



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case number: **2140/2018**

In the matter between:

SHADRACK NKOMENI MOLOI

1st Applicant

JONAS MOSEBETSI MALEKA

2nd Applicant

PETROS MOKETE CINDI

3rd Applicant

MATLA JOSEPH MOTETE

4th Applicant

MANYATHELA ABEL

5th Applicant

MATHODISA DANIEL MOJALEFA

6th Applicant

MONARENG LEGHEKU AMOS

7th Applicant

TSATSI NTJA ALFRED

8th Applicant

MOPEDI HABOFANWE

9th Applicant

MOTAUNG KHOATLELI

10th Applicant

MTHOMBENI FRANK

11th Applicant

and

EDWARD EPHRAIM MADUNA

1st Respondent

NTLELI GABRIEL SWARTBOOI

2nd Respondent

MBATHANE P GABA

3rd Respondent

HLAKOTSA RAYMOND

4th Respondent

TSOTETSI TUMELO

5th Respondent

**THE AFRICAN PRESBYTERIAN
BAFOLOSI CHURCH OF SOUTH AFRICA**

6th Respondent

CORAM: DAFFUE, ADJP

HEARD ON: 10 OCTOBER 2019

JUDGMENT BY: DAFFUE, ADJP

DELIVERED ON: 28 NOVEMBER 2019

I INTRODUCTION

- [1] This application is about the dissatisfaction of several members of a church with the financial affairs of the church and the manner in which certain meetings were held. Four of the applicants were suspended as members and eventually expelled.
- [2] The irony of the matter is that the meetings complained of were held from August to December 2017. Notwithstanding the fact that the application was issued during 2018 and the applicants' replying affidavit filed on 20 June 2018, the matter was only set down finally to be heard on 10 October 2019. The application was postponed several times. The latest postponement was caused by the applicants who intended to amend their notice of motion at the last moment.

II THE PARTIES

[3] The eleven applicants in this application are adult male persons. They allege that they are members of the African Presbyterian Bafolisi Church of South Africa (“the Church”) in good standing and all of them are also Moderators of the Church, having been elected at the Synod held in December 2013. It is further alleged that second applicant is the Assistant General Secretary, third applicant the General Secretary and fourth applicant the Treasurer of the Church, having been elected to these positions at the Synod in December 2013. Adv MS Mazibuko appeared for the applicants.

[4] The respondents in this application are cited as follows:

- 4.1 The first respondent is Edward Ephraim Maduna, an adult male Bishop of the Church;
- 4.2 The second respondent is Ntleli Gabriel Swartbooï, an adult male and the Presiding Bishop of the Church;
- 4.3 The third respondent is Mbathane Pieter Gaba, an adult male, ordained as an Evangelist;
- 4.4 The fourth respondent is Hlakotsa Tumaka Raymond, an adult Junior Minister of the Church;
- 4.5 The fifth respondent is Tsotetsi Thapelo Simon, an adult male Moderator of the Church;

4.6 The sixth respondent is the African Presbyterian Bafolisi Church of South Africa (NPC), a non-profit organization duly incorporated in terms of the Company Laws of the Republic of South Africa.

- [5] Mr NW Phalatsi appeared for the first and third to sixth respondents. Second respondent, having been present when the matter was postponed on the 22nd August 2019, did neither appear before me, nor instruct someone to appear on his behalf.

III THE RELIEF SOUGHT

- [6] It is not my intention to quote the amended notice of motion which consists of four pages. Eighteen different orders are sought, but applicants' counsel conceded during argument that he either could not successfully obtain relief in respect of some prayers, or did not have instructions to persist with such prayers. Consequently, he did not ask for relief in terms of prayers 1, 11, 12 and 15 to 18. Some of the other prayers are also duplication to an extent.
- [7] Respondents indicated that prayer 2 could be granted by agreement, to wit that the resolution taken on 12 August 2017, terminating first respondent's membership, be declared to be unlawful and inconsistent with the Constitution and set aside.

[8] The relief sought are therefore summarised as follows:

- 8.1 Any resolutions taken at the meeting of the Inter-Synod of 4 November 2017 held at Bethlehem shall be declared inconsistent with the Constitution and therefore unlawful;
- 8.2 Any resolutions taken at the meeting of 9 and 10 December 2017 held at Balfour, including those ratifying the decisions taken on 4 November 2017, shall be declared inconsistent with the Constitution and unlawful;
- 8.3 Interdicting and restraining first respondent from presenting himself as and/or calling himself the acting Presiding Bishop of the Church and from holding meetings in such capacity in the name of the Church;
- 8.4 Declaring the election and nomination of third respondent as Secretary General of the Church inconsistent with the Constitution and unlawful and interdicting and restraining him from holding himself out and presenting himself as the Secretary General of the Church;
- 8.5 Interdicting and restraining the fifth respondent from presenting himself as a Senior Minister of the Church and from interfering with the affairs of the Church without the permission of the applicants as Church Council, although he may continue to act in the position to which he was duly elected in December 2013, to wit that of Moderator.

IV THE DISPUTES

- [9] The *locus standi* of the applicants is in dispute. It is the respondents' case that on 4 November 2017 the first, second, third and ninth applicants ("the four applicants") were suspended as members by its Disciplinary Committee for a period of five years. They and others were eventually expelled by the Synod on 9 December 2017. The crux of the matter is thus really whether the meetings convened and held on 4 November 2017 and 9 December 2017 were duly convened and conducted in accordance with the Constitution and whether the resolutions taken at these meetings are valid. In this regard it must be pointed out that the respondents tried to distinguish between the meeting of the Inter-Synod on 4 November 2017 and the meeting of a Disciplinary Committee held on the same day and at the same venue and occasion. Mr Phalatsi submitted that it is clear from the papers that a motion of no confidence in the second respondent as Presiding Bishop was accepted by the Inter-Synod on that day, whilst the four applicants were suspended during a disciplinary hearing of the Disciplinary Committee on the same day. This submission will be tested later.
- [10] The applicants have no *locus standi* to ask for relief on behalf of second respondent pertaining to the adoption of the motion of no confidence against him on 4 November 2017. Save for some remarks later herein, that issue will not be adjudicated.

- [11] Mr Phalatsi submitted and conceded that the dilatory plea of non-joinder, raised in the papers, does not have to be adjudicated at all.
- [12] Another point *in limine* raised in the papers, to wit the issue of entanglement, *i.e.* that matters concerning internal rules, governance, doctrine, values and precepts of the Church as a religious association, fall outside the jurisdiction of the court, has also been discarded.

V UNCONTESTED EVIDENCE

- [13] As mentioned, it is common cause that the resolution taken on 12 August 2017 at Heilbron, terminating the membership of first respondent, was unlawfully taken and should be set aside.
- [14] It is uncontested that the four applicants were duly informed to be present at the meeting of the Inter-Synod on 4 November 2017, but that they failed to attend. They should have been aware that a disciplinary enquiry was to be held. It is their case that they refused to participate in the absence of a charge sheet being provided to them and whilst the meeting was unlawfully convened. It is evident from the papers that no action was taken against them in terms of the Church's Code of Conduct.
- [15] On 4 November 2017 the four applicants were suspended as members of the Church for a period of five years.

[16] Applicants were instructed to attend a disciplinary enquiry during the Synod meeting to be held at Balfour on 9 December 2017. It was alleged that the applicants disregarded their suspensions and continued to act as if not on suspension. First respondent was informed by first applicant in writing that he would not attend that meeting as the Synod had resolved at the December 2016 meeting that the next annual meeting would be held at Bothaville and not Balfour and therefore the Balfour meeting was unlawfully convened. The four applicants were eventually expelled as members of the Church on 9 December 2017. There is uncertainty as to what was resolved in respect of the other applicants who in any event did not make out a case at all for relief.

VI EVALUATION OF THE EVIDENCE AND SUBMISSIONS OF THE PARTIES

[17] Since the meetings of 4 November and 9 & 10 December 2017 a period of 2 years has lapsed. In the meantime the annual Synod meeting of December 2018 would have been held and vacant posts would have been filled for the next five years in accordance with the Constitution. Bearing in mind the time when the affidavits were filed herein and in the absence of any supplementary affidavits, not a word was said about the December 2018 meeting which I accept has taken place. The court is left in the dark in this regard.

[18] My judgment and the orders to be granted cannot have an effect on any elections and/or appointments that might have been made during the December 2018 meeting if it was held indeed. This

court was not asked to set aside any resolutions that might have been taken at such meeting. I shall therefore deal exclusively with applicants' membership of the Church and not their right to the positions they held until 4 November 2017. I am also mindful of the fact that it is trite law that an applicant must make out his/her case in the founding affidavit. Applicants elected to approach their dissatisfaction on a different basis in the founding affidavit insofar as no reliance was placed on the Code of Conduct. I am of the view that, notwithstanding a possibly wrong approach, the court is entitled to look at the totality of the evidence in order to arrive at a correct conclusion and I shall deal with the dispute accordingly.

- [19] It is also evident that both parties, represented by different legal representatives at the time, drafted comprehensive heads of argument in June 2018 in anticipation of a hearing shortly thereafter. Nothing has happened in that regard, causing the new legal representatives to prepare supplementary heads of argument during September 2019 and totally ignoring the initial heads of argument in relying on their supplementary heads only during oral argument.
- [20] Much of the evidence contained in the founding affidavit is devoted to aspects such as alleged financial mismanagement, an attack on first respondent's actions and inactions and alleged serious conflict within the Church. Mr Mazibuko, on behalf of applicants, conceded as I indicated *supra*, that they are not entitled to relief as set out in prayers 1, 11, 12 and 15 to 18 of the amended notice of motion. Therefore this judgment will not deal with the request for production of financial documentation regarding the management

of the Church, its financial statements or financial predicament, the convening of a Synod meeting, or the appointment of an independent person such as an advocate to act as a so-called electoral head and to report to the court the outcome of the elections to be held.

- [21] Once their legal representative has conceded that they were not entitled to the relief in the prayers mentioned above, the only remaining issue is the applicants' alleged entitlement to have their suspensions and eventual expulsions rescinded with reference to the meetings of 4 November 2017 and 9 December 2017 respectively. Mr Mazibuko concentrated on the allegation that both meetings were unlawfully convened contrary to the prescripts of the Constitution. The applicants have not approached the court for the review and setting aside of these specific resolutions. If their application was couched in the form of a review, the Church and/or Inter-Synod and/or Disciplinary Committee might have been in a position to provide minutes of the meetings and reasons for the decision to suspend initially and thereafter to expel.
- [22] Mr Phalatsi submitted that applicants in essence seek a review of the decisions to suspend and expel them and because of their failure to use the correct procedure, it was not incumbent on the Church or its Disciplinary Committee to file the records of decision or reasons for the decisions taken. I also need to consider whether applicants can overcome the next hurdle and that is the Church's Code of Conduct. In terms thereof they had a domestic remedy available insofar as a right of appeal to the Synod is afforded. They have not made use of this domestic remedy and

did not provide any reasons why the matter is exceptional for this court to entertain and to adjudicate the application.

[23] A voluntary association like the Church is founded on the underlying notion of mutual agreement as embodied in its Constitution.¹ The general rule is that conflict between the association and its members must be dealt with in terms of domestic remedies agreed upon. These remedies must be exhausted before relief is sought from the court.²

[24] In *Crisp v SA Council of the Amalgamated Engineering Union* the Appeal Court held as follows³:

“The decided cases clearly establish that it is always open to the Courts of law in the first instance to refer a complainant who is the member of a society or corporation governed by fixed rules to the domestic tribunals of the society or corporation established by these rules for determining disputes amongst members where it is more convenient that the complaint should be determined by such domestic tribunals. Especially is this the case where the rules which constitute the contract between the members clearly exclude courts of law. In these cases courts of law will not as a rule exercise their jurisdiction until the special tribunals have dealt with the matter.

If, therefore, a party aggrieved has a complaint against the act of an official or committee of a voluntary society he must bring this complaint before the proper domestic tribunal appointed for that purpose by the rules of the society, and if the tribunal or tribunals act *bona fide* according to the rules and according to the dictates of natural justice, the law Courts will not interfere; but if they do not do so the aggrieved person can always resort to the Courts of law to have his rights vindicated or a wrong remedied. No voluntary arrangement can take that right away. In such cases Courts of law will not allow their jurisdiction to be ousted.....

To sum up, therefore; where the rules provide that certain disputes and complaints should come before the domestic tribunals, the law Courts will not as a rule usurp their functions, but a dispute may arise which the rules never designed the domestic tribunals to deal with. In such a case the law Courts will not refer the matter to the domestic tribunals but will themselves deal with

¹ *Van Vuuren v Kerkraad, Môrelië Gemeente: NG Kerk OVS* 1979 (4) SA 548 (O) at 557D - E

² *Turner v Jockey Club of South Africa* 1974 (3) SA 638 (AD) at 645B - C

³ 1930 AD 225 at 236, 238 and 242 respectively

it. The present dispute is one of the latter class, for in this case at least one of the tribunals constituted by the rules is directly involved, and cannot, therefore, express an unbiased opinion. It was the act of the Executive Council and the South African Council to declare Crisp ineligible for the office of organiser without having heard him in defence and without deriving the power to act as they did from any rule of the Society. We must therefore conclude that the domestic tribunals were not designed by the rules of the Society to deal with a matter of this kind.

[25] Although *Crisp* was decided nearly a hundred years ago, the principle remains the same as is evident from the *Jockey Club* judgment⁴ and may I say, has been given legislative authority in e.g. the Promotion of Administrative Justice Act⁵ in respect of administrative action as defined in that Act. In *Koyabe v Minister of Home Affairs*⁶ the Constitutional Court dealt with the rationale why internal remedies shall be exhausted before a court is approached for relief. Borrowing from the judgment of Mokgoro J and applying it *in casu*, an application to court before the Church's highest authority has dealt with the dispute will be premature as the court will, if the matter is adjudicated, effectively usurp such body's executive role and function. This will be allowed in exceptional circumstances only, e.g. where the internal remedy would not be effective or where its pursuit would be futile.⁷

[26] This Division has had to deal with a similar situation involving the same Church previously, to wit *African Presbyterian Bafolisi Church of Southern Africa v Moloi & another*.⁸ The reader will immediately make the connection between the parties *in casu* and

⁴ Loc cit

⁵ Act 3 of 2000 and s 7(2)(a) in particular

⁶ 2010 (4) SA 327 (CC) at para 36

⁷ Ibid at para 39

⁸ (3775/2009) [2010] ZAFSHC 1 (7 January 2010)

in that matter. Two Reverends, Swartbooï and Moloi, were the main role players in that proceedings. Rev Swartbooï features again *in casu*, although Rev Moloi is not the same person as the 1st applicant in our matter. Although referring to the duty to exhaust domestic remedies, Rampai J decided to deal with the application and dismissed it on the merits.

[27] Mr Mazibuko relied vigorously on the judgment of *National African Federated Chambers of Commerce and Industry and Others v Mkhize and Others*⁹ (“*Nafcoc*”) for the submission that the aforesaid two meetings of 4 November and 9 December 2017 were unlawfully convened insofar as the person that had the constitutional power to convene them did not do that and consequently, all resolutions passed at these meetings are invalid and of no force and effect. I do not necessarily agree with this submission, bearing in mind that it could not be expected of the very same person accused of wrong-doing to convene a meeting for the discussion of a motion of no confidence in him. I indicated earlier that I am not prepared to consider whether the motion of no confidence in second respondent was properly adopted as he is not an applicant applying for relief. The applicants cannot speak on his behalf. My *prima facie* view expressed earlier in this paragraph does not mean that the four applicants’ suspension is in order. I shall elaborate later.

[28] I have referred to the previous matter of the Church that came before this court and also noticed from the papers presented to me that several other disputes have been referred to our courts in the past. It is apparent that the Church and its members rely on their

⁹ (805/2013) [2014] ZASCA 177 (21 November 2014) at para 37

statement of faith as set out in paragraph 2.1 of the Constitution and the character of the Church and its prophetic calling in paragraph 2.2. Contrary to these laudable principles, too many rifts have been created and litigation embarked upon over several years. Therefore and after I heard argument, I reserved my judgment after expressing my deep concern that the Church with its laudable objectives is being steadily undermined by a battle for its control for apparently opportunistic reasons to borrow the words of Majiedt JA, as he then was in *Nafcoc*.¹⁰ The learned Judge of Appeal proceeded to say the following which equally applies in *casu*:

“The flood of cases and concomitant considerable legal costs will not solve the organisation’s internal problems; on the contrary it will do inestimable harm and very little, if any, good.” I trust that sanity will prevail soon so that the Church can carry on with the good work as provided for in its Constitution.

- [29] Although respondents rely on the fact that applicants should have approached the court with a review application, their opposition to the relief claimed by the applicants is in essence the failure to make use of the internal mechanisms of dispute resolution. It is their case that applicants should have appealed to the Church Council as is evident from paragraph 4.17 of the answering affidavit. I do not agree for the reasons advanced later herein. Respondents correctly confirm that the Synod is the highest decision-making body of the Church, but argue that an appeal from that body (or the Inter-Synod) should be directed to the Church Council. I also do not agree with the respondents’ view point that

¹⁰ Op cit at para 37

the applicants are “a little early to late” or “the horse has bolted and the boy is in trouble” or “the milk is spilt and now mixed with sand” or that the scrambled egg cannot be unscrambled as set out in paragraph 7.19 of the answering affidavit. The applicants seek at this stage an order that they are recognised as members of the Church. Therefore they allege that their suspensions on 4 November 2017 and the expulsions on 9 December 2017 should be regarded as null and void.

[30] Unlike as argued by Mr Phalatsi, it appears as if no separate meetings were held on either 4 November 2017, or 9 December 2017. It is apparent from the clear and unambiguous wording of Annexure “AA1” to the answering affidavit that the Inter-Synod had two items on its agenda of 4 November 2017, firstly the motion of no confidence against the Presiding Bishop Swartbooi, the second respondent in the application, and secondly, the disciplinary enquiry against the first, second, third and ninth applicants. It may not be altogether clear who conducted the disciplinary enquiry in the absence of the particular applicants on that day, but a verdict of guilty was returned and applicants suspended for a period of five years.

[31] The records relied upon by the respondents indicate in my view decisively that the Inter-Synod dealt with the disciplinary proceedings against the applicants on 4 November 2017. Mr Phalatsi submitted in this regard that there was a separate disciplinary enquiry which continued in the absence of the applicants and that enquiry returned a guilty verdict and suspended the applicants for a period of five years as is evident

from paragraph 4.7 of the answering affidavit. In my view the respondents' version under oath is directly contrary to the contents of the notice issued to convene the meeting of 4 November 2017 as is apparent from annexure "AA1." Two issues were placed on the agenda of the Inter-Synod, to wit the motion of no confidence in the Presiding Bishop NG Swartbooi and the disciplinary enquiry against the applicants. In my view it was intended *ex facie* the agenda that the Inter-Synod also dealt with applicants' disciplinary enquiry. If it was the intention to convene a Church Judicial Committee in accordance with the Code of Conduct, I would have expected that committee to give proper notice of disciplinary proceedings to be held by it. This did not transpire. In fact, respondents clearly did not have any regard to the Code of Conduct at that stage of the proceedings.

- [32] The Code of Conduct was not attached to the founding affidavit, but as annexure "RA2" to the replying affidavit. Discipline is exercised in terms of the Code of Conduct by the Church Judicial Committee and the Synod and/or Inter-Synod each having its own jurisdiction and acting within such. The Code of Conduct stipulates that any matter brought before any of each communities is not complete until any appeal or review has been completed or the time for noting it has passed. The Code of Conduct also provides that a Judicial Committee may refer any disciplinary hearing or any part of the hearing or point of difficulty in a hearing to the Synod or the Inter-Synod for advice or decision. One's a Judicial Committee has found an accused person guilty, he/she should be informed that he/she may appeal to the Synod or the Inter-Synod.

- [33] If the applicants were indeed disciplined by the Inter-Synod that suspended them before they were eventually expelled by the Synod, their right to appeal has become nugatory. Respondents' allegation that applicants have a right to appeal to the Church Council is devoid of any merit. There is no such provision in the Code of Conduct or the Constitution.
- [34] The applicants failed to attend the meeting of 4 November 2017 notwithstanding having been informed thereof. It is their case that they did not received a charge sheet, but in any event, their disciplinary enquiry and/or the meeting of 4 November 2017 was not properly convened.
- [35] It is common cause that the Inter-Synod meeting of 4 November 2017 was convened by the first respondent who is the Bishop of the Church and this meeting was to deliberate on the motion of no confidence in the Presiding Bishop and to hold a disciplinary enquiry in respect of the four applicants. The Constitution provides that if it is necessary for the Presiding Bishop to have a decision of the Inter- Synod on any urgent matter, he is authorised to instruct the General Secretary to convene a meeting in writing with two calendar weeks' notice. The Bishop can only act in the position of the Presiding Bishop if the latter is suspended. This was not the case when the meeting of 4 November 2017 was convened. The applicants submit that this meeting was convened and held unlawfully as there was no lawful reason for the first respondent to act instead of the Presiding Bishop. The effect hereof is that all

resolutions taken at that meeting are of no forced and effect, so the applicants submitted, relying on *Nafcoc*¹¹

[36] In my view neither the Inter-Synod, nor the Synod could have acted as a Church Judicial Committee. Neither the Synod, nor the Inter-Synod could act as a body of first instance to deal with discipline within the Church. The Synod and/or Inter-Synod are the appeal bodies. Therefore, the applicants could not and should not have been suspended as members by the Inter-Synod on 4 November 2017 and based on the same argument, could not and should not have been expelled by the Synod on 9 December 2017. In doing so, these bodies acted directly in conflict with the Code of Conduct and thus unlawful.

[37] I considered the other relief requested, but no case has been made out for such relief. Those matters have become moot if the time lapse is considered as indicated above. Applicants also accepted in their replying affidavit that the matter was urgent “because no one will hold office after December 2018” and “the term of office of the current leadership, including the first and second respondent will expire in December 2018.”

VII CONCLUSION

[38] The parties are *ad idem* that the purported resolution taken at the Heilbron meeting on 12 August 2017, terminating the membership of the first respondent, was unlawful and inconsistent with the

¹¹ Loc cit at para 37

Constitution of the Church. A declaratory order may therefore be granted in this regard.

[39] The applicants do not have the right to seek relief on behalf of the second respondent and I am not prepared to grant any relief in this regard or any further relief set out in the amended notice of motion, save such relief as set out in the next paragraph.

[40] I am satisfied that notwithstanding the vague and even poor manner in which the founding affidavit was drafted and the fact that reliance was placed on irrelevant matter in respect of which it was conceded no relief could be granted by the court, it became quite evident from the papers relied upon by the applicant and in particular the documentation attached to the answering affidavit and even the respondents' version, that the four applicants were firstly suspended by the Inter-Synod which was not the appropriate body to do that and secondly, the Code of Conduct was totally ignored in convening and holding the so-called disciplinary enquiry. Therefore the suspension of the applicants as members on 4 November 2017 should be set aside as null and void and in the same breath, the later expulsion of applicants as members of the Church by the Synod on 9 December 2017 cannot stand for the reasons as advanced herein. I reiterate that the applicants cannot be placed in the positions they held as Moderators, Assistant General Secretary, General Secretary and Treasury respectively as the positions would in any event have become vacant five years from December 2013. New elections were supposed to be held at the Synod in December 2018.

VIII COSTS

[41] The applicants shall be held responsible for the wasted costs of 22 August 2019, the reason being that they decided at the last moment to amend their notice of motion, causing respondents to reconsider their position and requiring a postponement. I have not been made aware of any other cost orders that stood over for later adjudication.

[42] The applicants, having been successful to a limited extent, might have been entitled to their costs of the application. Their emphasis in the founding affidavit was on financial and even irrelevant matters.

The founding affidavit consists of 153 paragraphs and the attack was mainly focused on first respondent's actions or inactions, the incorrect procedure in adopting the motion of no confidence against second respondent and the lack of trust amongst the various groups in the Church. Applicants dealt briefly and in a few paragraphs with the meetings of 4 November 2017 and 9 December 2017. Applicants placed the Code of Conduct before the court and dealt with issues relating thereto only after the respondents dealt with the so-called disciplinary enquiry and made allegations in that regard. I also take cognisance of the fact that this matter was delayed to a great extent by the applicants themselves. A matter that should have been heard in the first term of 2018 was heard in the fourth term of 2019 only. However the applicants were unfairly treated and contrary to the provisions of the Constitution and the Code of Conduct.

[43] Most importantly in considering a costs order, the amended notice of motion does not contain a prayer for costs or even one for “further and/or alternative relief.” Although Mr Mazibuko asked for costs in his supplementary heads of arguments, applicants’ entitlement to costs was not fully argued. It is possible that applicants deliberately refrained from asking for costs in their notice of motion. I must also accept that respondents opposed the application well-knowing that no cost order is sought against any of them. Therefore, in addition to what I said earlier and even considering the court’s wide discretion in the exercise to award costs, no costs should be awarded in favour of applicants.

IX ORDERS

1. The resolution taken on 12 August 2017 at Heilbron, purportedly terminating first respondent’s membership in the African Presbyterian Bafolosi Church of South Africa (“the Church”) is declared unlawful and inconsistent with the Constitution of the Church and set aside.
2. It is declared that the suspension of first, second, third, and ninth applicants as members of the Church on 4 November 2017 and their eventual expulsion as members of the Church on 9 December 2017 are contrary to the Constitution and Code of Conduct of the Church and unlawful and therefore, such suspensions and expulsions are rescinded and set aside.

3. The parties shall be liable for their own costs of suit, save that applicants shall be liable to respondents for respondents' wasted costs occasioned by the postponement on 22 August 2019.

J P DAFFUE, ADJP

On behalf of Applicants: ADV MS MAZIBUKO

(The main heads of argument having been
drawn by: ADV OM MOTAUNG)

Instructed by: SIBANDA BUKHOSI ATTORNEYS
c/o MOKHOMO ATTORNEYS
BLOEMFONTEIN

On behalf of 1st and 3rd

to 6th Respondents': MR PHALATSI

(The main heads of argument having been
drawn by: ADV PT MASIHLEHO)

Instructed by: PHALATSI & PARTNERS
BLOEMFONTEIN

On behalf of 2nd Respondent: No appearance