

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

Case No: 4702/2013

In the application between:

THE APOSTOLIC FAITH MISSION OF
SOUTH AFRICA
TEBEJANE ALFRED MLANGENI

1st applicant

2nd applicant

and

A A MOLOI
M E MOLOE
T A CHARLIE
P P LESIA
D J MATELA
I V Y MOTSOENENG
G T MOTSOENENG
P M HLALELE
B M SELEVU
M E NKWANE
S NKWANE
B RADEBE
N E MALAKOANE
T SETLABA
L S LENYEHELO

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent
7th Respondent
8th Respondent
9th Respondent
10th Respondent
11th Respondent
12th Respondent
13th Respondent
14th Respondent
15th Respondent

JUDGMENT BY: C REINDERS, AJ

HEARD ON: 11 JUNE 2015

DELIVERED ON: 25 JUNE 2015

[1] This application, dealing with disruption and/or disturbance of church services, originated as an urgent application on 16 November 2013 and has yet to find closure. Due to the

somewhat long history as well as uncertainty relating to the current nature thereof, I find it apposite to give a brief synopsis of the history of the application.

[2] On 16 November 2013 a rule nisi was issued by Moloi J, returnable 30 January 2014, in the following terms:

- “1. The non-compliance with the rules of the above Honourable Court pertaining to time limits and manner of service is dispensed with and that this application is heard as one of urgency.
2. The rule nisi is issued, returnable on 30th January 2014, calling upon the Respondents to show cause, if any, why the following orders should not be made final:
 - 2.1 That the Respondents and/or anyone under their instruction be interdicted and restrained from disturbing, alternatively disrupting in any manner whatsoever Sunday church service of the Applicant;
 - 2.2 That the Respondents and/or anyone under their instruction be interdicted and restrained from threatening in any manner board members of the Applicant.
3. Paragraph 2.1 and 2.2 supra above shall operate as an interim interdict with immediate effect.
4. The Respondents, jointly and severally, the one paying the others to be absolved, to pay the costs hereof.”

- [3] The Respondents filed their opposing affidavits on 27 January 2014, but on the intended return day the application was postponed to 6 March 2014, and once again on 6 March 2014 to 13 March 2014, apparently by agreement that the rule nisi had not lapsed.
- [4] By agreement between the parties the Second Applicant was allowed to intervene on 13 March 2014, and time frames were laid down relating to the delivery of further affidavits. The rule nisi was extended further to 15 May 2014.
- [5] On 28 March 2014 the Second Applicant delivered a notice in terms of Rule 28 of the Uniform Rules of Court of his intention to amend the Notice of Motion in the following manner:
- “By deleting the whole of paragraph 3 and replacing it with the following:
3. That pending the finalization of an investigation into acts of misconduct by the Respondents or possible institution and finalization of disciplinary steps against the Respondents by the disciplinary body of the Apostolic Faith Mission of South Africa, alternatively, the holding of an Annual General Meeting (AGM), whichever occurs first, that prayers 2.1 and 2.2 shall operate as an interim interdict with immediate effect.”
- [6] The Respondents filed a notice of objection to the intended amendmend on 22 April 2014. On 23 April 2014 the First Applicant filed a notice of withdrawel, tendering costs. On the return day, 5 May 2014, the application was postponed sine die by agreement between the parties.

[7] Pursuant to the Respondent's objection to the intended amendment of the Second Applicant's Notice of Motion, the application was enrolled on the opposed motion roll of 19 June 2014 and heard by Mbhele, AJ who handed down judgment in favour of Second Applicant on 11 September 2014.

[8] The application that I need to adjudicate upon is thus for an order in the following terms:

“2.1 That the respondents and/or anyone under their instruction is interdicted and restrained from disturbing, alternatively disrupting in any manner whatsoever Sunday church service of the First Applicant

2.2 That the respondents and/or anyone under their instruction be interdicted and restrained from threatening in any manner board members of the First Applicant

3. That pending the finalization of an investigation into acts of misconduct by the Respondents or possible institution and finalization of disciplinary steps against the Respondents by the disciplinary body of the Apostolic Faith Mission of South Africa, alternatively, the holding of an Annual General Meeting (AGM), whichever occurs first, prayers 2.1 and 2.2 shall operate as an interim interdict with immediate effect.”

[9] There can be no doubt in my mind as to the status of this application. It is not a final order that is sought as prayer 3 above makes it clear that the relief sought in prayers 1 and 2,

are interim interdicts sought against the Respondents as stated. The latter is pending the occurrence of the finalisation of an investigation and possible disciplinary steps against the Respondent, alternatively the holding of an Annual General Meeting (AGM). The interim order already given on November 2013, had been extended and will continue to do so until such a time as the occurrence of prayer 3 take place.

[10] I now turn to the merits of this application. The First Applicant is the Apostolic Faith Mission of South Africa (the church), being so described as the name of the church in the document entitled "Constitution of the Apostolic Faith Mission of South Africa" kindly handed up from the bar by Mr Tshabalala on behalf of the Respondents. The Second Applicant is one of the members of the church (Thabong Assembly), Mr Tebejane Alfred Mlangeni (Mr Mlangeni). All the respondents are members of the church.

[11] The application was brought about by disruption of church services by the Respondents at the Thabong Assembly where one Pastor Andries Molete (Pastor Molete), who deposed to the founding affidavit of the First Applicant, was the preacher. Ceremonies were disrupted by singing and chanting whilst Pastor Molete was preaching and thus no order could exist. According to Mr Mlangeni, after the court order was granted in November 2013, church services ran smoothly, peacefully and uninterrupted. It was respected by the parties, but grievances of the parties against each other

needed to be addressed by the church whilst the court order remained in force.

[12] The Respondents in their opposing affidavit admitted that problems in the assembly existed and could be resolved internally. That tension exists between the parties, can not be denied, as Respondents indicated that the leadership was questioned by some members and it was decided that a neutral person must be assigned to preach. It was also common ground that there had not been an AGM as is provided for in the church's constitution since 2012. This aggravated tension, mistrust and animosity between members of the congregation.

[13] When the application was initially brought by Pastor Molete, (as deponent to the then Applicant's founding affidavit) the Respondents raised four points in limine, namely the material non-joinder of the Regional Leadership Committee of the Church, the incorrect citation of the First Applicant, material non-joinder of the National Leadership Forum of the Church and failure to exhaust internal remedies in respect of the constitution of the church. These four points in limine were once again raised in opposition to Mr Mlangeni's founding affidavit.

[14] It should be borne in mind that Pastor Molete (as deponent) withdrew as First Applicant, leaving only Mr Mlangeni as Second Applicant, who intervened in his capacity as a member of the church. Mr Mlangeni requires of this court to

assist him, as well as other members of the Thabong assembly, in preserving his right to worship in a peaceful, orderly fashion. Mr Mlangeni has a prima facie right as member of the church to the relief that he claims. In so far as Mr Greyling submitted that the first three of the abovementioned points raised in limine do not have any merit, I agree with him. No relief is sought against either the Regional Leadership Committee or National Leadership Forum. The First Applicant withdrew from the proceedings so the citation thereof became irrelevant thereafter.

- [15] The final point in limine raised by Respondents, namely that Mr Mlangeni has failed to exhaust his internal remedies afforded to him in the constitution of the church (Appendix 11 thereof), requires closer scrutiny. The thrust of Mr Tshabalala's argument was that the Applicant did not exhaust his internal remedies by referring the dispute in terms of the constitution, but "jumped the queue" by taking the matter to court. This factor is also an important element in the court's general discretion to grant or refuse an interim interdict.

See: **Beecham Group Ltd v B-M Group (Pty) Ltd** [1977] 1 All SA 267 (T).

- [16] In his reply to the latter point in limine by Respondents, Mr Mlangeni indicated that there is a dire need for a restraining order against the Respondents for the reasons as alluded to above. Whilst the church's hierarchal structures are dealing with the factual disputes in the congregation, an interdict is crucial for the preservation of peace and order in the church.

He would follow the “normal procedure”. I am satisfied that the internal remedy of procedures in terms of the constitution of the church would not afford Mr Mlangeni and other members of the congregation the same immediate and effective protection of their rights, as is quite clearly shown by the positive results that the interdict granted by this court against the Respondents on 16 November 2013 had. Urgent and immediate intervention was (and still is) required in order to restore peace, something which only the wheels of justice could and can achieve.

- [17] Another requisite for the granting of an interim interdict is a reasonable apprehension that continuance of the alleged wrong will cause irreparable harm. The test is objective and the question is whether a reasonable person, confronted by the facts, would apprehend the probability of harm

See: **Minister of Law and Order v Nordien** [1987] 2 All SA 164 (A).

- [18] It is unquestionable that the reasonable member of a church (like Mr Mlangeni) would apprehend that harm be caused by unruly behaviour of his fellow church members. Such unruly and disruptive behaviour by church members cause irreparable harm to all other members who attend church in order to worship. A church is a place of peace, and harm is caused to the church as a whole in the absence thereof.

- [19] That the balance of convenience favours the granting of an interim interdict, is evidenced by the fact that the only

prerequisite for the Respondents to attend sessions of worship, is to behave and not disrupt in any way. I reconcile myself with Mbhele, J in her unreported judgment in this application as referred to in par [6] above where she states as follows:

“[18] Church is a place of worship where the highest level of order and discipline must be maintained in order to protect the members’ right to freedom of religion.”

and furthermore

“[20] Disruption of church services is an undesirable phenomenon at any given time.”

[20] In view of the discretionary nature of an interim interdict all of the abovementioned requirements are not judged in isolation but they interact. The facts as set out by Mr Mlangeni, together with the facts conceded to by the Respondents, is indicative of the fact that conflicts exists and that, until such a time as the conflicts can be resolved internally, interim relief is of the utmost importance.

See: **Gool v Minister of Justice** 1955 (2) SA 682 (C).

[21] The order granted by Moloi J on 16 November 2013, was extended on several occasions as referred to above, and lasted until date hereof. As the church (the then Applicant) withdrew its application and there was an amendment of the notice of motion (par [7] above) it is not prudent to confirm that order. I am not of the view that the Second Applicant has locus standi to obtain an order prohibiting the Respondents

from threatening members of the board. Should any one of them need such an order, they should apply therefore.

[22] The interim order granted ostensibly heeded healthy results. The road forward could or should be addressed either by way of disciplinary steps or an AGM as is provided for in the constitution of the church. Until the happening of either of the two occurrences an interim order seems to be appropriate. However, I am uncertain when the next AGM must be held, but accept that same occurs once every twelve months.

[23] The only remaining question is thus that pertaining to costs. Various cost orders have been granted in the course of this application as was referred to in paras [2]-[7] above. The basic principle regarding cost is that cost will follow suit. I have noted the genuine interest with which all parties involved followed the court proceedings on 11 June 2015. I also take cognizance of the fact that religion is more often than not a matter of principle for believers. However, the Second Applicant was substantially successful in obtaining the relief that he prayed for, and is accordingly entitled to his costs.

[24] Accordingly I grant the following orders:

1. Pending finalization of disciplinary steps against the Respondents by the disciplinary body of the Apostolic Faith Mission of South Africa, alternatively, the holding of an Annual General Meeting of the Apostolic Faith Mission

of South Africa (which shall be held in terms of the constitution of the church within twelve months of date of granting of this order), whichever occurs first, the Respondents and/or anyone under their instruction are interdicted and restrained from disturbing, alternatively disrupting in any manner whatsoever Sunday church services of the Apostolic Faith Mission of South Africa.

2. The Respondents to pay Second Applicant's taxed costs on a party and party scale, jointly and severally, the one to pay the others to be absolved.

C. REINDERS, AJ

On behalf of Second Applicant: Adv. P. du P Greyling
Instructed by:
Motaung Attorneys
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On behalf of Respondents: Adv. M. S. Tshabalala
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