

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER:1927/2020

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
DATE.....	SIGNATURE:.....

In the matter between:

UNITING REFORMED CHURCH OF SOUTH AFRICA

(GENERAL SYNOD)

FIRST APPLICANT

UNITING REFORMED CHURCH OF SOUTH AFRICA

(NORTHERN SYNOD)

SECOND APPLICANT

And

THE MAMABOLO TRIBAL COMMITTEE

FIRST RESPONDENT

MP MAMAMBOLO

SECOND

RESPONDENT

BJATLADI LAND PROPERTY COMMITTEE

THIRD RESPONDENT

STATION COMMANDER MANKWENG SAPS

FOURTH

RESPONDENT

JUDGEMENT

KGANYAGO J

[1] The applicants allege that they are the rightful owners of erf 816 Mankweng–E (property). The applicants further allege that on 24th February 2020, the first to third respondents (respondents) unlawfully entered the property and threatened to take control of the property with force should they wish to do so.

[2] The applicants further allege that on 29th February 2020 the respondents attended the property, and that upon entering the property, the respondents burned down the library of Turfloop Seminary Task Team which is situated on the property. On 2nd March 2020 the respondent together with unknown people returned to the property and started to intimidate and threaten the security guards, employees and students of the applicants. That the respondents told the students that they will return at 14h00 on the 4th March 2020 and take control of the

seminary and property. The respondents threatened to remove any person they wished to, with force from the property and also cause more damage to the property should any person resist them.

- [3] That resulted in the applicants approaching the fourth respondent for protection and assistance. The applicants also contacted a private security company to provide them with security, but that company told them that it was a police matter, and that the company was willing to assist the police in securing the property should it be necessary. The fourth respondent informed the applicants that they should rather approach a court for an interdict.
- [4] The applicants engaged their current legal representatives who brought an ex-parte extreme urgent application wherein the applicants led oral evidence. In that application the applicants obtained a temporary interdict with a rule nisi being issued. The applicants are seeking confirmation of the rule nisi.
- [5] The respondents are opposing the applicants' application. The respondents allege that the property is within the farm Syferkuil which falls within the area of jurisdiction of the Bjatjadi Bja Dikolobe Tribal Authority and that the Tribal Authority is holding the land within the vicinity of the farm Syferkuil in trust and in favour of the people of Mamabolo. The respondent alleges that in the 1960's and/or 1985, the apartheid government granted URCSA permission to occupy (PTO) the property for missionary purposes only and that the PTO has stated that

it does not confer ownership of the land to the church. That the PTO further stated that if the church violates the terms of the PTO, by amongst others, carry out any other business save for the missionary at the property, it shall forfeit the said land to its trustees.

[6] It is the respondent's contention that the applicants are no longer conducting missionary duties at the property, but that they are conducting the business of student's accommodation. The respondents avers that when the tribal authority became aware that the church has ceased its missionary work, it called the applicants' representatives to its offices for the purposes of an amicable settlement, and the return of the property to the community for it to be held in trust and in favour of the Mamabolo community. That the tribal authority engaged the applicants on numerous occasions with the hope that they will reach consensus, but that instead the applicants rushed to court for a declaratory order that the property be transferred into their names.

[7] The respondents further allege that the applicants have failed to inform the respondents that they (applicants) have obtained an order calling upon Polokwane Municipality to confer ownership of the property into their names within six months from 11th November 2011. It is the respondent's contention that up to date, ownership of the property has not yet been transferred into the names of the applicants. The respondents deny that the tribal authority and those under its care and

instructions have attended the property to cause hammock or burn down the property.

[8] The respondents in their answering affidavit have raised four points *in limine*, that of *non locus standi* to depose the founding affidavit; non-joinder of the traditional council of Mamabolo tribal authority and Turfloop seminary task team; and vague and embarrassing. With regard to the point *in limine of non-locus standi*, the respondents have stated that Bjatladi Bja Dikolobe Tribal Authority is the rightful owner and not the applicants.

[9] In its replying affidavit the applicants have stated that they are the registered owners of the property. The Applicants have also attached to their replying affidavit copy of a deed grant which shows that the property has been transferred to the Uniting Reformed Church in Southern Africa on 7th July 2020. The applicants have also attached a deeds search which shows that the property was purchased by the Uniting Reformed Church in Southern Africa on 23rd August 2013 for R1707-00.

[10] It is settled law that the requirements for the grant of a final interdict are that the applicant must show a clear right; an injury actually committed or reasonably apprehended, and the absence of similar protection by

any other ordinary remedy. Once the applicant has established the three requisites elements for the grant of an interdict, the scope if any for refusing to grant an interdict is limited. There is no general discretion to refuse the relief sought. **(See Hotz v UCT 2017(2) SA 485 (SCA) at para 29).**

- [11] The applicants in support of their averments that they are the registered owner of the property have attached a deed search and a title deed. As I have already pointed out in paragraph 9 *supra* that the applicants have purchased the property on 23rd August 2013 and that property has been transferred into the names of the applicants on 7th July 2020, the applicants in my view, have rights over the property which ought to be protected. Based on that, the applicants have established a clear right.
- [12] With regard to an injury actually committed or reasonably apprehended the applicants in their founding affidavit have stated that on 29th February 2020 the respondents have burned down the library that is situated on the property. The applicant's in support of these allegations have attached photos of a building which had burned down. The respondents in the answering affidavit did not dispute that the pictures attached to the applicants' founding affidavit depicts the library that has burned down. The applicants have further stated in the founding affidavit that on 2nd March 2020 the respondents came to the property and told the students that they will return at 14h00 on 4th March 2020 to take control of the seminary and property. The respondents except to

deny that they went to the property on the day in question, does not deny that indeed this incident took place.

[13] The pictures of the burned building shows that an injury has actually been committed. The threat of coming back at 14h00 on 4th March 2020 shows the perpetrators still intend to cause more harm on the property and have no intention of stopping with their actions. In my view, the applicants have established the second requisite for the grant of a final interdict.

[14] With regard to the third requisite, the absence of similar protection by any other remedy, the applicants have tried assistance from South African Police Services and also from a private security company without success. The court is therefore satisfied that the applicants have established the third requisite for the grant of a final interdict.

[15] The respondents dispute that they are responsible for the burning of the library on the property and also of making threats of coming back at 14h00 on 4th March 2020 in order to take control of the seminary property. However, the respondents in their answering affidavit have stated that when the tribal authority became aware that the church has ceased its missionary activities, the tribal authority called the representatives of the applicants to its offices for the purposes of an amicable settlement in relation to the return of the property to the community for it to be held in trust. The respondents have further stated that the tribal authority had engaged the applicants on numerous

occasions with the hope that they will ultimately reach consensus. All these engagements did not yield any fruits. The respondents avers that the applicants instead of trying to resolve the matter amicably rushed to court for an order to transfer ownership of the property into their names.

[16] By rushing to court was an indication that negotiations have collapsed. The tribal authority wanted to reclaim the property as they believed it is part of their land and that they are entitled to claim it back as the church was no longer using it for the initial purpose it was allocated to it. In my view, the respondents felt that the applicants were undermining the authority of their tribal authority when they refused to hand back the property, and also when the applicants rushed to court for a declaratory order regarding transfer of ownership. The respondents are the subjects of the tribal authority and from their own version, they wanted the property back but the applicants were refusing to accede to their demands. The only inference to be drawn is that they wanted to reclaim what they believed to be their land back by force and have therefore acted in a manner as described by the applicants in its founding affidavit.

[17] It is a fundamental principle of our law that no one is allowed to take the law into his/her own hands. The philosophy of self-help should be discouraged at all costs. If that is allowed, it will result in chaos and there will be no public order. We are living in a democratic country

where the rule of law must be respected at all times. It follows that the applicants are entitled to a final interdict.

[18] In the result I make the following order.

18.1 The interim order granted on 4th March 2020 is confirmed and made final.

18.2 The first to third respondents jointly and severally, the one paying the other to be absolved to pay the applicants costs on party and party scale.

MF. KGANYAGO J

JUDGE OF THE HIGH COURT OF SOUTH

AFRICA

LIMPOPO DIVISION, POLOKWANE

APPEARANCE:

Counsel for the Applicant	:	Adv G Diamond
Instructed by	:	Diamond Inc
Counsel for the Respondent	:	Adv KSD Mohoto
Instructed by	:	Kgadi Phaka Attorneys
Date of hearing	:	01 March 2021
Date of Judgment	:	4th May 2021