

NGUNGUNYANA HOUSING CO-OPERATIVE  
SOCIETY LIMITED  
versus  
MINISTER OF SMALL MEDIUM ENTERPRISES  
AND CO-OPERATIVES DEVELOPMENT N.O.  
and  
REGISTRAR OF CO-OPERATIVE SOCIETIES N.O  
and  
DOMINIC MUZAVAZI

HIGH COURT OF ZIMBABWE  
MTSHIYA J  
HARARE, 10 March 2016, 23 March 2016 and 11 May 2016

### **Opposed Application**

*I. M Sithole*, for the applicant  
*Ms A Magunde*, for the 1<sup>st</sup> and 2<sup>nd</sup> respondents

MTSHIYA J: this is an opposed application wherein the applicant seeks the following relief:

“IT IS ORDERED THAT:

1. The application be is hereby granted.
2. The appointment of 3<sup>rd</sup> respondent by 1<sup>st</sup> and or 2<sup>nd</sup> respondent be and is hereby declared unlawful, unprocedural and unconstitutional.
3. 3<sup>rd</sup> respondent be and is hereby barred from holding himself out as applicant’s administrator.
4. Respondents to bear cost of this application on a higher scale”

The background to the relief sought is that on 17 November 2013 members of the applicant elected a new interim management committee. The deponent to the founding affidavit was appointed chairman. The interim committee claimed to have been subsequently confirmed as the substantive management committee on 21 September 2014. This new management committee replaced the one that had been in place since August 2009. The first and second respondents were made aware of these developments. The first respondent, the Minister of Small

Medium Enterprises and Co-operative Development administers the Co-operative Societies Act (*Chapter 24:05*) (the Act). It is therefore the Ministry of Small and Medium Enterprises and Co-operative Development (the Ministry) that, through the second respondent, ensures that co-operative societies, such as the applicant, are properly run.

On 8 October 2015 the third respondent, who, together with the first respondent, did not file any opposing papers to this application, presented himself to the applicant's legal practitioners as the new administrator of the applicant. This development was preceded by a letter from the office of the first respondent. The letter, dated 13 August 2015, and addressed to the management committee, reads as follows:

“RE: INVITATION TO A MEETING ON THE APPOINTMENT OF AN ADMINISTRATOR  
TO YOUR CO-OPERATIVE

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Reference is made to the above subject matter.

The Registrar of Co-operatives is inviting you to a meeting on the 18<sup>th</sup> of August 2015 at Linquenda House in the Ministry's boardroom on the 5<sup>th</sup> floor at 0900 hours. The agenda of the meeting is to inform you about the appointment of an administrator who shall be running your co-operative affairs, to discuss the salary of the administrator and to set a date and time for a special general meeting for the official introduction of the administrator to the co-operative by the Ministry officials.

The appointment of an administrator is done in terms of section 120 (1) (2) of the Co-operative Societies Act (*Chapter 24:05*) of Zimbabwe.

Be guided accordingly

E Ndlovu  
A/Secretary for Small and Medium Enterprises and Cooperative Development”

The applicant is opposed to the appointment of an administrator, namely the third respondent and hence this application.

However, in the opposing affidavit, the second respondent states that:

“The co-operative was informed of the Administrator's appointment and the reasons thereof through the duly recognized Management Committee (Annexure G)”.

Annexure ‘G’ is the above letter of 13 August 2015, which letter did not give any reasons for the appointment of the Administrator.

In its founding affidavit the applicant avers:

- “16. 3<sup>rd</sup> respondent presented himself to our legal practitioners on 8 October 2015 around 1500hrs where he announce that he had been appointed by the 1<sup>st</sup> and or 2<sup>nd</sup> respondents as an Administrator over the affairs of the applicant.
17. Up to date, I have not seen any formal communication showing that appointment save for a letter from 1<sup>st</sup> and 2<sup>nd</sup> respondents Ministry addressed to the officer in charge, Southerton Police Station, and copied to the City of Harare introducing 3<sup>rd</sup> respondent as applicant’s Administrator. He denied me and my legal practitioners the opportunity to photocopy the letter.
18. I am not even aware of any reason why 3<sup>rd</sup> respondent was appointed or the need for same. His terms of reference remain a mystery to the applicant who is the subject of the Administration. The possibility of overstepping authority and abuse of office cannot therefore be over emphasized”.

The applicant then proceeds to say its members were never given an opportunity to be heard as provided for in sections 68 and 3 of the Constitution of Zimbabwe Amendment (No 20) Act 2013 (the Constitution) and the Administrative Justice Act [*Chapter 10:28*] respectively.

Section 68 of the constitution provides as follows:

“Right to administrative justice

- (1) Every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair.
- (2) Any person whose right, freedom, interest or legitimate expectation has been adversely affected by administrative conduct has the right to be given promptly and in writing the reasons for the conduct.
- (3) An Act of Parliament must give effect to these rights, and must –
  - (a) provide for the review of administrative conduct by a court or, where appropriate, by an independent and impartial tribunal;
  - (b) impose a duty on the State to give effect to the rights in subsections (1) and (2); and
  - (c) promote an efficient administration.”

Section 3 of the Administrative Justice Act provides, in full, as follows:

“**Duty of administrative authority**

- (1) An administrative authority which has the responsibility or power to take any administrative action which may affect the rights, interests or legitimate expectations of any person shall :-
  - (a) act lawfully, reasonably and in a fair manner; and

- (b) act within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to take the action by the person concerned; and
- (c) where it has taken the action, supply written reasons therefor within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to supply reasons by the person concerned.
- (2) In order for an administrative action to be taken in a fair manner as required by paragraph (a) of subsection (1), an administrative authority shall give a person referred to in subsection (1) –
  - (a) adequate notice of the nature and purpose of the proposed action; and
  - (b) a reasonable opportunity to make adequate representations; and
  - (c) adequate notice of any right of review or appeal where applicable
- (3) An administrative authority may depart from any of the requirements referred to in subsection (1) or (2) if-
  - (a) the enactment under which the decision is made expressly provides for any of the matters referred to in those subsections so as to vary or exclude any of their requirements; or
  - (b) the departure is, under the circumstances, reasonable and justifiable, in which case the administrative authority shall take into account all relevant matters, including –
    - (i) the objects of the applicable enactment or rule of common law;
    - (ii) the likely effect of its action;
    - (iii) the urgency of the matter or the urgency of acting thereon;
    - (iv) the need to promote efficient administration and good governance;
    - (v) the need to promote the public interest.”

The applicant goes further to argue that in appointing the third respondent, the first and second respondents violated s 120 (1) of the Co-operatives Societies Act [*Chapter 24:05*] (the Act), as read together with s 113 of the same Act, which requires an inquiry to be made before such an appointment. The applicant argues that there was never an inquiry made.

Sections 113 and 120 of the Act provide, in full, as follows:

**“113 Inquiries and audits by Registrar**

- (1) The Registrar may at any time-
  - (a) on his own initiative; or
  - (b) on the application of a majority of the members of a management committee; or
  - (c) on the application of at least one-third of the members of the society concerned; or
  - (d) on the application of a supervisory committee; or
  - (e) on the application of a creditor of the society concerned, who deposits with him such sum of money as the Registrar may require as security for the costs of the proposed inquiry or audit; conduct-
    - (i) an inquiry into the constitution, administration, management or finances of a registered society; or
    - (ii) an audit of the accounts of a registered society.
- (2) The Registrar shall submit a written report on the results of any inquiry or audit in terms of subsection (1) to every creditor of the society, to the society and to the Minister.
- (3) Where an inquiry or audit has been conducted in terms of subsection (1), the Registrar may apportion the costs of the inquiry or audit or such part of the costs as he may think

right between the society and the members seeking the inquiry or audit, the officers or former officer of the society or the creditor, if any, on whose application the inquiry or audit was conducted.

- (4) Any sum awarded by way of costs against any society or a person under this section may be recovered by the Registrar on application to a court having jurisdiction in the place where the registered office of the society is situated or where the person resides or carries on business for the time being.

## **120 Administration of affairs of society by Registrar**

- (1) Notwithstanding any other provision of this Act, if-
- (a) upon receiving a report from a majority of the members of a management committee or a supervisory committee of a registered society;
- (b) after an inquiry or audit conducted in terms of section one hundred and thirteen into the affairs or accounts of a registered society;  
The Registrar has reason to believe that the property or funds of the society are being misappropriated or misapplied or that the affairs of the society are being conducted in a manner that is detrimental to the interests of the members as a whole, the Registrar may do any one or more of the following-
- (i) order the freezing of the bank accounts or the deposits of such society;
- (ii) order the suspension of all or any of the operations of the society or prohibit the disposal of any of its assets for such period as he shall specify by notice in writing to the officers of the society;
- (iii) appoint an administrator and such assistants as may be necessary to administer the affairs of such society:  
Provided that the Registrar shall not appoint an administrator unless, after consultation with the society's main creditors, he is of the opinion that there is a reasonable possibility that the appointment will lead to the rehabilitation of the society.
- (2) An administrator may be appointed for such period, not exceeding one year, as the Registrar may specify.
- (3) During the term of an administrator's appointment, the management committee of the society concerned shall be suspended and the administrator shall administer the affairs of the society in such manner as will rectify the matters giving rise to his appointment.
- (4) In the exercise of his powers in terms of subsection (3), an administrator-
- (a) may exercise all the functions normally exercised by the management committee or manager of the society concerned in terms of the Act, and
- (b) before vacating his office, shall convene one or more special meetings of members of society concerned for the purpose of reporting to the members on his activities and of securing the election of a new management committee in accordance with the by – laws of the society.
- (5) After completing this term of office, an administrator shall send a report on his activities to the Registrar.
- (6) Any allowances or remuneration of an administrator and his assistants shall be paid out of the funds of the society concerned.
- (7) Any person who –
- (a) knowingly contravenes any order made by the registrar in terms of paragraph (i) or (ii) of subsection (1); or
- (b) hinders or obstructs an administrator in the performance of his functions in terms of this section; shall be guilty of an offence and liable to a fine not exceeding level seven or to

imprisonment for a period not exceeding one year or to both such fine and such imprisonment". (my own underlining)

In the opposing affidavit the second respondent raises some points *in limine*:

In the main, it is argued that :-

- a) The applicants has no locus standi because its Management Committee, which has brought this suit on behalf of its members is not recognized by the first respondent
- b) Matter was dismissed when same was brought through an urgent application
- c) The deponent to the founding affidavit is approaching the court with dirty hands because there are pending criminal charges against him.

Also in heads of argument, filed on 14 January 2015 on behalf of both the first and second respondents, it is also argued as follows:

“3.4 We humbly submit that in as much as the High Court has jurisdiction to issue declaratory orders, it is not the last resort for the applicant. The applicant has overstepped the mark in that it failed to pursue internal remedies provided for under the Act. The applicant is not being candid with this Honourable Court when it avers that it has no other remedy save to approach this court. Section 115 (6) of the Co-operative Societies Act provides for an Appeal to the Minister who one is aggrieved by a decision made by the Registrar. Furthermore, if aggrieved by the Minister’s decision, one has a right of Appeal to the Administrative Court as provided for in terms of Section 116 (1) of the Co-operative Societies Act [*Chapter 24:05*] .

3.5. In light of the above circumstances, we humbly submit that the appointment of the administrator was lawful and that applicant has other remedies available other than the one they are seeking.”

In general, the second respondent responds to the merits of the application as follows:

#### **“10 Ad Paragraph 8**

There is nothing unlawful, unconstitutional and unprocedural about the appointment of the 3<sup>rd</sup> Respondent. This is simply a malicious application by the incumbent and abuse of the poor co-operators money to protect the legal representatives’ and the incumbent’s financial interests as they had already two (2) (HC 9795/15) other applications before this honourable court with the same content seeking almost the same relief.

THE FACTS

#### **11 Ad paragraph 9**

The 17<sup>th</sup> of November 2013 meeting was illegal and unprocedural and it was never sanctioned by myself evidenced by my absence in those proceedings. Thus I deny any knowledge of his election as the Chairperson of the co-operative and have never referred to him as such.

**12 Ad paragraph 10 – 12**

Denied as members of the society have written numerous complaints against both the management committee and the incumbent's "interim committee" (Annexure E). The Greater Harare Housing Union, also carried out an investigation into the affairs of the co-operative producing an adverse report and recommended for my intervention in the co-operative (Annexure F)".

This matter was first heard on 10 March 2016. However, after Mr *Sithole* had finished making his submissions on behalf of the applicant, Ms *Magunde*, for the first and second respondents, applied for a postponement. She submitted that she had never been served with the applicant's answering affidavit filed on 18 December 2015. She, however, agreed that the answering affidavit had been served on her clients who had never shown it to her. She therefore said she needed time to study the answering affidavit which had numerous annexures.

The application for a postponement was not opposed. I therefore agreed to postpone the matter to 23 March 2016.

Having heard both Counsel, I shall now deal with the points *in limine* raised by the second respondent.

I take note of the fact that, for having not filed any opposing papers, both the first and third respondents have not expressed any views on the application.

I also take note of the fact that in terms of s 113 (2) of the Act, if an inquiry is made into the applicant's activities, or affairs, the first respondent is entitled to receive a report. There is no confirmation of that having happened.

With regards to the matter having been dismissed for lack of urgency when earlier brought to court, I would quickly state that the general position of the law is that if the matter is not dismissed on merits, there is nothing that stops the applicant from proceeding through an ordinary court application as has been done *in casu*. That point therefore falls away and I did not hear the second respondent insisting on it.

As regards pending criminal allegations against the deponent to the founding affidavit, I want to simply say he is not the applicant and in any case mere allegations against him cannot be

said to have smeared his hands with dirt to the extent of being barred to represent the applicant's interests. That issue, again, is not sustainable.

To the extent that the second respondent conceded that this court has jurisdiction to grant the relief sought, I do not think the issue of exhausting internal remedies arises. In any case, the power to issue a declarator lies with this court. That *point in limine* which was only made in submissions, cannot stand.

That then leaves me with the issue of *locus standi*, which issue I believe is very important.

The main argument around the issue of locus standi is that the applicant's management committee is not recognized by the first respondent, who, as already stated, has not opposed the application.

There is evidence of factions within the applicant. In a letter dated 30 April 2012 and addressed to the police (i.e. Member in – charge ZRP Budiriro), the first respondent's officials wrote:

**“Re: Application for full names of current leadership of Ngungunyana Housing  
Co- operative : ZRP CR/86/03/14**

Reference is made to your letter dated 17 March 2014.

Ngungunyana Housing co-operative society limited is a duly registered co-operative under section 17 of the co-operative Societies Act Chapter (24:05). Current leadership for Ngungunyana Housing Cooperative is as follows:

**Management Committee Members**

Name	Identity Number	Position
Sibanda Tikho	58-014221K58	Chairperson
Dynda Martin V	24-074228N24	V/Chairman
Mutongerwa Jacob	63-302338N38	Treasurer
Mhembwe Josphat	63-972700S80	Secretary
Nyakudya Robert	43-401775M43	Committee Member

**Supervisory Committee Members**

Chingwe Patrick	63-450523J63	Chairperson
Nechipotwi Rangarirai	04-066344N04	Committee Member
Mutuswa Samukele	63-736773A70	Secretary

Thank you for your support

T S Hlatswayo  
For Secretary for Small and Medium Enterprises and Co-operatives Development

In line with the above, in para 5.1. of its opposing affidavit, the second respondent states:

“The applicant is not properly represented as the purported representatives of the co-operative lack the *locus standi* to represent the co-operative. A co-operative as a duly registered legal entity is managed and run by a management committee which is elected into office by the members. The Management Committee recognized by the Ministry is as attached (Annexure A). The applicants are in fact running an illegitimate parallel structure as they identify themselves as an “interim Committee” (Annexure B) which has no legal basis and their conduct amounts to that of land barons.”

It is important to note that the above letter was written before 17 November 2013 when the applicant’s members elected the following to its Interim Management Committee:

- |                      |                                |
|----------------------|--------------------------------|
| “1. Luke Chesango    | 5. Lewis Bindu                 |
| 2. Tranos Chinotimba | 6. Munyaradzi Godfrey Nyakodzi |
| 3. David Gabaza      | 7 Morris Chimutwe              |
| 4. Leon Gambiza      | 8. Vongai Chiweshe”            |

Luke Chesango is the deponent to the applicant’s founding affidavit.

Unless there are also divisions in first respondent, correspondence in these papers confirms that both the first and second respondents have, since 17 November 2013, dealt with the above Management Committee, chaired by the deponent to the founding affidavit herein. Although that committee was not officially confirmed on 21 September 2014, it is not disputed that officials of first respondent attended both Special General Meetings of the applicant on the two dates, namely 17 November 2013 and 21 September 2014. So, unless there are divisions in first respondent, those officials cannot turn around today to deny knowledge of the existence of the applicant’s current Management Committee. To support the first and second respondents’ involvement in official engagements with the current Management Committee, the minutes of the Special General Meeting held on 21 September 2014 and attended by Jabulani Mudede of first respondent, record in part, the following:

**“ELECTION OF OFFICERS OF THE MANAGEMENT COMMITTEE**

Mr. Mudede the ministry official present administered the rest of the proceedings. He resolved that:

- a. No elections would be done considering without having the outgoing management audited and this had to be done prior to election of new officers.
- b. The ministry would work with the interim management committee appointed by the general membership on the 17<sup>th</sup> of November 2013. He stressed that the ministry does not impose a management committee but it adopts resolutions made at the co-operative's general meetings. Thus it was in the interest of the co-operative for the ministry to recognize the interim committee and to ensure all the crisis bedeviling the co-operative were addressed. (my own underlining)
- c. All resolutions made at general meetings held during the interim era were valid because the supreme authority of the co-operative was vested in its general meetings of its members. The vote of no confidence passed against the management and supervisory committees has seen all members of the committee being dropped which is the common thing that usually happens when a no confidence vote is passed. If the management could have called for an AGM some could have been retained for continuity sake.
- d. The ministry is going to facilitate the execution of the forensic audit long awaited for by the general membership. He gave November 2014 as the month in which the annual general meeting would be held soon after completion of the audit.
- e. The ministry would adopt Mr Magede who was appointed by the general membership to do the forensic audit.
- f. The ministry would facilitate the opening of the locked offices so that all locked documents are recorded and send to the auditor for audit purposes.
- g. The ministry would order the old management to surrender documents they looted from the locked offices because they belonged to the co-operative and not individuals.
- h. The current interim committee should have an odd number of members being 5 or 7 or 9 and not eight as is the case with the interim committee. This was for voting purposes. So divided opinion on whether to add or subtract and many reasons were cited. Committee members were requested to volunteer to resign. Leon Gambiza, Lewis Bindu, David Gabaza and Vongai Chiweshe were the volunteers. Vongai Chiweshe was automatically voted back because she is the only female in the committee. Vongai Chiweshe was automatically voted back because she is the only female in the committee. Various opinions were given on who to drop and it yielded nothing. Finally it was generally agreed that the lifespan of the interim committee was now short-lived considering the resolutions passed, so it would remain with the eight members until the AGM day.
- i. The interim committee members should have specific post of duties and should be well versed with what is required of them when performing their duties."

I am unable to accept that Ministry officials who attended meetings called by the committee, elected on 17 November 2013 had no authority from the first and second

respondents. Jabulani Mudede of the Ministry, actually confirmed that Mr K Chikura (Acting Deputy Director in the first respondent) authorised him to attend. He states in his report of 14 October 2014:

“A REPORT ON THE PROPOSED NGUNGUNYANA HOUSING CO-OPERATIVE ANNUAL GENERAL MEETING HELD ON 21 SEPTEMBER 2014

On 21 September 2014 I attended a meeting which was initially posed to be an Annual General Meeting (A.G.M). Myself and Mr Chiwawa were assigned to attend the Annual General Meeting by Mr Chikura of which the terms of references for the meeting I was not given. My other senior colleague Mr J. C Chiwawa failed to come and I had to use my jurisdiction as a co-operative officer as empowered by the Co-operative Societies Act chapter 24:05 section 3. According to the Cooperative Societies Act section 54 it gives the agenda of the annual general meeting and I had to follow it accordingly. The meeting was called and convened by the interim committee because the outgoing committee had not done any audit report and never called for an Annual General meeting since 2010 (the 2011 A.G.M was disturbed by Mr Zvandasara and no elections of the committees were done since then).

Even though the interim committee had called for the A.G.M, there was a plethora of things that should precede an A.G.M that were not done. The outgoing committee’s chairman was not present and so was his report, the supervisory committee also absconded the meeting and the co-operative’s books were not audited. Section 29 of the Housing Co-operatives By-laws states that, the purpose of the Annual General Meeting shall be to:

- “a) Consider minutes of the preceding Annual General Meeting
- b) Receive and discuss audit reports and the reports of the management committee
- c) Confirm the financial statements certified correct by the auditor
- d) Consider and approve the work-plan presented by the management committee for the next financial year
- e) Consider and agree on the disposal of any surplus of the society in accordance with the Act, the regulations made there under and these by-laws

All the above purposes of the A.G.M were not accomplished because the outgoing management committee led by Mr Tikho Sibanda did not attend the co-operative meeting, a move which was veritably referred to by the co-operative members as an attempt to hold the co-operative at ransom. This meant the meeting left a lot to constitute an Annual General Meeting. I called the interim committee to come to the podium and I discovered that even though they were democratically chosen by the people, they needed training because the composition of the committee was incorrect; they were eight instead of being composed of odd numbers. They were also some things that they seemed not to be aware of, things like their duties and the role of the Ministry officials at meetings.....

In conclusion, the audit of the co-operative is now in progress, the interim committee that was chosen by the people have started spearheading the construction of the roads (which is now at gravel level) and the installation of the sewer pipes – something that was not done in over a decade by the outgoing management committee.”

Although the meeting of 21 September 2014 was, according to the Ministry official, not properly constituted, it was accepted that the committee elected on 17 November 2013 was in charge.

In a further report of the same date, Jabulani Mudede said:

“A REPORT ON WITNESSING THE HANOVER OF NGUNGUNYANA HOUSING CO-OPERATIVE’S BOOKS OF ACCOUNTS TO THE AUDITOR BY THE INTERIM COMMITTEE ON THE 25<sup>TH</sup> OF SEPTEMBER 2014

On the 25<sup>th</sup> of September, I went to Ngungunyana Housing Co-operative Society Limited to witness the handing over of books by the management committee to the auditor (Mr Magede). This followed a resolution that was passed at the general meeting of the co-operative that the books must be audited and an A.G.M should follow the audit. The auditor (Mr Magede), the interim management committee and the Zimbabwe Republic Police Officer from Budiro Police Station who witnessed the offices being locked were also present.

We phoned the outgoing management committee informing them that the auditor had come to collect the books for the audit but they said the office must not be opened (despite allegations that they were breaking into the offices stealing some of the books. I told them that the supreme authority of a co-operative lies in the general meeting and therefore the decisions passed by the members of the co-operative on the meeting held on 21 September could not be overturned (see attached register of attendance) by two members of the management committee. Since the interim committee is the one that had locked the offices and the police officer who witnessed the occasion was present, and so was the auditor, we decided that the interim committee proceed with the process of handing over the books to the auditor. As for the cases before the courts, I gathered that they had nothing to do with the auditing of the books and neither the courts nor the Ministry had ordered the books not to be audited (In fact the co-operative’s books had not been audited since 2010 and they were now being destroyed by the termites and anthills had started developing in the office). The interim committee opened the office and handed the books to the auditor and myself, the auditor and police officer signed as witnesses. All this was done in the interest of more than four hundred members who had clamored for the auditing of books. I was a bystander witness of the implementation of the resolution that was passed by the general meeting.”

I have deliberately quoted extensively from the minutes of general meetings convened by the current committee and also from reports by Ministry official(s) in order to demonstrate the extent of the Ministry’s official interaction with the current management committee which has initiated these proceedings.

The above extracts clearly show that officials of the Ministry were in fact assisting the current committee in ensuring a proper hand-over from the outgoing committee of Tikho Sibanda.

The above extracts further confirm that the exit of the committee led by Sibanda and the coming in of the current committee are some of the issues that were raised by the Ministry

officials. Those issues were being discussed with a new interim committee. That is the committee that the first and second respondents have been dealing with since 17 November 2013. That is the committee to whom the letter of 13 August 2015 was directed.

It is accepted that it is the members of the applicant who present members of Management Committee to the first respondent. The question of recognition does not arise. To that end the current committee, chaired by the deponent to the founding affidavit to this application, has *locus standi* to represent its members.

Having dismissed all the points *in limine* raised by the second respondent, I shall now proceed to deal with the main issue in contention, namely the appointment of the third respondent as Administrator.

The resolution to this issue is, in my view, very simple because there are guiding statutory provisions which are very clear. The appointment is regulated by s 120 of the Act as read together with s 113 of the same Act. There is no doubt that the legislature wants these co-operative societies to be properly run. There is also no doubt that prior to the election of the current committee, the management of the applicant's affairs was in shambles. The detailed remarks attributed to the Ministry official, Jabulani Mudede, in the Minutes of 21 September 2014, confirm the chaos then existing in applicant. It would be folly to deny that the first and second respondent have statutory obligations to ensure the smooth running of the applicant. To that end, they should be guided by the law that empowers them to intervene.

In terms of s (s) 113 and 120, of the Act, the appointment of an Administrator requires an inquiry to be carried out first. It is further mandatory that a report should be tabled before all stakeholders, particularly members of the applicant, the Minister and Creditors. The views of these parties are important. They should be canvassed before an Administrator is appointed.

*In casu*, there is no evidence of the inquiry process having been carried out in terms of the Act. True, because of the divisions in the applicant, the first and second respondents were inundated with various unofficial reports, from various quarters, relating to malpractices in the applicant. I say unofficial reports because the Act specifically says "upon receiving a report from a majority of the members of a management committee or a supervisory committee of a registered society." There was no official management report from the committee elected on 17 November 2013. That is the committee the officials of the Ministry were dealing with. Such a

report would have triggered a proper and formal inquiry prior to the appointment of an Administrator. That was never done. The applicant is therefore correct in arguing that it was never heard. No report was tabled at the meeting of 18 August 2015, if ever it was held. There are no minutes of same. Worse still, the meeting was not for the purpose of considering an inquiry report and the appointment of an Administrator. The meeting was for the purpose of informing the management committee of the appointment of an Administrator, and to discuss his salary. The appointment had already been made. The letter of 13 August 2015 did not give any reasons for the appointment of an administrator.

The fact that the Administrator had already been appointed is also confirmed through a letter from a Ministry official addressed to the Member – in – Charge, Budiriro Police Station. The letter, dated 4 September 2015, reads as follows:-

“RE: REQUEST FOR POLICE DETAILS TO ATTEND A SPECIAL GENERAL MEETING  
FOR THE OFFICIAL INTRODUCTION OF AN ADMINISTRATOR TO NGUNGUNYANA  
HOUSING CO-OPERATIVE

Reference is made to above subject.

Ngungunyana is a duly register Housing Co-operative registered under Co-operative Societies Act. The Society is going to hold its Special General Meeting on 6 September 2015 at 10:00hrs at its site office in Budidiro for the official introduction of an administrator to run affair of the Co-operative.

We are therefore requesting presence of police officers to ensure that peace prevails at the meeting.

Thank you for your support.

R. Chirume

For: Secretary for Small and Medium Enterprises and Co-operative Development”  
(my own underlining)

Clearly the meeting was for the purpose of introducing an administrator who had already been appointed prior to the proposed Special General Meeting.

I am not sure why the appointed administrator chose to present himself to the applicant’s legal practitioners. It however, confirms that, at least, he knew who was running the affairs of the applicant. It was the committee represented by the legal practitioners he presented himself to. That committee was never suspended to make way for the administrator.

The foregoing clearly speaks to the fact that the applicant has proved that, in addition to failure to be guided by s 120 of the Act, the respondents (first and second) also violated sections 68 and 3 of Constitution and the Administrative Justice Act, respectively. The first and second respondents were legally bound to hear the views of the applicant's members directly or through its Management Committee. They were entitled to air views on an inquiry report properly produced in terms of s 113 of the Act. Such a report would then form the basis for the appointment of an administrator. There was no such inquiry and written report. There is also no evidence that the applicant's main creditors were ever consulted prior to the appointment of the administrator.

There is therefore merit in the application and it ought to be granted with costs on a higher scale.

I therefore order as follows:

1. The application be and is hereby granted.
2. The appointment of the third respondent by the first and second respondents be and is hereby declared, unprocedural and unlawful.
3. The 3<sup>rd</sup> respondent be and is hereby barred from holding himself out as applicant's administrator; and
4. The respondents shall pay costs of this application on a higher scale

*Messers Mangwana & Partners*, applicants' legal practitioners  
*Civil Division of the Attorney General's Office*, 1<sup>st</sup> and 2<sup>nd</sup> respondent's legal practitioners  
Dominic Muzavazi  
7<sup>th</sup> Floor Liquenda House  
58 Nelson Mandela, Harare  
3<sup>rd</sup> Respondent