

LABSON ZIMBA v REGISTRAR OF SOCIETIES AND THE ATTORNEY-
GENERAL (1981) Z.R. 335 (S.C.)

SUPREME COURT
GARDNER, AG. D.C.J., CULLINAN, J.S. AND MUWO, AG. J.S.
22ND OCTOBER, AND 17TH DECEMBER, 1981
(S.C.Z. JUDGMENT NO. 24 OF 1981)

Flynote

Civil procedure - Mala fide - Allegation of - Onus of proof.

Civil Procedure - Mandamus - Discretion on court to refuse.

Headnote

The appellant, on behalf of the Mutendere Branch of the Jerusalem Church made an application to the first respondent for registration of his church as a society. This application was refused on the ground that the appellant's church was suspected of being associated with the Lumpa Church, a banned organisation in the country. An application was made to the High Court for an order of *certiorari* to quash the decision of the first respondent but the High Court ordered that because the appellant had not been given sufficient indication of the objection raised against him to enable him to meet such objection, the decision by the first respondent and the subsequent decision by the Minister on appeal must be set aside.

The appellant, thereafter, on behalf of the same church made further application to the first respondent for the church to be registered as society. This application was also refused. The appellant made an application to the High Court for an order of *mandamus* asking that the first respondent be ordered to register the appellant's church as society. This was rejected. He now appeals to this court against the decision. Counsel for the appellant among other grounds of appeal alleged that the first respondent when refusing the application acted with *mala fide*.

Held:

- (i) It is settled law that any litigant alleging *mala fide* on the paw of his opponent has upon him the onus to prove that allegation.
- (ii) The court will, as general rule, and in the exercise of its discretion, refuse an order of *mandamus*, when there is an alternative specific remedy at law which is not less convenient, beneficial and elective.

Case referred to:

- (1) The People v Luanshya Municipal Council (Ex parse Chendaeka) (1969) Z.R. 69.

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Legislation referred to:

For the appellant: H. Silweya, Silweya & Co.
For the 1st and 2nd respondents: A.M. Kasonde, Principal State Advocate.

Judgment

GARDNER, AG.D.J.: In this case the appellant, on behalf of the Mutendere branch of the Jerusalem Church, made an application to the first respondent for registration of his church as a society. This application was refused on the grounds, as stated by the first respondent, that the appellant's church was suspected of being associated with the Lumpa Church which is a banned organisation in this country. An application was made to the High Court for an order of certiorari to quash the decision of the first respondent. The application was heard by Hadden, J, and he ordered that, because the appellant had not been given sufficient indication of the objection raised against him to enable him to meet such objection, the decision by the first respondent and the subsequent decision by the Minister on appeal must be set aside.

Thereafter, the appellant, on behalf of the same church, made a further application to the first respondent for the church to be registered as a society. This application was also refused; but on this occasion the first respondent gave an opportunity to three members of the applicant's church to appear before him to discuss the matter. After this discussion the first respondent notified the appellant that the application was again refused for the same reasons as I have mentioned earlier.

The appellant then made an application to the High Court for an order of mandamus asking that the first respondent be ordered to register the appellant's church as a society. By a judgment dated the 28th February, 1980, Sakala, J., rejected this application. The appellant now appeals to this court against the order of Sakala, J.

Mr Silweya, on behalf of the appellant, has argued a number of grounds of appeal in which the most important allegation he has made is that the first respondent, when refusing the application by the appellant, acted with *mala fides*.

It is settled law that any litigant alleging *mala fides* on the part of his opponent has upon him the onus to prove that allegation. I have examined the record and the documents in this case and, despite the argument put forward by Mr Silweya, I am quite unable to agree that there is any reason to suspect *mala fides* on the part of the first respondent.

Furthermore, I must comment that an application for mandamus in a case such as this must be regarded in the light of paragraph 200 (p. 107) of Halsbury's Laws of England, Third Edition, Vol. 11. This paragraph reads as follows:

"The Court will, as a general rule, and in the exercise of its discretion refuse an order of mandamus, when there is an alternative specific remedy at law which is not less convenient, beneficial and effective."

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There is a provision in s. 16 of Cap. 105 for an appeal to be made to the Minister of Home Affairs

in the event of refusal by the Registrar of Societies to register an organisation as a society. As was said in the case of *The People v Luanshya Municipal Council (ex parte Chendaeka)* (1), at p. 76, when statute lays down particular mode of appeal, that procedure should be followed unless it is less convenient, beneficial and effective.

I see no reason to find, in this case, that there was such a reason for applying for a writ of *mandamus*.

There was no merit the other grounds of appeal.

I would dismiss this appeal with costs against the appellant, both in this court and in the court below.

Judgment
CULLINAN, J.S.: I concur.

Judgment
MUWO, AG.J.S.: I also concur.

Appeal dismissed
