

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

IN THE HIGH COURT OF SOUTH AFRICA, NORTHERN CAPE DIVISION, KIMBERLEY.

Not reportable
Case no: 855/2009

In the matter between:

THE AFRICAN GOSPEL CHURCH

APPLLCANT

And

STANDARD BANK

FIRST RESPONDENT

THE SIGNATORIES TO STANDARD BANK

AGC KIMBERLEY ACCOUNT NUMBER 143... 899

SECOND RESPONDENT

Heard: 08 February 2019

Delivered: 10 May 2019

JUDGMENT

PHATSHOANE J

Introduction:

[1] 10 years ago, on 15 May 2009, the African Gospel Church (AGC), the applicant, approached this Court on an urgent basis for an order substantially in the following terms:

- 1.1 Interdicting and restraining Standard Bank ("the Bank"), the first respondent, from permitting any person to withdraw any funds or part thereof held in the Standard Bank account number: [...] in the name of AGC Kimberley;

- 1.2 Directing the Bank to disclose to AGC the names and addresses of the signatories to the bank account in issue to enable AGC to serve the application on them;
- 1.3 Directing the Bank to pay the funds held in the specified account into the Trust Account of Preston Whyte & Associates, AGC's attorneys; and
- 1.4 Directing that the costs of the application be paid by those respondents who oppose the application jointly and severally, the one paying the other to be absolved.

[2] The application succeeded before William J who issued a rule nisi returnable on 19 June 2009 with paras 1.1 and 1.2 above operating as an interim interdict. The rule nisi was extended several times between the years 2009 to 2018. The urgency in which the application was brought was overtaken by the events, in particular, on each return date, Mr Robert raig Preston-Whyte, the applicant's attorney of record, attested to an affidavit seeking an adjournment on the basis that similar orders as the one sought in the present application were pending in the Pietermaritzburg and the Durban Division of the High Court; that insofar as the second respondents, the signatories to the Standard Bank account, were opposing the relief sought, *inter alia*, on the ground that those representing the applicant were not its properly elected leaders, the parties had agreed that this application could not be determined until the finalization of the Pietermaritzburg High Court application issued under Case No: 1658/09 dealing with the legitimacy of a previous election of the executive and/or the leadership of applicant that was held in January 2008.

[3] Mr Preston-Whyte went on to state that the common understanding between the parties was that if indeed the elections of the relevant officials of the AGC, particularly the Moderator, were found to be invalid then that Judgment would have a significant impact on the further conduct of matters where an interdict had been sought in respect of funds that belonged to the AGC.

[4] The Pietermaritzburg High Court application was dismissed on 17 April 2018 for want of prosecution. Effectively this meant, so it was argued for the applicant, that the elections of the office bearers of the applicant as at 12

January 2008 remained valid and that Reverend Nutu De Villiers Gigaba, the deponent to the founding affidavit, was the validly elected Moderator of the applicant.

- [5] The argument by the second respondent that Rev Gigaba has no *locus standi* to bring the application is unmeritorious. This is so because Article IX of the Constitution of the AGC, provides in part that the Moderator acts as a representative of the church in all relationships with the government and authorities wherever the church is concerned and shall sign all the official documents.
- [6] As already alluded to, the present application was instituted partly to restrain the Bank from permitting any person to withdraw any funds from a certain specified bank account number held in the name of AGC Kimberley. Annexure "E" to the founding affidavit is headed "AGC Fascadale Building Project - Proposal to borrow money from the Bank". It sets out a number of bank accounts, including the bank account in issue, which are held in the name of the AGC and in respect of which contributions, made in good faith by the congregants of the AGC, were paid in by certain members of the church, which includes the second respondents, who call themselves the dissident of the AGC led by certain Mr MP Zimu (the Zimu group)¹. It is common cause that these contributions were made for the furtherance of the objects of the AGC as set out in its Constitution. Rev Gigaba, an elected Moderator of the applicant since 1994, explained with reference to annexure "E" that the funds were gathered from the congregants of the AGC and administered by the dissidents group as opposed to the centralized administration of funds provided for in the constitution of the AGC. He intimated that the property at Fascadale, contrary to what is contained in the purported proposal to the Bank, does not belong to the AGC but to a Trust over which AGC had no control. He says that any renovation of the building, taking place upon the land in issue, is of no benefit to the AGC.
- [7] The Bank did not oppose the application. The signatories to the Standard Bank account number: [...], held in the name of AGC Kimberley, the second respondents, opposed the application. Their attorneys of record, Lister &

¹ Pages 11-18 of "E" contains various Bank accounts held at various Banking institutions including

Lister, withdrew from the matter on 13 May 2014. Even though Mr Phillip Ramme attested to the answering affidavit on behalf of the second respondent, he did not file any heads of argument. He was also not present in Court on the return date of 08 February 2019 when this application was finally heard. The record demonstrates that on 15 January 2019 the sheriff of this Court served on the respondents: two documents, this being, the AGC's heads of argument and the Notice of Set Down for the proceedings of 08 February 2019. These documents were served on a certain Pastor Robert Hlajoane at the last known address of the respondents' signatories to the Bank account, [...] Kimberley, which address was provided to the applicant and the Court by the respondents' erstwhile attorneys of record in its Notice of Withdrawal as their representative dated 13 May 2014.

- [8] In his answering affidavit Mr Ramme says he is a Pastor (Minister) of the AGC serving the Kimberley circuit of the church. He and a certain Mr Kleinbooï Thiyan are the signatories of the bank account in issue; that there were two factions in the church which to a large extent functioned independently of one another; there has been a *de facto* decentralization of the management and control of the activities of the church since 1982. The wider management and control of the affairs of the church was awarded to the circuit churches and below that level. The circuits and congregations, which were controlled by either the Gigaba- group or Zimu-Group (dissident group), opened and operated banking accounts at circuit level for various purposes serving the objectives and purposes of the AGC. He says that the centralized operation of banking accounts is impractical and impossible. The funds held in various accounts collected from the congregants were applied, *inter alia*, to maintain and support the elderly, widows and pensioners. They were also used to defray the monthly expenses such as the salaries for the 34 Evangelists/Ministers and employees' salaries; rental of class rooms and halls used for church services, telephone, Insurance, fuel, and the like expenditure.
- [9] Mr Ramme claimed that the Gigaba-group's attempt to re-establish the central control of funds was aimed at financially crippling the Zimu-group and eliminating it from the AGC. He is of the view that the freezing of the bank

account, as sought in this application, has the effect of disrupting and indeed preventing the performance of the work by the Church.

[10] Almost eight years prior to the launching of this application, on 17 April 2001, at the then Durban and Coast Local Division under Case No: 1161/99 Combrink J committed Rev MP Zimu to a term of six months imprisonment for being in contempt of the Court order dated 02 July 1999 issued by Tshabalala J which was wholly suspended on certain conditions. A declarator was also issued to the effect that Rev Zimu relinquished his office of Moderator of the AGC which he had appropriated to himself in contempt of the order of that Court and that he had admitted that such appointment as moderator was unconstitutional and in contravention of the Court order. In addition, he was interdicted from, *inter alia*, either directly or indirectly acting in any office of the AGC for which elections must be held at a duly constituted conference unless elected to such an office at a duly constituted conference of the AGC.

[11] The question of the purported existence of two legitimate groups within the AGC was considered by Ntshangase J during the contempt proceedings brought against Mr Zimu in the KwaZulu-Natal High Court, Durban, under case No: 14614/07 and rejected as preposterous. The learned Judge held:

"It is preposterous to think that a single church can exist as two split groups. Congregants within the African Gospel Church can exist simply as followers of Zimu as a person but [also] as followers of the existing Moderator [Rev Gigaba] both as a person and as a leader of the church. The absurdity which would flow from a recognition as African Gospel Church Gigaba or Zimu is that there could also emerge African Gospel Church Dlamini.... It is incredible."

[12] On 11 March 2013 the suspended sentence by Combrink J was put into effect by Ntshangase J who committed Rev Zimu to imprisonment for six months for being in contempt of Combrink J's order and a further six months imprisonment was imposed of which four months thereof were suspended for five years on condition, *inter alia*, that Mr Zimu does not hold himself out to be a leader of the AGC. Mr Zimu was refused leave to appeal by Ntshangase J and on 11 June 2013 the Supreme Court of Appeal dismissed his

application for leave to appeal Ntshangase J's judgment and order.

- [13] Against the backdrop of what is said above Mr Ramme's contention that he belongs to a legitimate group of AGC under the leadership of Mr Zimu is without any substance and must be rejected as false.
- [14] The Constitution of the AGC provides that the General Treasurer of the AGC shall act as custodian of all funds of the church. He is required to keep accurate record of all receipt and disbursements and to make all payments including the employees' salaries. It is also his obligation to give a financial report to the Central Committee and at the annual conference of the AGC comprising all the AGC's genuine, bona fide and lawfully ordained Ministers and Evangelists (and their wives) and elected delegates from every circuit of the AGC.² Therefore, there can be no question that the funds collected from congregants and members of the AGC are required to be remitted to the General Treasurer.
- [15] The postulate by Mr Ramme of a decentralised church operation where he and other persons were entitled to hold funds of the church collected from the congregants in the name of the Church is fallacious. Apparent from Mr Ramme's averments is that the funds, which were collected from congregants and members of the AGC, were not remitted to the General Treasurer. There is also a dearth of evidence that Mr Ramme and his associates ever accounted to the General Treasurer of the AGC with regard to those contributions. It is remarkable that Mr Ramme states that the funds collected were applied to support the elders, widows and pensioners but the annexure allegedly containing the list of the purported beneficiaries is conspicuously absent from his affidavit. To my mind, in conducting themselves as they did, Mr Ramme and his associates contravened the Constitution of the AGC.
- [16] In conclusion, Mr Ramme failed to demonstrate that the second respondent was lawfully entitled to hold the unspecified funds in the Standard Bank account collected from the AGC congregants. His unsubstantiated

² Article XII at page 9 of the Constitution of the AGC set out the duties of the General Treasurer. In terms of Article IX of the Constitution at page 5 the governance of the church shall be carried out by the district conference and the annual conference

1. The Rule nisi dated 15 May 2009 is hereby confirmed.
2. Standard Bank Ltd, the first respondent, is ordered to pay the funds in the Standard Bank account No [...], held under the name of the African Gospel Church, Kimberley, into the trust account of Preston- Whyte and Associates, the attorneys for the African Gospel Church, to be disbursed to the African Gospel Church, the applicant; and
3. The costs of this application are to be borne by Mr Phillip Ramme, the deponent to the answering affidavit and a signatory to the Standard Bank AGC Kimberley Account Number [...], the second respondent.

APPEARANCES:

FOR THE RESPONDENTS: No appearance