

THE EUROPEAN CENTRE FOR CONSTITUTIONAL
& HUMAN RIGHTS

APPLICANT

FOR ITS ADMISSION AS AMICUS CURIAE IN THE APPLICATION FOR A
CONSTITUTIONAL DECLARATORY ORDER BY THE TRUSTEES OF THE
MAKOMO & CHIMANIMANI SHARE OWNERSHIP COMMUNITY TRUST
IN TERMS OF THE CONSTITUTION OF ZIMBABWE

HIGH COURT OF ZIMBABWE
PHIRI J
HARARE, 2 & 8 June, 2016

Chamber Application

PHIRI J: This is a chamber application of the European Centre for Constitutional and Human Rights for its admission as *Amicus Curiae* in the application for a Constitutional Declaratory Order by the Trustees of the Makomo e Chimanimani Share Ownership Community Trust in Terms of the Constitution of Zimbabwe in HC 7213/15.

After perusal of the chamber application I considered it best, and wise, to invite representations of all interested parties cited in para 8 and 9 of the Applicant's Founding Affidavit.

I take Judicial Notice of the fact that the applicant has not placed before me, the record with respect to case number HC 7213/15.

This would have assisted me in determining whether the applicant does indeed have Real and Substantial Interest in the proceedings in case No. HC 7213/15.

The issue of Real, direct and Substantial Interest is well defined in the *locus classicas* of *Zimbabwe Teachers Association & Ors v Minister of Education and Culture* 1990 (2) ZLR 48.

Wintertons Legal Practitioners acting for and on behalf of Border Timbers Limited (under Judicial Management) answered my invitation for interested parties to make submissions in respect of the Chamber Application.

I also, do take note, of the fact that the applicants submitted, in para(s) 17 to 18, that they sought the consent of all the parties to the inclusion of the applicant in the dispute in

case number HC 7213/15. Such consent has not been unequivocally forthcoming from the parties.

As aforementioned it is only Messrs Wintertons that has made representations opposing the admission of the applicant as *amicus curiae* in the aforementioned proceedings pending before this court.

Having considered the Application and the submissions made by Messrs Wintertons this court is of the view that this Chamber Application be dismissed with costs on a legal practitioner and client basis as prayed for by Messrs Wintertons.

This court upholds all the preliminary points submitted in the opposing affidavit filed on behalf of Border Timbers Limited (under Judicial Management) deposed to by Craig Adamson.

More particularly this court upholds the arguments that:

- (a) The applicant failed to seek leave of this Honourable Court to file the present chamber application since Border Timbers Limited was placed under judicial Management by an order of this Honourable Court. In case number HC 35/15.

That order clearly stipulates that;

“All actions and applications and the execution of all writs, summons and other process against the applicant company shall be stayed and not proceeded with or without leave of this court.”

- (b) The present application is not in compliance with Rules 226 and 241 of the High Court Rules of 1971.
- (c) In addition the main matter in case number HC 7213/15 appears to be a simple matter involving domestic law and this Honourable Court has not called for *Amicus Curaie* to be involved in that main matter.
- (d) Further s 167 (C) of the Constitution of Zimbabwe, Amendment [No 20] Act, 2013 does not give jurisdiction to the present court without leave of the Constitutional Court to allow a person to appear as a “friend of the court” (my emphasis)

This Court also takes Judicial Notice of the fact that there are allegations that there is a reasonable apprehension of collusion between the applicant and one of the parties in the main matter, that is, case number HC 7213/15 and the applicant cannot purport to be acting in a non -partisan and neutral manner....”

I hold the view that the present Chamber Application is fatally defective and should never have been brought before this court, given the history of this matter.

Accordingly the present chamber application is hereby dismissed with costs in favour of Wintertons on a legal practitioner and client scale.

Zimbabwe Lawyers for Human Rights, applicant's legal practitioners

Wintertons, 1st respondent's legal practitioners

Hussein Ranchhod & Co. 2nd respondent's legal practitioners

Civil Division of the Attorney General's Office, 3rd respondent's legal practitioners