

Coram: Mossop J

Heard: 27 July 2023

Delivered: 10 August 2023

ORDER

The following order is granted:

1. A rule nisi is issued calling upon the respondents to show cause, if any, on 21 September 2023 at 09h30, or so soon thereafter as counsel may be heard, why an order in the following terms should not be made:

- (a) Declaring the Interim Committee formed by the first to eighth respondents during or about March 2017 to be an unconstitutional church structure and that it is dissolved with immediate effect;
- (b) Declaring the following resolutions of the Interim Committee taken on:
 - (i) 8 January 2017, to expel Pastor M E Phangwa from the Ngwelezane local assembly;
 - (ii) 6 April 2017, to terminate the services of Pastor M E Phangwa; and
 - (iii) 6 April 2017, to evict Pastor M E Phangwa from the Ngwelezane local assembly mission house situated at A351, Makhosonke Road, Ngwelezane Township, Empangeni, to be invalid and of no force and effect;
- (c) Confirming Pastor M E Phangwa, or any other pastor appointed by the governing body of the Ngwelezane local assembly, as the only properly recognized pastor of the Ngwelezane local assembly of the Apostolic Faith Mission of South Africa;
- (d) Confirming that the governing body of the Ngwelezane local assembly is the only governing structure vested with the authority to govern and manage the affairs of the Apostolic Faith Mission of South Africa, Ngwelezane local assembly and its branches, including the right to operate the banking

accounts held with First National Bank with account numbers 62198882633 and 62407346594 and to run a postal office on behalf of the aforesaid local assembly;

(e) Interdicting and restraining the first to eighth respondents from operating any bank accounts pertaining to the Ngwelezane local assembly, irrespective of where such bank accounts are held;

(f) Confirming that paragraph 3 of the order of this court dated 27 April 2017 be discharged; and

(g) Confirming that the internal grievance procedure provided for in the constitution of the Apostolic Faith Mission of South Africa is the proper and lawful remedy available to the first to eighth respondents, or any other aggrieved church member, with regard to any complaint pertaining to the appointment of a pastor to the Ngwelezane local assembly.

2. The first to eighth respondents shall pay the costs of this application, jointly and severally, the one paying, the other to be absolved.

JUDGMENT

Mossop J:

‘The most useful members of a church are usually those who would be doing harm if they were not doing good.’¹

[1] In the Ngwelezane local assembly, which is a local assembly of the Apostolic Faith Mission of South Africa (the AFMSA) church, it is alleged that there are individuals who have not done good but who have, in fact, done great harm to that local assembly. It has, in effect, been cleft in two because of the conduct of an association of individuals that identifies itself as being the ‘Interim Committee’ (the Interim Committee). It is common cause that the members of the Interim Committee are the first to eighth respondents. The pastor employed by the Ngwelezane local assembly during 2017, Pastor M E Phangwa (Pastor Phangwa), was initially

¹ Charles Haddon Spurgeon, known as the ‘Prince of Preachers’, was an English Particular Baptist preacher.

suspended from his employment and then had his contract of employment terminated. It is alleged that this was at the behest of the individuals who formed the Interim Committee. Pastor Phangwa was consequently compelled to vacate the Ngwelezane local assembly mission house that he was entitled to occupy by virtue of his appointment as pastor. He was thereafter prevented from preaching to the members of the Ngwelezane local assembly and was forced to preach his pastoral message to those members of the Ngwelezane local assembly flock that remained loyal to him, which included the members of the Ngwelezane local assembly governing body, from other premises situated within the general area of the Ngwelezane local assembly church.

[2] The answering affidavit reveals that the only basis upon which the Interim Committee took these steps against Pastor Phangwa was because he had reached the mandatory retirement age of 65 but had not retired. During argument, counsel for the first to eighth respondents submitted that there was a further reason, namely that the Interim Committee disapproved of the fact that Pastor Phangwa had closed certain associated churches that fell under the control of the Ngwelezane branch. That, however, is not an issue that arises from the papers. There is thus but a single reason for the expulsion of Pastor Phangwa, namely his age.

[3] Whilst the title of the Interim Committee tends to suggest that it is not a permanent body and that its existence would likely be of a limited duration, this has not proven to be the case. This application has its genesis in events that occurred in 2017. The notice of motion bears the date of 1 August 2018. I shall consider why it has taken five years to enrol and argue the application later on in this judgment. But it appears that the Interim Committee has morphed into a permanent committee, for it appears to still exist, and claims to now run the Ngwelezane local assembly, has briefed counsel and has delivered heads of argument to resist the relief claimed by the applicant.

[4] When the matter was argued, the applicant was represented by Mr Madikizela and the first to eighth respondents were represented by Mr Dlamini. The ninth respondent, despite delivering an affidavit, did not appear at the hearing and the

tenth respondent has not participated in the matter at all. Both Mr Madikizela and Mr Dlamini are thanked for their assistance in the matter.

[5] The applicant's notice of motion is divided into part A and part B. I initially believed that what was before me was the relief claimed in part A. In this I was apparently mistaken, for counsel for the applicant advised me that what I was required to adjudicate upon was the relief claimed in part B. The relief claimed in part B reads as follows:

'That a Rule Nisi do issue calling upon the Respondents to show cause, if any, on _____ day of _____ 2018 why an order should not be made:

2.1 Declaring that the Interim Committee formed by the respondents and others about March 2017 is an unconstitutional church structure and is hereby dissolved with immediate effect;

2.2 Declaring the following conduct or decisions of the so-called Interim Committee is invalid and consequently without legal force and effect:

2.2.1 the resolution on 5 May 2017 purporting to authorize Mr SM Ndlovu Assembly (sic) against members of the Governing Body and/or its members;

2.2.2 the decision on 8 January 2017 to expel the presiding pastor from the church;

2.2.3 the resolution on 6 April 2017 to terminate services (sic) of the presiding pastor, Mr ME Phangwa, by serving him with a letter of termination;

2.2.4 the decision on 6 April 2017 to evict the presiding pastor from the church or mission house at A351, Makhosonke Road, Ngwelezane Township, Empangeni;

2.3 Confirming Mr ME Phangwa as the only properly recognized pastor vested with the authority to lead and preside over the AFM of SA – Ngwelezane Assembly at Ngwelezane;

2.4 Confirming that the Church Governing Body which took office in October 2016 was properly elected and is the only governing structure vested with authority to govern and manage the affairs of the AFM of SA - Ngwelezane Assembly and its branches, including to open and operate church accounts (including account number 62198882633 and 62407346594 held with FNB) and to run a postal office on behalf of the church;

2.5 Confirming that the internal Grievance Procedure provided for in the Constitution of the church (Appendix 11.1) is the proper and lawful remedy available to the first (sic), Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Respondents or any other aggrieved church member in accordance with which any misconduct-related complaints and/or grievance against the presiding Pastor and/or any member of the Governing Body or any leader are required to be handled.'

[6] The AFMSA is the mother body to which other Apostolic Faith Mission branches, such as the Ngwelezane branch, are affiliated. The AFMSA has a formal constitution (the constitution). I dwell for a moment on the constitution as, in my view, it plays a significant and pivotal role in the determination of this application. It is a substantial document, comprising some 110 pages. It is trite that the constitution of a voluntary association, together with all the rules or regulations passed in terms thereof, collectively form the agreement entered into by that association's members and serves as the internal statute of that association.² It is a contract concluded between its members, which then binds them.

[7] The constitution provides that each local assembly shall determine: '... the membership qualifications, the number of members, appointment procedures and functions of their governing body, in terms of a policy approved by the assembly at a duly convened meeting.'

[8] Each local assembly is therefore run by a governing body which is mandated by the constitution to perform '... any functions that may be prescribed by the church laws.'

[9] The applicant is the governing body of the Ngwelezane local assembly. In terms of the constitution, the pastor of a local assembly is: '... the leader, vision carrier and member of the governing body.'
Thus, the leader of the Ngwelezane local assembly governing body was its pastor. As previously noted, in 2017, the pastor was Pastor Phangwa.

[10] Appendix 11 to the constitution deals with the administration of justice within the AFMSA church. It has a section relating to the disciplining of pastors and a separate section dealing with the disciplining of members of the church. I need not go into any detail in this regard, other than to acknowledge that the appendix is extremely detailed on these two aspects and deals, inter alia, with the creation of an investigation committee to consider complaints, an appeals committee, a complaints

² *Turner v Jockey Club of South Africa* 1974 (3) SA 633 (A) at 645B-C; *Natal Rugby Union v Gould* 1999 (1) SA 432 (SCA) at 440F-G.

procedure, the formulation of charges and the conducting of hearings and the like. Significantly, section 11.13 of the appendix reads as follows in relation to the disciplining of pastors:

'The Investigating Committee may suspend the pastoral status of the Respondent on full pay pending the outcome of an investigation and disciplinary enquiry if:

11.13.1 The Respondent is alleged to have committed a serious offence;

11.13.2 The presence of the respondent (sic) at his/her workplace might jeopardise any investigation into misconduct or endanger the well-being or safety of any person or Church property.'

The reference to the 'Respondent' in the abovementioned extract is a reference to a pastor.

[11] On the issue of the retirement age of pastors, the constitution deals with this in appendix 7. Section 7.4.1 provides as follows:

'Normal retirement for a pastor shall be upon reaching sixty five (65) years of age, however, a pastor may voluntarily retire at any time after reaching sixty (60) years of age.'

Section 7.4.3 goes on to explain that:

'Local assemblies, and other statutory bodies within the church may utilize the services of a pastor who has retired in terms of Regulation 7.4.1 on a fixed term contract that may be subject to renewal, such renewal and/or extension thereof at Local Assembly level shall be considered at a duly convened meeting of an assembly governing body in the presence of the Regional leader.'

[12] Leaving the constitution and turning to now consider the facts of the matter, the founding affidavit states that on 8 January 2017, Pastor Phangwa was expelled from the Ngwelezane local assembly. This was effected at the instance of the first respondent 'and other persons', who are not identified. The next day, Pastor Phangwa reported this turn of events to the AFMSA's Regional Leadership Forum.

[13] The Regional Leadership Forum, according to the constitution, is an advisory body to a region of the AFMSA church that is intended to provide general leadership and to promote the church's vision and master plan. It is also mandated to, inter alia, enhance meaningful relationships within its region, with special emphasis on interaction and cooperation based on geographic proximity and, importantly, in the context of this matter, to facilitate conflict resolution.

[14] After being informed by Pastor Phangwa of these events, the Regional Leadership Forum established an ad hoc committee to investigate the matter. It met with Pastor Phangwa in February 2017 and with the Ngwelezane local assembly governing body on 1 March 2017. Its scheduled meeting with the first respondent apparently did not occur because the first respondent brought an application for a protection order before the Ngwelezane Magistrates' Court against Pastor Phangwa, complaining that Pastor Phangwa was guilty of harassing him. The Regional Leadership Forum submitted written representations to the magistrate on this issue in due course and explained that the matter was being addressed by an internal inquiry. Subsequent to these representations being made by the Regional Leadership Forum, the first respondent declined to meet with the Regional Leadership Forum and explain his view of matters.

[15] In March 2017, the first to eighth respondents formed the Interim Committee. That body has subsequently positioned itself as the true governing body of the Ngwelezane local assembly since then. It does not claim to be the governing body, but it has appropriated for itself the powers of a governing body. It appears to espouse the same views as the first respondent concerning the tenure of Pastor Phangwa.

[16] On 20 March 2017, fourteen members of the Ngwelezane local assembly addressed a letter to Pastor Phangwa. The letter does not profess to be from the Interim Committee, however the first to eighth respondents in this application are amongst those named. The letter reads:

'Pastor we would like to thank you for your assistance while we were still looking for the Pastor.

As the Ngwelezane Apostolic Faith Mission Church, we have agreed that you no longer have to continue offering us your services.

We request that within 21 days of receipt of this letter or on the day the post office will notify us that you received the letter, to take all your belongings so that we can use the church house.

We request that the Pastor return all the Church belongings including those in other Church branches/Church members including Bank signatures.'

This letter was referred to in argument as 'the suspension letter'. I shall continue to refer to it by that name.

[17] The matter was escalated on 6 April 2017 when a further letter was sent to Pastor Phangwa. Again, the letter is not in the name of the Interim Committee, but it was allegedly sent by the 'AFM Church'. It stated:

'We wish to thank you for your time you dedicated into our Church while we were busy with the appointment of the new Pastor.

The Church has reached a resolution that we immediately terminate your services as a Pastor.

We therefore wish to emphasize that within 21 days upon receiving this letter you vacate our premises belonging to the Church to enable us to utilize it.

Furthermore all movable items in your possession belonging to the Church be returned as a matter of urgency. You are aware that you are a signatory to the Bank account and therefore call upon you to resign with immediate effect.

I will (sic) you will find the above in order.'

This letter was referred to as 'the termination letter'. Again, I shall continue to refer to it by that name.

[18] Five days later, on 11 April 2017, the second respondent, who is apparently the chairman of the Interim Committee but who represented that he was acting on behalf of the AFMSA, approached this court on an ex parte basis and obtained an order prohibiting Pastor Phangwa and two other persons, who may have been members of the governing body although this is by no means clear on the papers, from accessing or operating two bank accounts belonging to the Ngwelezane local assembly. The order was subsequently anticipated on 26 April 2017 and was ultimately discharged but it was replaced with an order in the following terms (the order):

1. The rule nisi granted by the court on 11th April 2017 be and is hereby discharged.
2. The 4th Respondent is directed to forthwith transfer all funds held in the Applicant's FNB account number 62198882633 to Applicants FNB (Building account) 62407346594, with the exception of the sum of R104 000-00.
3. The First, Second and Third Respondents and Sibusiso M Ndlovu be and are hereby restrained from conducting the bank account 62407346594 (FNB) of the Applicant and are not to make any withdrawals from such bank account.

4. The First, Second and Third Respondents shall be entitled to operate Applicant's FNB current account number 62198882633 to pay any legitimate operating expenses of the Applicant, including First Respondent's salary, such monthly expenses not to exceed the sum of R34 000 per month.

5. The Regional Leadership Forum of the Applicant is directed forthwith to intervene and mediate the dispute between the parties in terms of Appendix 11 of the Constitution of the Apostolic Faith Mission of South Africa.

6. The Applicant, the First, Second and Third Respondents, the Governing Body of the Applicant, the Interim Committee and/or the Church Council, and any concerned member of the Applicant's congregation are entitled to participate in any dispute resolution procedures instituted by the Regional Leadership Forum by subjecting themselves to, and participating in, such procedures.

7. That in the event that the dispute is not finally resolved by the end of June 2017, any affected party may approach this Court on these papers, duly supplemented in so far as may be necessary, for further relief.

8. Costs reserved.'

[19] Consequent upon the granting of the order, the Regional Leadership Forum recommenced its efforts to mediate the dispute, as required by the order. Several meetings were convened between the opposing parties, at least one of which was blighted by blatant posturing by the members of the Interim Committee, who claimed that the governing body had arrived late for the meeting and declined to permit the meeting to occur. At a further meeting scheduled to occur at the Ngwelezane local assembly church, the members of the Interim Committee refused to allow the governing body to gain access to the church and declined to unlock a gate at the church premises. It is therefore not surprising that the mediation efforts of the Regional Leadership Forum failed, and the dispute continued to fester.

[20] On 21 October 2017, the Regional Leadership Forum delivered a written report outlining the steps that it had taken in unsuccessfully attempting to mediate the dispute. In that report, the Regional Leadership Forum expressed certain views on the matter. Briefly stated, it concluded that:

- (a) Pastor Phangwa was the true pastor of the Ngwelezane local assembly;
- (b) All unconstitutional committees that had been established were to be 'invalidated';

- (c) The Ngwelezane local assembly governing body and Pastor Phangwa were authorised to operate the former's bank accounts;
- (d) Any complaint against Pastor Phangwa or the governing body had to be lodged in accordance with the prescribed grievance procedures contained in the Constitution; and,
- (e) Pastor Phangwa and the 'church board' were authorised to take disciplinary steps against any church member transgressing the church code of conduct.

[21] Nine months later, on 1 August 2018, this application was launched. Almost exactly five years later, on 27 July 2023, argument was addressed to me on the issues arising out of that application by Mr Madikizela and Mr Dlamini respectively. My initial inquiry directed to Mr Madikizela was why it had taken so long for the matter to be set down. I am not confident that I understood his submissions in this regard. I note that the answering affidavit appears to have been delivered sometime in 2018: I cannot be certain of precisely when this occurred as the indexed papers purport to contain a filing notice which would reflect that date, but do not. But it appears that the replying affidavit was delivered on 29 October 2020. Why there should then be such a delay has not been explained satisfactorily. The matter was set down on 12 May 2021 for hearing on the opposed roll on 12 May 2022. This length of delay is not unusual in this division. I, however, have no understanding of what happened on 12 May 2022, but I am aware that the court file was mislaid at some stage and a duplicate file had to be constructed. This may have contributed to the delay.

[22] It is obviously unsatisfactory that matters such as this should clog up the system for as long as this one has. It is the aim of the court system to deliver swift adjudication of disputes where the assistance of the court is requested. Unnecessary delays hamper the ability of the court to discover and recognise the true facts.³ But the swift administration of justice is also dependent on litigants acting with corresponding swiftness. Here, it appears that the applicant has not moved with any great pace to place the matter before the court for resolution. The respondents have not made an issue of this lethargy on the part of the applicant and have been content to allow the matter to proceed at a snail's pace. They have not raised the spectre of

³ *Molala v Minister of Law and Order and another* 1993 (1) SA 673 (W) at 677.

superannuation, nor have they pointed to any prejudice that the slow progress of the matter has occasioned them.

[23] But there is an undeniable consequence that has resulted because of that slow progress. It appears that there is merit in the first to eight respondents' contention that Pastor Phangwa has reached the retirement age of 65 years. Indeed, this is common cause. He has, however, according to the applicant, been reappointed annually on a fixed term contract since reaching the retirement age. I was advised from the bar that the last annual reappointment was due to expire on 31 July 2023, four days after I heard argument in the matter. Pastor Phangwa had, however, not been reappointed for another annual term by the time that this matter served before me. Mr Madikizela stated that it was a matter of certainty that Pastor Phangwa's tenure would be extended for a further period of a year and that I should be guided by this certainty. I, however, bear in mind the words of Arthur Schopenhauer, the German philosopher, who once remarked that 'the present is the only reality and the only certainty'. At present, the reality is that Pastor Phangwa's employment has not been extended by a further year. It is, notionally possible that he may well have his employment extended for another year, but it is also possible that he may not. I shall, accordingly, cater for these possibilities in the order that I intend granting.

[24] The first to eighth respondents raised a point in limine in their answering affidavit that the founding affidavit is undated and is therefore a nullity. That point was frivolous when initially raised but was accepted as being persuasive by the applicant and it thus removed the matter from the roll and caused the missing date to be inserted by the commissioner of oaths. The point has consequently fallen away. It is, however, somewhat ironic that the first to eighth respondents chose to raise this as a point in limine in all seriousness, as the commissioner of oaths who administered the oath to the deponent to the answering affidavit has done precisely the same thing: no date is filled in indicating when the oath was administered. The point in limine consequently fails.

[25] The deponent to the answering affidavit acknowledged that the Interim Committee received the report of the Regional Leadership Forum and decided not to challenge it. In this regard, it states that:

'The said ruling was then discussed between me and the other Respondents even though aggrieved by it we formulated the view not to challenge or appeal against it.'

One of the reasons for the acceptance of the report by the Interim Committee was that the report did not specifically refer to the Interim Committee but only to 'unconstitutional structures' and was therefore, according to the Interim Committee: 'vague and incapable of enforcement'. Other reasons advanced for its acceptance were that Pastor Phangwa had already left the church and had founded a breakaway congregation, had opened a separate bank account and did not make any effort to come back and participate in the church services and programmes offered by the Ngwelezane local assembly. Finally, it was submitted that:

'As matters stand, in this matter, the current Pastor Mr Phangwa has reached retirement age which is sixty-five years in terms of the church's Constitution and therefore it logically stands to reason that he is now incapable of assuming duties and functions associated with being a pastor.'

[26] The deponent to the answering affidavit further states that:

'As disciplined and loyal members of the church we could not simply leave the church leaderless but we decided to do the good and warranted by continuing to exercise leadership towards the congregation and perform all functions and duties associated with the governing body. In fact, we have filled the vacuum left behind by the Applicant.'

What the deponent does not acknowledge is that if there was a vacuum that was created, it was created by the actions of the members of the Interim Committee.

[27] The issues that require determination in this matter accordingly appear to me to centre entirely around the question of the legitimacy of the Interim Committee and the decisions that it has taken in the place and stead of the governing body, which appears to have followed Pastor Phangwa into exile. While this matter has a long and complicated history, in reality the issues are not that complex and were made simpler by certain admissions made by Mr Dlamini during argument. I asked him on what constitutional basis the Interim Committee claimed to be entitled to an existence. He initially posited that the constitution permitted bodies such as the Interim Committee to exist and referred me to clause 6.1 of the constitution which reads as follows:

'Where necessary, the National Leadership Forum may appoint standing and/or ad hoc committees to attend to certain tasks on their behalf.'

That clause, clearly, does not apply as the Interim Committee was not created by the National Leadership Forum, which is a body akin to the Regional Leadership Forum but on a national scale. The Interim Committee was self-created, not to attend to any tasks on behalf of the National Leadership Forum, but to pursue its own agenda. Mr Dlamini was thereafter constrained to concede that the constitution did not allow for bodies such as the Interim Committee to exist. It was a concession wisely made.

[28] It is a well-established principle that the powers and functions of a voluntary association's organs, such as its governing body, are derived from the association's constitution.⁴ Thus, in *Cape United Sick Fund Society v Forrest*, the court remarked that:

'It has not been seriously contested that the scope of the functions of the numerous organs of this society is determined, primarily if not exclusively, by its written constitution.'⁵

[29] In a voluntary association, such as a church, the members bind themselves to act in a particular way in their relationships with each other. In *Economic Freedom Fighters v Speaker, National Assembly and others*,⁶ the Constitutional Court stated:

'The rule of law requires that no power be exercised unless it is sanctioned by law, and no decision or step sanctioned by law may be ignored based purely on a contrary view. It is not open to any of us to pick and choose which of the otherwise effectual consequences of the exercise of constitutional or statutory power will be disregarded and which given heed to. Our foundational value of the rule of law demands of us, as a law-abiding people, to obey decisions made by those clothed with the legal authority to make them or else approach courts of law to set them aside, so we may validly escape their binding force.'

The Interim Committee has not challenged the ruling of the Regional Leadership Forum, which ruling then binds it. The argument that the ruling is vague is baseless. While the Interim Committee is not mentioned by name, as Mr Dlamini acknowledged, it is not a constitutionally sanctioned body. It accordingly falls within

⁴ *Cape United Sick Fund Society and others v Forrest and others* 1956 (4) SA 519 (A).

⁵ *Ibid* at 533H.

⁶ *Economic Freedom Fighters v Speaker, National Assembly and others* [2016] ZACC 11; 2016 (3) SA 580 (CC) para 75.

the meaning of the phrase 'unconstitutional structures' which is referred to in the Regional Leadership Forum's report.

[30] If it is accepted that the Interim Committee has no legitimacy and no right to an existence within the formal structures of the AFMSA constitution, then it must follow that the constitution did not endow it with any of the powers that the governing body is armed with. The constitution sets out clearly that the Ngwelezane governing body holds those powers that the Interim Committee has purported to exercise. It does provide, however, that the governing body has the power to delegate its powers and duties to any member of the governing body for such periods and on such conditions as it deems fit. It is common cause that no such act of delegation has occurred.

[31] When it is necessary to interpret a constitution, it must be interpreted in accordance with the ordinary rules of construction that apply to contracts in general.⁷ This requires giving effect to the plain language of the document, objectively ascertained within its context.⁸ In the course of interpretation, preference should be given to a sensible meaning over:

'one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document'.⁹

It appears to me, however, that no interpretation is necessary regarding this constitution. It is perfectly plain in its meaning.

[32] According to the constitution, each local assembly is an independent legal persona distinct from the church and/or its members and is:

'... capable of employing persons in its employ which employment includes the calling and appointment of a pastor or any other minister as envisaged by the constitution.'

The governing body would also then have the right to terminate that employment.

[33] The constitution makes it clear that the power to suspend a pastor is a power given to an investigative committee investigating serious misconduct on the part of a

⁷ *Wilken v Brebner and others* 1935 AD 175 at 187.

⁸ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18.

⁹ *Ibid.* See also *National African Federated Chamber of Commerce and Industry and others v Mkhize and others* [2014] ZASCA 177; [2015] 1 All SA 393 (SCA) para 21.

pastor. No such committee was established in this matter. It was not suggested at all by the first to eighth respondents that Pastor Phangwa had committed a 'serious offence' and rightly so: it can never be an offence to simply turn 65. Nor was it suggested that Pastor Phangwa's presence might jeopardise any investigation into misconduct or endanger the well-being or safety of any person or church property.

[34] All of this serves to establish that the Interim Committee had no power to suspend Pastor Phangwa from his employment, or to terminate his employment or to expel him from the church and evict him from the mission house or to determine that he was compelled to involuntarily step into retirement.

[35] The constitution further makes it plain that retired pastors may still have a role in the life of the church and it carves out a niche for them in that regard. Turning 65 does not, as the first to eighth respondents assert, mean that Pastor Phangwa was incapable of assuming the duties and functions associated with being a pastor. According to the constitution, governing bodies may continue to employ retired pastors on annual fixed term contracts. There does not appear to be any restriction on the number of renewals of these annual contracts, nor that such renewals must be in writing.

[36] A single letter, unsigned, and addressed to the Regional Secretary deals with the appointment of Pastor Phangwa as pastor after his retirement and is attached to the founding affidavit. That letter, which is contested by the first to eighth respondents because it is unsigned, states that:

'After deliberations, the Church Council resolved by requesting the Church Governing Body to extend or renew Pastor Phangwa's service Contract for 3 consecutive years starting from 01 January 2019. The Church Governing Body advised the Church Council that the service contract can only be renewed for a period of 12 months at a time. So the council agreed but insisted that as long as those 12 months will eventually add up to 3 years, there is no problem. After the meeting, the Governing Body communicated with Pastor Phangwa and he responded positively to our request. (Please find the attach letters)'

I find nothing sinister in the letter being unsigned. In these days of electronic communications, the non-signature of documents appears to be the norm. It appears to me therefore that Pastor Phangwa was validly employed by the Ngwelezane local assembly governing body beyond his retirement date.

[37] No constitutional entitlement has been identified by the Interim Committee as being the basis for its existence or the actions that it has taken. In effect, the Interim Committee has simply hijacked the affairs of the governing body and usurped its functions.

[38] The further arguments of the first to eighth respondents must be considered. They argue that Pastor Phangwa left the church of his own volition and, in effect, abandoned it. That argument cannot be accepted, for several reasons. Pastor Phangwa immediately reported his expulsion to the Regional Leadership Forum the day after he was physically expelled. That is not consistent with the conduct of someone who has chosen of his own volition to leave the church. Further, had Pastor Phangwa abandoned the church, as the first to eighth respondents suggest, then it is reasonable to expect that there would have been mention made of this in both the letter of suspension and the letter of termination. No such mention is made. Finally, the Regional Leadership Forum would surely not have wasted time, effort and resources to investigate the matter if Pastor Phangwa had indeed elected to leave the Ngwelezane local assembly to pursue other interests and opportunities.

[39] Mr Dlamini argued further that the Interim Committee had initially accepted the findings of the Regional Leadership Forum without reservation. Had Pastor Phangwa immediately returned to the Ngwelezane local assembly, he would have been permitted by the Interim Committee to recommence his duties as they were before the hiatus, so it was submitted. But I was advised that this was no longer the attitude of the Interim Committee, for two principal reasons. Firstly, Pastor Phangwa did not, and still has not, returned to the Ngwelezane local assembly, and has allegedly established a new church to which he now devotes himself. And secondly, the Regional Leadership Forum, after delivering its mediation report, joined the legal skirmish between the Interim Committee and the applicant and has delivered an affidavit in which it has explicitly stated that it supports the applicant's position. It is now viewed by the Interim Committee as being partial and this has tainted the content and findings of its mediation report in the Interim Committee's eyes. Pastor Phangwa is accordingly now not welcome back under any circumstances. Indeed, Mr Dlamini indicated that the first to eighth respondents would consent to all the

relief claimed by the applicant in this application provided that Pastor Phangwa did not return to the Ngwelezane local assembly.

[40] This is a strong stance taken by the first to eighth respondents. In my view it is not a justified stance. On Pastor Phangwa not returning to his duties, there is evidence that the Interim Committee prevented him from gaining access to the Ngwelezane local assembly church. The first respondent, furthermore, sought a protection order against Pastor Phangwa. None of this demonstrates any form of acceptance of the possibility of him returning to his churchly duties and could not possibly have been construed by him that he could, or should, return. There is also no evidence of the Interim Committee stating publicly, or even informing Pastor Phangwa privately, that it would not oppose his return. On the report of the Regional Leadership Forum initially allegedly being accepted by the Interim Committee but later being rejected, this appears to me to be an instance of pure opportunism. The findings of the Regional Leadership Forum were discussed earlier in this judgment. Either the report and its findings were palatable to the Interim Committee, or they were not. The Interim Committee claims to have accepted it. The fact that the Regional Leadership Forum several years later¹⁰ delivered an affidavit in which it essentially confirmed under oath its findings cannot suddenly make the report unacceptable to the Interim Committee.

[41] It is entirely likely that disputes may arise from time to time in a voluntary association. Any association of human beings is a potential breeding ground for possible dissensus. It is for that reason that a good and detailed constitution is beneficial as it identifies channels and procedures for the ventilation and resolution of such disputes that arise. The AFMSA has such a constitution. Rather than act presumptuously as it has, the members of the Interim Committee ought to have followed the prescribed constitutional procedures to deal with their grievance or they, not Pastor Phangwa, ought to have left the church. Instead, the members of the Interim Committee went outside the constitution of the AFMSA in both the creation of the Interim Committee and in the decisions that the Interim Committee subsequently

¹⁰ The affidavit of the Regional Leadership Forum bears the registrar's stamp of 15 January 2021 with the affidavit being dated 17 October 2020. The report bears a date three years earlier, namely 21 October 2017.

then took. The decisions thus taken by it are not the decisions of the governing body and cannot be permitted to stand and to bind the Ngwelezane local assembly.

[42] Finally, something must be said about the order claimed in the notice of motion.

The order sought in paragraph 2.2.1 of the notice of motion is unintelligible. I simply do not know to what is being referred to. I consequently decline to make any order based upon that paragraph. In paragraph 2.4 of the notice of motion, the applicant claims that it is entitled to an order that the governing body was properly elected during October 2016. Insufficient information has been disclosed that would entitle me to come to such a finding. I also decline to make such an order, but I intend granting the other relief claimed in that paragraph.

[43] The applicant also seeks an amended order that includes an interdict preventing the Interim Committee from operating any of the Ngwelezane local assembly's bank accounts. Having found the Interim Committee to be an unconstitutional body, this relief must be granted. It also therefore follows that paragraph 3 of the order granted on 27 April 2017 must be discharged. The applicant has been substantially successful in bringing this application and it must consequently follow that the costs will follow the result.¹¹

[44] I accordingly grant the following order:

1. A rule nisi is issued calling upon the respondents to show cause, if any, on 21 September 2023 at 09h30, or so soon thereafter as counsel may be heard, why an order in the following terms should not be made:

(a) Declaring the Interim Committee formed by the first to eighth respondents during or about March 2017 to be an unconstitutional church structure and that it is dissolved with immediate effect;

(b) Declaring the following resolutions of the Interim Committee taken on:

(i) 8 January 2017, to expel Pastor M E Phangwa from the Ngwelezane local assembly;

¹¹ *Ragavan and others v Optimum Coal Terminal (Pty) Ltd (in business rescue) and others* [2023] ZASCA 34; 2023 (4) SA 78 (SCA) para 29.

- (ii) 6 April 2017, to terminate the services of Pastor M E Phangwa;
and
 - (iii) 6 April 2017, to evict Pastor M E Phangwa from the Ngwelezane local assembly mission house situated at A351, Makhosonke Road, Ngwelezane Township, Empangeni,
to be invalid and of no force and effect;
 - (c) Confirming Pastor M E Phangwa, or any other pastor appointed by the governing body of the Ngwelezane local assembly, as the only properly recognized pastor of the Ngwelezane local assembly of the Apostolic Faith Mission of South Africa;
 - (d) Confirming that the governing body of the Ngwelezane local assembly is the only governing structure vested with the authority to govern and manage the affairs of the Apostolic Faith Mission of South Africa, Ngwelezane local assembly and its branches, including the right to operate the banking accounts held with First National Bank with account numbers 62198882633 and 62407346594 and to run a postal office on behalf of the aforesaid local assembly;
 - (e) Interdicting and restraining the first to eighth respondents from operating any bank accounts pertaining to the Ngwelezane local assembly, irrespective of where such bank accounts are held;
 - (f) Confirming that paragraph 3 of the order of this court dated 27 April 2017 be discharged; and
 - (g) Confirming that the internal grievance procedure provided for in the constitution of the Apostolic Faith Mission of South Africa is the proper and lawful remedy available to the first to eighth respondents, or any other aggrieved church member, with regard to any complaint pertaining to the appointment of a pastor to the Ngwelezane local assembly.
2. The first to eighth respondents shall pay the costs of this application, jointly and severally, the one paying, the other to be absolved.



MOSSOP J

APPEARANCES

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Date of argument: : 27 July 2023

Date of Judgment : 10 August 2023