



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

Case No.: 1149/2024

Reportable	YES/NO
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In the matter between:

**ALGOA REGIONAL COUNCIL OF THE UNITED
CONGREGATIONAL CHURCH OF SOUTHERN AFRICA** Applicant

and

IVAN VAN STADEN	First Respondent
BRIAN KLUE	Second Respondent
WILLIE HEYNS	Third Respondent
NEVILLE VAN STADEN	Fourth Respondent
ASHWIN LANGEVELD	Fifth Respondent
RONNIE BERNARDO	Sixth Respondent
CHARLES JORDAAN	Seventh Respondent
ROCHARD BROOKS	Eight Respondent
JOHANNES SEEKOEI	Ninth Respondent
LESLIE RAYNERS	Tenth Respondent
ELVIS 'BONES' HOFFMAN	Eleventh Respondent
JOHANNES 'PENAKIE' SWARTBOOI	Twelfth Respondent
JACOBUS SMITH	Thirteenth Respondent
DOLLIE JANSEN	Fourteenth Respondent
BERNARD LEEUSKIETER	Fifteenth Respondent

JUDGMENT

Cengani-Mbakaza AJ

Introduction

[1] On 5 April 2024, the applicant, a Regional Council (“the Algoa Regional Council”), duly constituted in terms of the United Congregation Church of Southern Africa (“UCCSA), filed a notice of motion seeking an order in the following terms:

- “1. Condoning the applicant’s non-compliance with the time limits and provision service contained in the Uniform Rules of Court and hearing the application as one of urgency in terms of Rule 6 (12) of the Uniform Rules on *ex parte* basis.
2. That a *Rule Nisi* be issued calling upon the respondents to show cause, if any on 16 April 2024 why a final order shall not be granted in the following terms:
 - 2.1 That the respondent be ordered to immediately hand over and restore access *ante omnia* to the applicant of the premises situated at 41 Kingfisher Drive, Rosedale, Kariega (“the Premises”) upon service of the order upon them;
 - 2.2 That in the event that the respondent fails to comply with the above, the applicant be permitted, with the assistance of the Sherrif of the Honorable Court, to obtain the services of locksmith to gain access to the premises.
3. The contents of paragraphs 2.1 and 2.2 above to operate as an interim order with immediate effect.”

[2] On the same date, the interim order was granted by agreement between the parties. The respondents, some members of the local UCCSA, the Dale Street

Congregation, were ordered to file their answering papers, if any, to the applicant's application by 16:00 on Wednesday, 10 April 2024.

[3] On 16 April 2024, the matter was postponed to 30 May 2024 for hearing. On 30 May 2024, the case was served before me, the Algoa Regional Council sought a confirmation of the *rule nisi* that had been granted on 05 April 2024. Before the hearing of the matter, the fifth respondent, through his counsel applied for a postponement of the matter. The bases for the application for a postponement were *inter alia* to: (a) seek permission from the court to file a further answering affidavit and the counter-application and; (b) give the applicant an opportunity to file further opposing affidavits (if any). The Algoa Regional Council strongly opposed the application for a postponement stating that it was not genuine, reasonable and worthy of consideration.

[4] Having considered the arguments raised, I dismissed the application for a postponement. I now proceed to provide my reasons which are as follows: It is noted from the court's bundle of documents that on 17 May 2024, the fifth respondent filed a notice to condone the filing of an additional answering affidavit and counter-application through the registrar of the court. By principle, there are three sets of affidavits in the motion court proceedings. The court has the discretion to allow additional affidavits to be filed, as it is essential to consider all the relevant facts related to the disputed issues. However, this discretion lies with the court, not the registrar. The fifth respondent's decision to file further affidavits through the registrar without obtaining the court's permission did not accord with the Uniform Rules of Court. No explanation or justification was provided as to why the court should condone or overlook the violation of the Uniform Rules of Court.

[5] It must be taken into consideration that a postponement is an indulgence that must be earned and not a right. When granting a postponement in this matter, I needed to also caution myself that although I had the discretion to grant the

indulgence sought, that discretion is a judicial one and should be exercised judiciously. In *Psychological Society of South African v Qwelane*¹, Nkabinde ACJ held that:

“Postponements are not for the mere taking. They have to be properly motivated and substantiated. And when considering an application for a postponement, a court has to exercise its discretion whether to grant the application. It is a discretion in the true or narrow sense - meaning that, so long as it is judicially exercised, another court cannot substitute its decision simply because it disagrees. The decision to postpone is primarily one for the first instance court to make.”

[6] Considering the fact that the fifth respondent decided on his own accord to file further affidavits through the registrar and without the leave of the court, the application for a postponement lacked legal and factual basis. Therefore, it was reasonable to conclude that the application was solely designed to delay the speedy finalisation of this matter. In the interest of both parties, all the relevant facts were already included in the filed affidavits and therefore it was incumbent to adjudicate the issue of a *mandament van spolie* and if necessary restore the *status quo* before all else.

The case for the Algoa Regional Council

[7] The basic facts of the Algoa Regional Council’s case which are presented in the founding affidavit are as follows: After the late Reverend Adonis retired from his position at Dale Street Congregation, on 31 December 2018, Reverend Swarts was appointed as an Acting Minister. In April 2021, the process to appoint a permanent Minister began. However, the appointment process was marred by significant conflicts among a select group of Dale Street Congregation members. As a result, a formal mediation process was initiated and the members who participated in the mediation ultimately decided to dissolve the Dale Street

¹ 2017 (8) BCLR 1039 (CC).

Congregation. The respondents appealed the decision taken in the mediation process and such remained unresolved.

[8] The Dale Street Congregation remained crippled and the Algoa Regional Council decided to commence the election of the Treasury and the Secretary. Although the process had its own challenges, the Treasury was ultimately elected through the majority vote.

[9] The Algoa Regional Council issued a directive that the election of the Secretary should take place on 03 March 2024. However, the election process did not take place on that date due to the objections raised by some members of the Dale Street Congregation. Despite this, Reverend Volanie was appointed as an Acting Minister. The position of the Secretary remained vacant until a special meeting was scheduled to take place on 21 April 2024 to fill this position.

[10] On 02 April 2024, Reverend Volanie was informed by the Acting caretaker that the respondents had entered the church premises intending to change the door locks of the church. He sought assistance from the members of the South African Police Service (“SAPS”). Although SAPS entered the premises, they were unable to assist due to the absence of a court order.

[11] A number of concerned Dale Street Congregation members arrived at the church premises and took photographs. All of the respondents were identified and they were found to be in possession of tool kits and padlocks which they used to prevent the Algoa Regional Council from accessing the premises.

[12] The Algoa Regional Council’s case is premised on the fact that its possession of the premises arises by virtue of the church Constitution. The Algoa Regional Council asserts that the premises are for the benefit of all Dale Street Congregation members and not only the respondents.

The respondents’ case

Point in limine: *Locus standi*

[13] The respondents contest the Algoa Regional Council's *locus standi* to litigate against them as the Dale Street Congregation Church is autonomous and only members of the local church enjoy *locus standi* to bring an application before court.

[14] The Constitution of the UCCSA which was annexed in the court's bundle of documents provides that the UCCSA is composed of the local churches, Regional Council, Synods, and an Assembly. In terms of clause 3.3 of the Constitution of UCCSA, local churches are formed at the request of existing local churches, on the recommendation of the appropriate Regional Council, or a Regional Council based on the stipulated terms. Clause 3.3.6 provides that in all cases the local church concerned consults with the Regional Council in whose bounds it falls.

[15] Although the local churches have their own model of Constitution, it must be remembered that in the present instance, the Dale Street Congregation was crippled and the Algoa Regional Council had to intervene by virtue of the powers vested in it, and had automatically acquired a requisite *locus standi* to bring this application. The Dale Street Congregation is a constituent Church of the UCCSA and is bound by the Constitution and the accepted procedures of the UCCSA. Consequently, this *point in limine* cannot succeed.

[16] To oppose the application for *mandament van spolie*, the third respondent filed what he titled a "replying affidavit" in response to the Algoa Regional Council's founding affidavit. To avoid confusion and in the ordinary course of the proceedings, the respondents should have filed an answering affidavit, in accordance with the Uniform Rules of Court, rather than a replying affidavit. Although the application before me is that of *mandamanent van spolie* and not the review proceedings, the affidavit filed to substantiate the respondents' case appears to be a composite document that contests the procedure followed in the

appointment of Reverend Volanie. A significant bulk of the issues raised in the affidavit challenge actions and inactions of the Algoa Regional Council including all the internal conflicts that occurred in relation to the election and non-election of other church office bearers, all of which preceded the institution of these legal proceedings.

[17] Nevertheless, the essence of the respondents' case as stated in paragraph 25 of the third respondent's affidavit, is that on 2 April 2024, the respondents attended the premises with the intention of requesting access to the building. This was because they had been advised that Reverend Volanie had issued an instruction prohibiting them from entering the premises. According to the respondents the caretaker voluntarily handed the keys and indicated that he wanted nothing to do with the process. It was then that the process of replacing the locks was initiated. To align themselves with the contents of the third respondent's affidavit, the first, second, fourth, fifth and sixth respondents filed their confirmatory affidavits.

[18] The issues up for debate are: (a) whether the Algoa Regional Council was in peaceful and undisturbed possession and, (b) whether it was forcefully dispossessed of the premises.

The legal framework

[19] The main purpose of the *mandament van spolie* is to restore before all else unlawfully deprived possession of the possessor. This legal remedy aims to prevent individuals from taking possession through unlawful means, promoting a philosophy that rejects self-help and vigilantism. By so doing, it maintains public order by discouraging people from taking the law into their hands and instead, encouraging them to follow legal procedures.²

² Ngqukumba v Minister of safety and Security and Others [2014] ZACC 14; 2014(7) BCLR 788 (CC); 2014 (7) BCLR 788 (CC); 2014 (5) SA112(CC); 2014 (2) SACR 325 (CC) at para 10; see also City of Ekurhuleni

[20] To qualify for a *mandament van spolie*, the Algoa Regional Council must prove that it was in peaceful and undisturbed possession. Due to the strict criteria for this remedy, the respondents have limited defence options in spoliation proceedings. As the legal authors highlight, no spoliation occurs when someone is lawfully deprived of possession.³ The respondent can only justify the dispossession by showing that the applicant willingly and voluntarily gave up possession or that they had a court order or legal authority to do so.⁴ In essence, to obtain a *mandament van spolie*, the applicant must demonstrate undisturbed possession, and the respondent can only defend against the claim by showing lawful deprivation, voluntary surrender, or legal authorisation for the dispossession.

The parties' legal submissions and the analysis by the court

[21] Mr White, counsel for the applicant, argued that in accordance with the Constitution of the UCCSA, the Algoa Regional Council was in peaceful and undisturbed possession and administrative control of the premises prior to the respondents' unlawful actions. The Algoa Regional Council's right of access is a *quasi-possessio* right which is incidental to the Algoa Regional Council's control of the premises. At no stage had the Algoa Regional Council ever authorised or requested the respondents to attend to the changing of the locks on the premises.

[22] On the other hand, Mr Roelofse, counsel for the respondents, submitted that the keys were handed over to the respondents by the caretaker without the use of force. At the handing over of the keys by the caretaker, a squabble between the parties intensified to the extent that the acting pastor was called to intervene. The respondents were in lawful possession of the keys because they were handed

Metropolitan Municipality v Tshepo Gugu Trading CC and Another (1054/2022) [2024] ZASCA 81 (28 May 2024) at para 21.

³ Civil Procedure: A practical Guide – Stephen Peté *et al*, 2nd page 424 at 5.3.

⁴ City of Ekurhuleni Metropolitan Municipality v Tshepo Gugu Trading CC and Another at fn 1 above (see para 22).

to them by the caretaker and their actions cannot be regarded as an intention to deprive the Algoa Regional Council of its peaceful and undisturbed possession of the property, he argued.

[23] Based on the strength of the common cause facts, the respondents had no legal authority or court order to lock the premises and deprived the Algoa Regional Council and other Dale Street Congregation members of the right to access the premises. It has already been established that the Algoa Regional Council had administrative control over the premises by virtue of the UCCSA Constitution. In light of that, amongst others, there is no basis to challenge its peaceful and undisturbed possession of the premises.

[24] In all probabilities, the fact that a confrontation ensued between certain members of the Dale Street Congregation and the respondents, resulting in the involvement of the SAPS, strongly suggests that there was a forceful dispossession of the premises. It is apparent from the papers filed that the caretaker sought to avoid his involvement in the confrontation, and thus handed over the keys. In my view, the caretaker's actions constitute a form of coerced submission necessitated by the confrontation. Such actions cannot be construed as a voluntary relinquishment of possession, but a forced surrender of the keys. Therefore, there is no merit in the respondents' submissions in this regard. Given that the facts established by both parties align to a significant degree, the application for the confirmation of *rule nisi* is poised for success.

Order

[25] The following order shall issue:

1. **The point *in limine* is dismissed.**
2. **The *Rule nisi* is confirmed.**

3. The respondents shall pay costs on scale “A” as contemplated in terms of Uniform Rule 67 A read with Uniform Rule 69 of the Uniform Rules of Court.

N CENGANI-MBAKAZA

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

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