

**GUTA RA MWARI**

**versus**

**GUTA RA MWARI RELIGION**

**and**

**JOSEPHU BAKURU TAYALI**

**and**

**C. MADZIMBAMUTO**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 20 OCTOBER 2014

Mr Z C. Ncube for applicant  
Mr M. Ncube for respondents

Urgent Chamber Application

**MAKONESE J:** The Applicant, a duly constituted religious denomination, approached this court by way of an urgent *ex parte* chamber application seeking a provisional order with interim relief interdicting the Respondents and their agents or assigns from disrupting or interfering in any way with Applicant's annual commemorations which were due to be held on 7<sup>th</sup> June 2014 in all of the Applicant's branches within Zimbabwe. I granted the provisional order on the 6<sup>th</sup> June 2014 and the matter has now been set down for confirmation or discharge of the order.

The Respondents have hotly contested the confirmation of the provisional order and have raised certain preliminary points. I will now consider each of the preliminary points in turn.

1. Locus Standi

The Respondents argue that there is only one church called Guta Ra Mwari, a *legal persona*. That church is indivisible, so it is argued. That church is headquartered at 58006 Old Lobengula, Bulawayo. It is argued that that the Applicant is a break away group having left the Respondent in January 2014.

The reality though is that the Respondents admit and accept that the Applicant church has established a headquarters at Tshabalala, Township Bulawayo. It is beyond dispute that Guta Ra Mwari church has disintegrated into various groupings and that the Applicant has a separate Constitution with a congregants worshipping in their own in branches inside and outside Zimbabwe. The Applicant clearly has legal rights which ought to be protected by and under the laws of Zimbabwe. It is therefore idle to argue that when a church has broken away, a group or groupings that have broken lose *locus standi in judicio* to sue and be sued. I must point out here that I am not being called upon to determine the ownership wrangle currently raging on in separate legal proceedings. My purpose in this action is to confirm or discharge the provisional order.

I find therefore that the first preliminary point has no merit and accordingly dismiss it.

2. Dispute of fact

The Respondent contends that there is a dispute of fact as to whether or not Applicant can lay claim to the branches that there are all over Zimbabwe. This matter cannot be resolved on the papers. It has been argued. The preliminary point once again is not well taken. I am not dealing with the ownership rights of the various parties. The provisional order sought to prevent the Respondents from interfering with the Applicant's services at the Tshabalala branch and at any other places of worship in the country. When I quizzed both legal practitioners for the Applicants and the Respondents to list the Applicants' and Respondents' places of worship, the impression I got is that the parties are fighting over control of church premises and assets. This is what is at the heart of the dispute. It is not my place to determine the ownership of the assets of the parties. I will dismiss the second preliminary point on the grounds that it is not relevant at this stage of the enquiry.

Having dismissed the preliminary points, I now invite the parties to address me on the merits.

*Calderwood, Bryce-Hendrie and partners*, applicant's legal practitioners  
*Messrs Phulu and Ncube*, respondents' legal practitioners