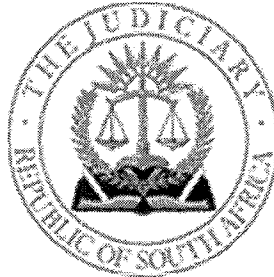


REPUBLIC OF SOUTH AFRICA**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
LOCAL SEAT, JOHANNESBURG****CASE NO: 3603/2019****DATE OF HEARING: 2 MAY 2019****DELETE WHICHEVER IS NOT APPLICABLE**1. Reportable: Yes ☒ No2. Of Interest To Other Judges: Yes ☒ No3. Revised ☒

DATE: 2.5.19

SIGNATURE: 

In the matter between:

MARAGU, GLADYS**OTHER APPLICANTS**

and

MABOTHE, PAUL**FIRST APPLICANT****2nd to 13th APPLICANTS****FIRST RESPONDENT**

OTHER RESPONDENTS**2nd to 39th RESPONDENTS****WRIGHT J**

1. This case concerns a dispute between two different groups in the party cited as the 13th applicant church. Both sides claim that the other is the continuing church. The litigation between the opposing sides has been long and hard, going back many years. In the present application, the applicants moved, as a matter of urgency an *ex parte* application before Adams J on 2 February 2019. He granted an order, pursuant to part A of the application, returnable on 19 March 2019, broadly speaking, interdicting the respondents from threatening the applicants and from interfering in church affairs. On 20 March 2019 Sutherland J granted an order, to similar effect and suspending the order of Adams J and postponing the matter to the opposed motion roll of this week. In effect, the respondents have been interdicted pending the finalisation of an action pending to determine the rights of the parties in the church.
2. What is before me is part B of the application as well as the orders of Adams J and Sutherland J.
3. There are enormous disputes of fact on the papers. For example, the *locus standi* of the applicants, particularly that of the 13th applicant, is challenged. According to the answering affidavit there are 41 Bishops in the church, only 2 of which are in the applicants' camp. The factual disputes cover every aspect of the relief sought. In my view, it would be unwise to attempt to resolve any aspect of the matter on paper. The respondents, at the hearing before me consented to certain limited relief relating to blocking entrances, threats and the like. To the extent that the applicants seek relief over and above that to which the respondents have consented, the disputes of fact, and with them the probabilities are so intractable that it would be improper for me, even on an interim basis to grant relief.

4. The founding affidavit contains allegations of threats of violence. These allegations are denied in detail. It would appear, from the answering papers that peace, of some kind has reigned since the time the present application was launched.
5. In my view, the church affairs can be only resolved at trial. In 2005, Seriti J, as he then was, granted an order against the present applicants, or some of them. That order has apparently never been set aside. Its interpretation and scope of applicability are hotly in dispute and have been since 2005. To grant all the interim relief sought now would require an interpretation of the order of Seriti J, which interpretation is best done in the light of the facts found to have been proved at the trial.
6. The trial may well be lengthy, as it appears that it would be the culmination of years of contentious litigation. This case is but a small part of the larger dispute. In my view, the costs in the three stages of the present case should be reserved for the trial court. The affidavits in the present case will loom large in the trial hearing. I am loath to make a costs order for or against either side, particularly as authority to litigate, and accordingly to appoint lawyers, is in issue. It is possible that costs may be sought and granted *de bonis propriis* against some of the litigants.

ORDER:

1. The order of Adams J of 2 February 2019 and the order of Sutherland J of 20 March 2019 are set aside.
2. The costs associated with the hearings before Adams J, Sutherland J and Wright J are reserved for determination by the trial court.
3. Pending the finalisation of the action instituted under case number 45752/18 the respondents are interdicted from:
 - 3.1 Impeding, interfering with or blocking roads and entrances to the Church or inciting such conduct;

- 3.2 Intimidating, threatening or assaulting any of the Church's members or employees and any other person visiting the Church or inciting such conduct;
- 3.3 Damaging the property of the Church, including but not limited to motor vehicles, buildings and gates and harming the Church's members or employees and any other person visiting the Church and the respondents are not to threaten or incite such conduct.
4. Nothing in this order, or the judgment that precedes it is to be read as a finding by Wright J or a concession by any of the respondents that the 13th applicant, as cited is properly or lawfully cited or is in fact an applicant.
5. Apart from the reservation of costs, to the extent that the relief sought in Part B does not dovetail with the relief granted in this order, Part B is dismissed.

Appearances:

On behalf of the

Applicants:

Adv W Pye

Instructed by:

Edward Nathan Sonnenbergs

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On behalf of the

Respondents:

Adv JC Viljoen

Instructed by:

Greensteins Attorneys Inc

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Date of Hearing: 2 May 2019

Date of Judgment: 7 May 2019