

MUGODHI APOSTOLIC FAITH CHURCH
versus
WASHINGTON MUGODHI

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE, 2 July 2021 & 9 September 2021

Unopposed Application

G. Sithole, for the applicant
No appearance for the respondent

MUREMBA J: This matter was set down for hearing on the 2nd of July 2021 as an opposed application. However, neither the respondent nor his legal practitioners appeared for the hearing despite the respondent's legal practitioners being served with the notice of set down. Resultantly, Mr *Sithole* applied for a default judgment to be granted in favour of the applicant.

I queried with Mr *Sithole* the applicant's *locus standi* to bring the application in *casu*. The facts of the matter are as follows. The now late Tadewu Mugodhi who used to be the bishop of the applicant was ill from February 2019 to October 2019 when he then died. In August 2019 when he was still ill, he called for a meeting with the Board of Ministers of the applicant together with vice bishops and pastors and made a pronouncement that his son the respondent in the present matter, Washington Mugodhi was now going to hold the office of vice bishop and subsequently succeed him as bishop upon his death. Tonnie Sigauke who is the deponent to the applicant's founding affidavit averred that this pronouncement by the now late bishop was contrary to the provisions of the applicant's constitution, particularly section 4 which provides that the Vice Bishop should hold office as the Acting Bishop when the bishop is unable to perform his duties. The applicant already had 2 vice bishops who were appointed in terms of the constitution: Aaron Munodawafa and the deponent himself.

The applicant averred that the pronouncement of the respondent as the vice bishop of the applicant triggered an urgent chamber application under HC 6734/19 by the applicant against the now late bishop, the respondent in the present matter and two other respondents. This court granted a provisional order declaring the pronouncement of respondent as the vice

bishop unlawful. However, the provisional order was appealed against and on 19 October 2019 the Supreme Court allowed the appeal on the basis that this court had made findings based on minutes written in vernacular which were not translated contrary to the provisions of 49 of the High Court Act [*Chapter 7:05*].

It is averred in the present application that upon the death of Bishop Tadewu Mugodhi in October 2019, the respondent installed himself as the bishop of the applicant. He did this in February 2020 at the late bishop's memorial service and continues to hold himself as such to date. It is further averred that he has even changed the locks at the applicant's national shrine in Hwedza. It is contended that the respondent's appointment as bishop of the applicant is *ultra vires* the applicant's constitution. It is on this basis that this application was brought. The draft order shows that the following three *declaratur*s are being sought.

"It be and is hereby declared that:

1. Aaron Munodawafa is the substantive Bishop of the applicant in terms of its Constitution.
2. Tonnie Sigauke is Acting Bishop of the applicant in terms of the Constitution.
3. Respondent's appointment as Bishop of the applicant, being *ultra vires* the applicant's Constitution is null and void.

Consequently, it is hereby ordered that:

4. Respondent is interdicted from holding himself as Bishop of the applicant.
5. Respondent shall pay costs of suit on a legal practitioner and client scale."

It is clear that the deponent to the applicant's founding affidavit wants the respondent's appointment as bishop of the applicant be declared null and void. He wants Aaron Munodawafa to be declared the substantive bishop whilst he is declared the acting bishop of the applicant. The deponent averred that on 2 February 2020 at the National General Conference of the applicant following the death of Bishop Tadewu Mugodhi which had created a vacancy in the office of the bishop, Aaron Munodawafa was appointed bishop of the applicant while the deponent remained as vice bishop. It was further resolved that since Bishop Munodawafa was now very old and senile, blind and unable to walk, the deponent should be appointed acting bishop.

With all these averments made by the applicant's deponent, it was my considered view that if the respondent installed himself as the bishop of the applicant and continues to hold himself as such and has gone on to change the locks at the national shrine in Hwedza, then it means that the applicant is now under the control of the respondent. Given this scenario, I then sought to understand from Mr *Sithole* how the applicant which is now under

the control of the respondent is suing its bishop for his removal. The question that came to mind was who authorised the applicant to sue? Mr *Sithole* referred to the resolution marked as Annexure A which he said authorized the deponent to be the acting bishop of the applicant. This resolution in question is an extract of the minutes of the National General Conference held on 2 February 2020. However, other than appointing the deponent to the founding affidavit as the acting bishop, it says nothing about the applicant being authorized to institute legal proceedings against the respondent. It also does not say that the deponent was authorized to represent the applicant in the said legal proceedings. It should also be noted that this National General Conference was held on 2 February 2020 and the present application was only filed on 22 October 2020, more than 8 months later. Being an acting bishop does not clothe Tonnie Sigauke, the deponent with the authority to represent the applicant in legal proceedings or to institute legal proceedings on its behalf. He needs to show that he was properly authorised by the applicant.

I find the submission that the deponent is the current head of the applicant self-defeating to the deponent. He cannot claim that he is currently in charge of the applicant yet he is suing the respondent for holding himself as the current leader of the applicant. The mere fact that the deponent, Tonnie Sigauke wants the appointment of the respondent as the bishop of the applicant to be nullified on the basis that it was made unconstitutionally means that currently, the person who is in charge of the applicant is the respondent. Whether rightly or wrongly, that is beside the point right now. With that, Tonnie Sigauke cannot claim that he has authority to bring legal proceedings on behalf of the applicant when he has no control over it. He has brought these proceedings in an attempt to take control of the applicant. Under the circumstances there is therefore no way the church can be bringing the present proceedings as the applicant. The applicant can only be a co-respondent with Washington Mugodhi who has control over it. It is clear from the founding affidavit that Tonnie Sigauke, the deponent has a personal interest in the matter. The relief that he is seeking is meant to serve his personal interest. He wants to be appointed Acting Bishop of the applicant and for the respondent to be divested of power over the applicant. Clearly this is an acknowledgment that the respondent has taken leadership and control of the applicant, otherwise why sue him? Tonnie Sigauke is trying to serve his own interests under the guise of the applicant. He should have brought this application in his own name.

Mr *Sithole*'s further submission was that the issue of *locus standi* in the circumstances of the parties had already been determined by this court in case no. HC 6734/19 in judgment

HH 575/19. This was an urgent chamber application between the parties and that same issue arose. This court made a finding that Tonnie Sigauke was authorised to bring the application on behalf of the applicant on the basis of a resolution that was made in the minutes of 10 August 2019. However, to begin with, that judgment was later overturned by the Supreme Court. So, it is unsafe to rely on a judgment that was overturned. Secondly, the High Court judgment in issue is silent on the arguments and submissions that were made by the parties in respect of this issue. So, it is dangerous to blindly follow the decision that was made.

Further, it is interesting to note that a *declaratur* for the appointment of Aaron Munodawafa as the bishop of the applicant is being sought yet Aaron Munodawafa is not an applicant in the matter. A relief which affects him cannot be sought in his favour without him being a party to the proceedings. He is a necessary party. The matter cannot be adjudicated in his absence. What if he does not want to be declared the substantive bishop? Besides, he is said to be senile. Does he even appreciate the existence of the present legal proceedings? It means that for his participation in any legal proceedings he would want to be represented by a curator *ad litem*.

In view of the foregoing, I make a finding that the applicant has no *locus standi* to bring the present application.

In the result, it is ordered that the application is dismissed.

Mvingi & Mugadza, applicant's legal practitioners