



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, BHISHO)**

CASE NO: 771/2022

In the matter between:

METHODIST CHURCH OF KINGWILLIAM'S TOWN

APPLICANT

and

MALUSI MAMKELI

1ST RESPONDENT

VUYO KATYWA

2ND RESPONDENT

BONGIWE MAGELE

3RD RESPONDENT

ONELA BAARTMAN

4TH RESPONDENT

NOSISEKO MNTOMNINTSHI

5TH RESPONDENT

MZWANDILE MJUNGULA

6TH RESPONDENT

THEMBINKOSI MJEKULA

7TH RESPONDENT

BONISWA NGUYE

8TH RESPONDENT

JUDGMENT

CENGANI-MBAKAZA AJ

Introduction

[1] In these proceedings, the applicant is a juristic person known as Methodist church of King William's Town, an entity with full legal capacity to sue and be sued. The entity's place of business is located at Office Numbers 5 & 6, Old Theatre Building, and King William's Town.

[2] The respondents are sued in their personal capacities.

[3] On 08 December 2022, the applicant filed an application seeking a prohibitory interdict against the respondents. The order was sought in the following terms:

- (a) First, interdicting and prohibiting the respondents from using the name, property and any intellectual property belonging to the applicant;
- (b) Second, interdicting the respondents from collecting funds in the name of the applicant;
- (c) Third, interdicting the respondent from publishing social media content while posing and parading themselves as and in the name of the applicant;
- (d) Fourth, interdicting the respondents from using any and all the structures and buildings of the applicant for their personal and financial gain;
- (e) Fifth, the applicant also sought the cost order against the respondents jointly and severally.

The Factual background

[4] The issues presented hinge on the following facts, most of which are undisputed: Methodist Church of King William's Town (KIMEC) was established in 1998, uniting the parties as a single congregation. On 25 January 2015, KIMEC was officially registered as non-profit organisation (NPO) under registration number 148-051, with the corresponding tax number 9479984206. Throughout this period KIMEC and its members were under the leadership of the late Reverend Fungile Buti (the late Rev Buti). However, from June 2020 and September 2021, allegations of misappropriation of certain funds arose, rendering KIMEC unable to meet its financial obligations. The later Rev Buti was at the centre of these accusations. The church's membership split into two factions.

[5] As a consequence of the allegations of maladministration, on 06 August 2022, the late Rev Buti either retired or was expelled from his position as a Superintendent Minister. On 17 August 2021, an entity identified as 'The Methodist Church of King William's Town was registered under NPO 263-670 with tax number 9009510315. From 06 August to 9 June 2023, KIMEC operated without a Superintendent Minister. On 10 June 2023, KIMEC appointed Reverend Mhlahli Njoli (Rev Njoli) as a Superintendent Minister of the church. The appointment was made under 'the Circuit Quarterly meeting (Board) as outlined in Chapter 14 of the Book of Order Constitution, Laws and disciplines of KIMEC'.

Preliminary issues for determination

[6] On the affidavit delivered on 08 December 2022, Mr Vernon Vusumzi Mpokeli (Mr Mpokeli) averred that he holds the position of Circuit Steward at KIMEC. He asserted that his appointment occurred during a meeting convened by the Board

of the church which was on the 30th of October 2021, where he was elected in terms of Section 5.3.2 of the Constitution of the Church of KIMEC. The appointment empowered him to depose an affidavit in support of the application before court. He further asserted that the respondents broke away from KIMEC and associated themselves with the late Rev Buti.

[7] On 15 February 2023, the respondents filed a notice to oppose the application. In an answering affidavit delivered on 22 March 2023, Mr Mzwandile Jungula (Mr Jungula) declared that he was elected by the Circuit Steward of KIMEC and has been serving in this position since 2015. He further stated that he was formally authorised to depose to an affidavit. In rebutting the claim of the respondents' breaking away from the KIMEC, he filed their pledge cards as annexures MJ5, MJ6, MJ7, MJ8, MJ9, MJ10, MJ11 and MJ12 respectively. The respondents filed their confirmatory affidavits and emphasized this point. The pledge cards were never challenged by any other form of evidence. Furthermore, the respondents raised the following preliminary points:

- (a) Challenging Mr Mpokeli's legal standing (*locus standi in judicio*);
- (b) Asserting that the applicants failed to exhaust internal remedies;
- (c) Contending the existence of a factual dispute and
- (d) Alleging that the applicants failed to establish the cause of action.

[8] On 04 April 2023, Mr Mpokeli filed a replying affidavit wherein he contested the Stewardship of Mr Jungula. Regarding the points in *limine*, Mr Mpokeli denied the allegations as stated in the respondents' affidavits. I now proceed to deal with the preliminary issues in turn:

The Locus standi in iudicio

[9] On 24 August 2023, the matter came before my brother Bloem J. The proceedings were adjourned to allow the parties to supplement their legal documentation. Justice Bloem J directed the parties to submit additional papers to ascertain the legal standing for filing the application in court and to verify the requisite authorisation according to the constitution of KIMEC. Additionally, he mandated the identification of the authentic KIMEC to be clarified in the supplementary documents.

[10] In paragraph 5 of his supplementary replying affidavit, Mr Mpokeli declared that NPO status is not a prerequisite for the registration of the church. He clarified that the two NPOs were formulated for certain projects namely 'soup kitchen for indigent persons' and 'early childhood development'. Additionally, Mr Mpokeli averred that KIMEC is a registered member of the South African Council of Churches (SACC), and is recognized as an independent church by the South African Revenue Services (SARS). Mr Mpokeli emphasized that the legal authority for instituting legal proceedings is derived from the SACC.

[11] In paragraph 5.16 of his supplementary answering affidavit, Rev Njoli denied that Mr Mpokeli derived his powers to institute legal proceedings from KIMEC. Rev Njoli's clear and uncontested account of the formation of KIMEC is thoroughly elaborated in paragraphs 4 to 6 of this judgment.

[12] In his supplementary answering affidavit, Mr Jungula confirmed that Rev Njoli holds the position of the leader within the highest decision-making body of KIMEC by virtue of being a Superintendent Minister. He denied that the NPOs were formulated for the projects as explained by Mr Mpokeli in his affidavit. He explained that SACC is an autonomous body and cannot be used for the enforcement of KIMEC's rights. Notably, Mr Njungula annexed the Constitution of SACC (MJ 14) which gives a reflection of what SACC encompasses. The fact that SACC is an autonomous body having perpetual succession and legal existence independent of its members is uncontroverted.

[13] The legal framework governing the litigation proceedings stipulates that the party wishing to contest the authority of another to act in a representative capacity must abide by Rule 7 of the Uniform Rules of Court which states:

“(1) Subject to the provision of subrule 2 and 3 a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such party is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, where after such person may no longer act unless he satisfies the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.”

[14] In the case under consideration, both parties appear to have conflated the authority to initiate the proceedings, the prosecution of the case and the authority to depose to an affidavit. In motion proceedings, the deponent to an affidavit does not need the authority to depose to such an affidavit. *The Supreme Court of appeal in Ganes and Another v Telecom Namibia LTD*¹:

¹ 2004 (3) SA 615 (SCA) p615.

“Headnote: In determining the question whether a person has been authorised to institute and prosecute motion proceedings, it is irrelevant whether such person was authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof that must be authorised. Thus, where, as in the present case, the motion proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the applicant and in an affidavit filed with the notice of motion, it was stated by the deponent thereto that he was a director in the firm of attorneys acting on behalf of the applicant and that such firm of attorneys was duly appointed to represent the applicant and such statement is not challenged by the respondent, it must be accepted that the institution of the proceedings was duly authorised. Such a finding will be strengthened if the respondent does not avail himself of the procedure provided by Rule 7 of the Uniform Rules of Court.”

[15] In the matter under consideration, I will not delve much into who the authentic church Steward is. On the facts before me, KIMEC is authorised to appoint more than one church Steward. For purposes of resolving this dispute, Meress Mpokeli and Jungula qualify to be positioned in the same way as witnesses testifying about the facts they personally know. Resultantly, the question of *locus standi* stands to fail.

The alleged failure to exhaust internal remedies

[16] The respondents averred that if there was any wrongdoing on their part, they ought to have been subjected to disciplinary hearings in line with the Constitution of KIMEC (annexure MJ3) which provides, 'CLAUSE 3.14 of Methodist Church of King William's Town Book of Order, Constitution, Laws, and Disciplines which states:

“No member acting in their personal or official capacity, shall institute legal proceedings against the church or any Minister or member thereof for any matter that in a way arises from or relates to the mission, work, activities or governance of the Church unless circumstances require immediately reporting due to statutory requirements. All matters must be dealt with internally.”

[17] The reference to clause 3.14 is irrelevant on the basis that it has conclusively been established that Mr Mpokeli’s role was to depose to an affidavit and not institute legal proceedings on behalf of KIMEC. The first applicant is Methodist Church of King William’s Town/KIMEC and not Mr Mpokeli. In his supplementary answering affidavit Mr Jungula declared:

“5.8 Bloem J even implored both the group of Mr Mpokeli and our group to find peaceful and Christ like means to resolve our differences outside the parameters of the Court.

5.9we made effort to resolve our differences with the group of Mr Mpokeli out Of court, but all of it fell in deaf ears.”

[18] Considering the informal mediation processes conducted prior to the commencement of legal proceedings and the historical context of this litigation, this *point in limine* must fail.

The merits of the application

[19] The general rule is that a final interdict can be granted in application proceedings only if the facts as stated by the respondent together with the admitted facts in the applicant's affidavit justify such an order². During the formal presentation

² See *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery* 2009 JDR 0035 p12 (Pty) Ltd [1957] 1 All SA 123 (C); 1957 4 SA 234 (C); 1956 4 SA 836 (C); *Beukes v Crous* [1975] 4 All SA 272 (NC); *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623, referred to in LAWSA Vol

in court, the parties agreed that there was no dispute of fact. I am amenable to the propositions made in this regard.

[20] The issue is whether the applicant is entitled to be granted an interdict against the respondents.

The parties' submissions

[21] The applicant argued that the respondents' conduct was so bad that it would cause further harm to the integrity and functioning of the applicant. The argument posited is that the respondents' actions constitute harmful behaviour with adverse consequences for the applicant's reputation and assets. The conduct complained of emanates from an incident where the respondents allegedly acted in concert and in collusion with each other using the applicant's name and congregated in the applicant's premises.

[22] The respondent contended that the applicant had failed to prove any clear right which needs to be protected against the respondents. Furthermore, the applicant, so it was argued, had failed to prove that the church had suffered or will suffer any injury in future in respect of the alleged unlawful conduct of the respondents.

[23] The legal framework governing the granting of a final interdict is settled. The applicant, for an interdict, must show a clear right; the occurrence of actual or reasonable anticipated harm; and the absence of similar protection by any other

11, par 395.

remedy³. Once the applicant satisfies these three requisite elements for the grant of an interdict, the scope, if any, for refusing relief is limited and there is no general discretion to refuse relief.⁴

Analysis

[24] I now proceed to address the requirements of an interdict individually. The first prerequisite pertains to the protection of a right accruing to the party seeking the interdict. It is imperative to ascertain the existence of a clear right. First, in this context, clarity is determined by substantive law, meaning the right must be the one that is recognised by law. Second, to establish a clear right, the applicant must prove on a balance of probabilities that a clear right exists.

[25] It is crucial to determine whether the applicant has, in its founding papers furnished proof which is uncontested and which would find a clear right. It is imperative to weigh the facts set out by the applicant together with the facts set out by the respondents which the applicant cannot dispute and to decide whether with regard to inherent probabilities and the ultimate onus, the applicant should on those facts obtain a relief. The confirmatory affidavits, together with all the documents filed by both parties in support of their cases require equal consideration.

[26] It is common cause that KIMEC has operated as a church since 1998. The fact that Rev Njoli is the Superintendent Minister of KIMEC remains unchallenged. As per the provisions of the Constitution of KIMEC, the superintendent minister, by

³ Setlogelo v Setlogelo 1914 AD 221; Free State Gold Mining Co 1961 (2) SA 505 W.

⁴ Hotz and others v University of Cape Town 2018 (1) SA 369 (CC).

virtue of that position is entrusted with control over the church's property, both movables and immovable. Mr Mpokeli presented evidence to the contrary. On the face of the third version of the Constitution he presented, the Chairperson of the Board is bestowed with the authority to take control of the church's property immovable and movables. Mr Mpokeli is neither the Chairperson of the Board nor the Superintendent Minister. The fact that he was elected by certain members of the church to depose to an affidavit does not automatically establish the existence of a clear right. Similarly, his right to worship in the church's premises like other church members, does not establish the existence of a clear right. A clear right and a real right are two different concepts. In his affidavit, the Superintendent Minister presented no evidence to prove that the church is under threat and therefore deserves the court's protection. On the face of what the respondents have put as a defence and in applying *Plascon Evans Rule*⁵, as a deponent of the affidavit, Mr Mpokeli had failed to establish a clear right that needs to be protected against the respondents.

[27] The second requirement pertains to an injury either committed or reasonably apprehended. In this context injury means an act of interference with or an invasion of the applicant's rights and the resultant prejudice⁶. The respondents submitted their pledge cards to prove their membership to the church. According to the evidence presented, being members of the church affords them a right to worship in the church. As the deponent, Mr Mpokeli had failed to demonstrate on a balance of probabilities that the respondents have and are likely to engage in harmful behaviour as alleged in his affidavit. As a high decision-making body, the Superintendent

⁵ Fn 2 above.

⁶ Erasmus 2003 Superior Courts Practice, E8-6

Minister presented no evidence in this regard. The documents marked 'Constitution' which were submitted by each of the parties, outline that the church building prohibits any form of entertainment or amusement that is vulgar, objectionable, or likely to bring reproach upon the church. Gambling of any kind, raffles, drives and guessing or other competitions which involve the method of raffle are all expressly forbidden. In the matter under consideration, there is no shred of evidence that the respondents participated or are likely to participate in any of these unlawful activities. The respondents legitimately believe that they are members of KIMEC and hence they confidently express this by wearing church regalia, taking photographs and worshipping in the church's premises.

[28] The final requirement is the unavailability of the other adequate remedies. An interdict is a drastic remedy therefore the court will not grant it in instances where some other form of redress would be adequate or would provide similar protection. The remedy referred to must be a reasonable legal remedy. It is acknowledged that the church members are divided into two splits. It is within the right of the aggrieved church members to lay charges to the South African Police Services (SAPS). I am alive to the fact that the decision to prosecute is bestowed to the National Prosecuting Authority and therefore laying criminal charges to the SAPS may not be viewed as the adequate remedy. This notwithstanding, the Protection from Harassment Act (Act 17 of 2011) came into effect on the 27th of April 2013. The aim is to address harassment and stalking behaviours which breach Constitutional provisions of the right to privacy and dignity of individual persons. Consequently, the third requirement of interdict must also fail.

[29] After careful evaluation of the presented facts and applicable case law, I conclude that the requirements for the granting of an interdict have not been fulfilled.

Costs

[30] The general rule is that costs follow the result. In the instant matter, KIMEC is cited as the applicant. KIMEC is a church and just like any other organisation, there are individuals within the church. This distinction is very important because it serves as a guide on how the issue of costs should be dealt with. The dispute is between the individuals within the church, therefore, it is fair to deviate from the general rule. The respondents' counsel argued that Mr Mpokeli should be ordered to pay costs in his personal capacity and on a punitive scale. The Constitutional Court has emphasized that costs on an attorney and client scale are to be awarded where there is fraudulent, dishonest, vexatious conduct and conduct that amounts to an abuse of court process⁷. Upon evaluation of the facts presented, the respondents' argument appears to be implausible in this regard.

[31] Considering the fact that the respondents were unsuccessful in their interlocutory applications, I am of the view that it fair and just to make no order as to costs in the interim/interlocutory applications and the main application.

Order

1. The application for the granting of an interdict is dismissed.
2. No costs order is made.

⁷ Public Protector v South African Reserve Bank[2019] ZACC 29 at paragraph 8

N CENGANI-MBAKAZA

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

APPEARANCES:

Counsel for the Applicant : Adv V Sangoni

Instructed by : Messrs Bacela Bukula & Associates
Applicant's attorney
115 Cambridge Road
KingWilliam's Town
Ref: Mr Marcus/nk/K-208CIV

Counsel for the Respondents : Adv M Simoyi

Instructed by : Ronney Lesele Attorneys
Respondents' Attorneys
75 Cambridge Road
Ref: Mr. Lesele/Leigh/mckwt_civ01

DATE HEARD : 2 November 2023

DATE DELIVERED : 06 February 2024