AFRICAN APOSTOLIC CHURCH
(Vaapostora VeAfrica)
and
RICHARD JURU
and
NORMAN SIYAMUZHOMBWE
and
ALFRED KUSHAMISA MWAZHA
and
JAMES MWAZHA
and
ELSON TAFA
versus
NYASHA MWAZHA
and
SHINGI MALCOM CHAPFUNGA

HIGH OF ZIMBABWE
ZHOU J
HARARE, 9 June 2020

Urgent chamber application

Ms *F. Chimwawadzimba*, for the applicant
A. Gurira, for respondent

ZHOU J: This is an application for a *mandament van spolie* in respect of premises referred to in the papers as No. 8 Jefferson Road, Hatfield, Harare. The first applicant is a religious organization, a *universitas* at law. Its capacity to sue and be sued in its own name is not in dispute. It also has a written constitution a copy of which is attached to the applicant's founding papers. The other applicants hold leadership positions in the first applicant. The two respondents are relatives of the founder and current leader of the church who is referred to in the papers as Archbishop Ernest Paul Mwazha.

The facts, which are common cause or are not in dispute, are as follows. According to the constitution of the first applicant its headquarters are at No.8. Jefferson Road, Hatfield, Harare. On

27 May 2020 the second to sixth applicants attempted to enter the said headquarters. They were denied access by the respondents. The founder and leader of the first applicant resides at that property. Having been denied access to the property, the applicants approached this court seeking the relief which is stated in the draft provisional order.

In addition to challenging the application on the merits the respondents have objected *in limine* to consideration of the merits on two grounds, namely (1) that the application is not urgent, and (2) that the deponent to the founding affidavit, Richard Juru, is not authorized to represent the first applicant.

A matter is urgent if it cannot wait to be dealt with as an ordinary court application. Relief for a *mandament van spolie* is by its nature urgent, in that it seeks to quickly restore the *status quo ante* which has been upset by the unlawful conduct of the alleged despoiler. But the court can still inquire into other aspects in considering whether to entertain an application of this nature on an urgent basis. This is because the hearing of an application on an urgent basis is special treatment given to a litigant who has to jump the queue of other matters waiting to be heard. It is for this reason that the court expects a litigant who seeks relief on an urgent basis to show that they acted expeditiously when the need to act arose. In this case the application was filed seven or so days after the need to act arose. There can be no delay to talk about in this case which would warrant calling upon the applicant to explain. Having regard to the circumstances of the case, the applicants clearly did not wait for the arrival of the day of reckoning to act. They instituted the application to assert their rights expeditiously.

On the question of the authority to institute the proceedings, the respondents allege that the proceedings were not authorized by the Board Trustees of the first applicant. That Board is not mentioned at all in the constitution as the authority that its responsible for the leadership of the first applicants. The officers of the first applicant are detailed in Article 9 of the constitution.

The deponent, who is also the General Secretary of the first applicant has attached a resolution which on the face of it purports to authorize him to depose to the affidavit. In any event, this objection, if indeed, it was valid, would have pertained only to the first applicant but not to the other applicants. It does not affect the validity of the proceedings.

For the above reasons, both objections *in limine* are dismissed.

On the merits, an applicant who seeks the *mandament van spolie* must allege and prove that he or she or it was in peaceful and undisturbed possession of the property in dispute, and (b) that the respondents wrongfully deprived him or her or it of that possession. The first applicant lays claim to its occupation of the property on the basis of it being its headquarters.

The rest of the applicants allege that by reasons of their offices they enjoyed access to the property. The respondents dispute the assertion that the applicants were in peaceful and undisturbed possession or occupation of the property. According to the respondents the property is owned by the Archbishop of the Church who uses it as his private residence. Ownership of the property is not a relevant consideration in an application for a *mandament van spolie*. Neither is the fact that the leader of the church also resides at the property exclusive of the applicants' rights of possession. As a juridical persona the first applicant can only have juridical possession of the property which it exercise through its human representatives. The second to sixth applicants are some of its human representatives as is, indeed, the leader of the church. The suggestion that the property is not the headquarters of the church is unsustainable in the face of the clear wording of the first applicant's constitution. At this stage the court's concern is whether the facts alleged are established by *prima facie* evidence. That evidence is there in article 2 of the constitution. For the purpose of the mandament it is sufficient that the applicant had the right of possession as opposed to the right to possession.

The deprivation of such possession is common cause. The respondents admit that without a court order they prevented the applicants from accessing the property. The act of self-help which the spoliation order is meant to address is therefore established. The respondents have not tendered any defence which is recognized at law to successfully challenge the application for the spoliation order.

In the result, the provisional order is granted in terms of the draft thereof as amended.

Mupindu Legal Practitioners, applicant's legal practitioners
Gurira and Associates, respondent's legal practitioners