meeting in a public place or meeting which the public or any section of the public is permitted to attend whether on payment or otherwise”

“meeting” means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters.”

These definitions put it beyond any doubt that the public gathering referred to in s 24 of POSA is a meeting held in a public place or one to which the public is permitted to attend and which is held to discuss matters of public interest. The applicant’s affidavit indicates that the meeting of the General Council is not one at which matters of public interest are to be discussed. It is only a public gathering because it is to be held in a hotel. But it is in fact a meeting of the General Council of the applicant. In my view therefore, even if the applicant was not exempted from the application of s 24 of POSA, which I have found it is, its meeting would still not be a meeting to which those provisions apply. The definitions I have referred to were uprooted verbatim from the

Law and Order (Maintenance) Act [*Chapter 11:07*] which was repealed by POSA. An instructive case on the meaning of “public gathering”, and the test as to what constitutes a “meeting” as defined in POSA, is to be found in *R v Chisanga* 1964 RLR 575 where the court held that a meeting of persons who belonged to the PCC, a political party, for the purpose of forming a local executive of the party and of informing the executive what their work would be and also of teaching the members of the executive party songs was held not to be a meeting as defined in the Act. BEADLE CJ at 577D – F said that –

“Before this gathering can be held to be a “meeting” within the meaning of that word as defined in the Act, the Crown must satisfy the Court that the purpose of that meeting was to “discuss matters of public interest” or for the purpose of “the expression of views on such matters”. As I have said, the purpose of the meeting was to form in that area an executive of the PCC to tell them what their work was and to teach them party songs. It seems to me that while this might be a matter of great interest to that particular section of the PCC who attended these two gatherings, the formation of this executive and the due instruction of the PCC in the Sabi North Area of Southern Rhodesia is hardly a matter of public interest within the meaning of the expression where it occurs in the definition of the word “meeting”.”

I have stated that the meeting of the applicant’s General Council cannot be classified as a meeting within the meaning of that word as defined in POSA, nor can it be described as a public gathering to which s 24 of POSA applies.

I am quite satisfied that the relief sought by the applicant must, subject to what I shall state hereunder, be granted.

It is not necessary for me to deal with the issue of the applicant’s

entitlement to enjoy the fundamental rights of freedom of expression, assembly and association. Those freedoms are a right granted to the applicant by sections 20 and 21 of the Constitution. Unless it is shown that an authority is acting on the basis of a law which curtails that freedom as provided in the said sections of the Constitution, then the applicant's rights may not be interfered with.

I do not think that the declarator sought by the applicant should be granted on the facts of this matter. Paragraph 1.1 of the draft declarator is too widely cast or worded. It would be a declaration to the effect that s 24 of POSA does not apply to any public gathering of the applicant, even if a meeting held by the applicant is not held for *bona fide* trade union purposes as mentioned in paragraph (j) of the Schedule to POSA and the respondents were able to show that this was so. Paragraph 2.1 thereof is also inappropriately worded for the same reason. Additionally, the declarator would be superfluous where an order favourable to the applicant is to be made. But I find that the terms of the order, not the declarator, sought are an appropriate relief to be granted because the General Council meetings are not meetings within the meaning of the definition of the word "meeting" in s 2 of POSA. I am also satisfied that the applicant's meetings are exempt from the provisions of s 24 of the POSA by virtue of the exclusion in subsection (5) of that section, as read with paragraph (j) of the Schedule to POSA.

In the result it is ordered that –

1. The respondents and their representatives be and are hereby prohibited from sitting at or attending the meeting

of the General Council of the Applicant to be held on Friday 12 April 2002 or any other similar meeting to be held in the future.

2. That the first and second respondents jointly and severally the one paying the other to be absolved, shall pay the costs of this application.

Gill, Godlonton & Gerrans, legal practitioners for the applicant.

Attorney-General's Office, legal practitioners for the respondents.