

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**CASE NO.: 2024-144764**

Delete whichever is not applicable

(1) Reportable: Yes / No

(2) Of interest to other Judges: Yes / No

(3) Revised: Yes / No

Date: 13 January 2025

Signature: [REDACTED]

In the matter between:

UNITING REFORMED CHURCH OF SOUTHERN  
AFRICA: NORTHERN REGIONAL SYNOD

Applicant

and

JOHANNES BAUKA MALULEKE  
RAKY SIMON KWAPE  
KENNETH KGAFELA  
MATEBETA SALTIEL MAPONYA

First Respondent  
Second Respondent  
Third Respondent  
Fourth Respondent

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*The matter was heard in open court, and the judgment is handed down electronically by circulation to the parties' legal representatives by email. The date for hand-down is deemed to be 13 January 2025.*

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**J U D G M E N T**

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## **Mazibuko AJ**

### Introduction

- [1] The applicant seeks an urgent relief in the following terms:
- [1.1] reviewing and setting aside an appointment of the first respondent as moderator and the second respondent as actuaries of its moderamen.
  - [1.2] that the respondents be interdicted and restrained from holding themselves out as the moderamen of the applicant, pending the finalization of Part B of the application issued under case number 2024-116475 (Part B).
  - [1.3] that the respondents be ordered to pay costs on attorney and client scale, jointly and severally, including the costs consequent upon the employment of two counsel.
- [2] The application was opposed, and the applicant filed a replying affidavit.

### The Parties

- [3] The applicant is the Uniting Reformed Church of Southern Africa: Northern Regional Synod (URCSA), a church registered in terms of its articles of the Church Order of the General Synod of the URCSA. Reverend Angelique Simone Ghall (Ghall), a duly appointed scribe of URCSA, launched this application on behalf of URCSA.
- [4] The first respondent is Johannes Bauka Maluleke (Maluleke), a duly ordained minister of the Word and moderator in URCSA.
- [5] The second respondent is Raky Simon Kwape (Kwape), a duly ordained minister of the Word and actuaries of URCSA.

- [6] The third respondent is Kenneth Kgafela (Kgafela), a duly ordained minister of the Word and acting scribe of URCSA.
- [7] The fourth respondent is Matebeta Saltiel Maponya (Maponya), a duly ordained minister of the Word since 1994 and an assessor for the time being of the URCSA in the Northern Regional Synod.
- [8] For the purposes of this judgment, reference to the positions held by Ghall, Maluleke, Kwape, Kgafela and Maponya, respectively, flow from their respective affidavits. This court is not called upon to pronounce on the legitimacy of their appointment to such positions. Such would be a call for the court hearing Part B or any other related litigation.

### Background

- [9] In deciding the issue of urgency, it is prudent to set out the chronological sequence of events relevant to this application.
- [10] In October 2024, URCSA launched an urgent application under case number 2024-116475, as referred to in paragraph 1.2 above, where the respondents included the third and fourth respondents. By agreement between the parties, an order was granted on 22 October 2024 that the respondents in that application would not hold any Extraordinary Synodical Commission meeting, pending the outcome of Part B. Part B would proceed as an ordinary opposed motion. Subsequent to that order, the respondents filed their answering affidavit and URCSA, its replying affidavit. The hearing date is not set yet.
- [11] On URCSA's version, on 8 November, it became aware of the meeting that some members of URCSA, including Kgafela and Maponya, scheduled for 9 November 2024. Through its attorneys, it dispatched a letter requesting an undertaking that the meeting would not proceed. Such undertaking was not received.

[12] At the end of November, it became aware of the appointment of Maluleke as moderator and Kwape, as the actuaries, following the meeting of 9 November as per the Pastoral letter 15, which letter, among others, recorded the events of 9 November.

#### Issue

[13] The issue for determination is whether

[13.1] the application is urgent;

[13.2] Ghall has locus standi to depose to an affidavit on behalf of URCSA;

[13.3] the correct process was followed to appoint the first and second respondents. Further, can Kgafela and Maponya still hold themselves out as the moderamen of URCSA, following the resignation as now retired moderator and actuaries?

#### Legal principles

[14] Rule 6(12) of the Uniform Rules requires applicants, in all affidavits filed in support of urgent applications, to set out the circumstances that render the matter urgent and why they cannot be afforded substantial redress at a hearing in due course.

[15] Rule 6(12) affords the applicant to create its own rules within which a respondent must file a notice to oppose and an answering affidavit. This is why condonation must be sought when the court is approached. An applicant who cannot convince the court of the rationality and necessity for the timeline devised by it should expect its application to be struck from the roll with costs.<sup>1</sup>

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<sup>1</sup> *E.M.W v S.W* (26912/2017) [2023] ZAGPJHC 710, para 10.

- [16] The applicant must make out their case in the founding affidavit to justify their departure from the norm.<sup>2</sup>
- [17] '... Urgency is a reason that may justify deviation from the times and forms the Rules prescribe. It relates to form, not substance, and is not a prerequisite to a claim for substantive relief.'<sup>3</sup>
- [18] When a matter is brought to court on an urgent basis, the question to be answered is whether or not the applicant will be afforded substantial redress in due course.<sup>4</sup> In the event that the applicant does not succeed to convince the court that he will not be afforded substantial redress at a hearing in due course, the matter will be struck from the roll.<sup>5</sup> The matter may also be struck from the urgent roll where the court finds that urgency was self-created.
- [19] The threshold to establish the juristic fact of "absence of substantive redress" is lower than that of "irreparable harm" for the purposes of establishing an interim interdict.<sup>6</sup>

## Discussion

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<sup>2</sup> *Luna Meubel Vervaardiger (Edms) Bpk v Makin* 1977(4) SA 135 (W) at 137E.

<sup>3</sup> *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Services v Hawker Aviation Partnership and Others* 2006 (4) SA 292 (SCA) at [9].

<sup>4</sup> *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

<sup>5</sup> *SARS v Hawker Air Services (Pty) Ltd* 2006 (4) SA 292 (SCA).

<sup>6</sup> *Several matters on the urgent court roll* 2013 (1) SA 549 (GSJ).

- [20] I have considered not making a finding as to whether or not Ghall has *locus standi* to depose to a founding affidavit as a scribe of URCSA. Due to the facts of this case and its litigation history, like other issues surrounding appointments to URCSA's positions, such would require a determination during the hearing of Part B or any other related pending litigation.
- [21] Deposing to its founding affidavit, URCSA asserted that the application is urgent in that it has a reasonable apprehension of harm arising due to the unlawful and irregular appointment of Maluleke as moderator and Kwape as actuaries since their appointment was not in accordance with the prevailing church order. Further, such appointment of the respondents will cause great damage to the good order and proper administration of the church. Therefore, the respondents be interdicted and restrained from holding themselves as the modaramen pending the finalization of Part B.
- [22] It is common cause between the parties that the dispute around the legitimacy of the URCSA's moderamen remains unresolved, considering the ongoing litigation. The respondents had not accepted the 20 April 2024 election of URCSA's modaramen as legitimate, where Ghall was appointed a scribe, also URCSA with regard to the November 2024 elections relating to the appointment of Maluleke and Kwape as well as Kgafela and Maponya.
- [23] It is evident that each of URCSA's groupings acquires and acts upon its own authority. Deposing to an answering affidavit in his capacity and on behalf of Maluleke, Kwape and Kgafela, who also filed confirmatory affidavits, Maponya disputed that the application was extremely urgent, stating that as members of modaramen, they were allowed to co-opt members to modaramen, pending confirmation by the Synodical Commission or the Regional Synod electing new leadership. It would seem that when Maluleke and Kwape were appointed, Kgafela and Maponya acted in their disputed positions.

- [24] URCSA argued that though the respondents agreed not to hold any Extraordinary Synodical Commission meeting pending Part B, they have no respect for the rule of law and the Church Order. It is unclear how the conduct of Kgafela and Maponya showing disrespect, as argued, can be accepted as a ground for urgency.
- [25] I agree with URCSA that Part B dealt with the dispute regarding the positions of Maponya, Kgafela, Moffat-Maruma and Moraka, not the disputed appointment of Maluleke and Kwape. However, no cogent facts were presented before the court as to why URCSA would urgently seek to review and set aside the appointment of Maluleke and Kwape or any of its members in the middle of all the appointments' related litigations.
- [26] It is unclear how their alleged appointment would destroy the church order when the dispute over appointments already exists. URCSA placed no facts before the court as to why it would not obtain substantial redress in due course or during the hearing of Part B. Further, why the disputed appointment cannot be dealt with during mediation as parties had previously resolved with respect to the other disputed appointments of Kgafela and Maponya.
- [27] I find no reason why all these appointments to URCSA's positions, including that of Maluleke, Kwape and Ghall, cannot be heard simultaneously, as they are related to the legitimacy thereof and revolve around the guide of the Church order to be followed. URCSA failed to satisfy the requirements to justify urgency and grant interdictory relief. Consequently, the grounds of urgency relied on by URCSA are not sustainable and must fail.
- [28] In my respectful view, considering the papers filed of record, the issue surrounding the legitimacy of the appointments to positions of scribe, moderator, actuaries, acting scribe and assessor is a material dispute of fact that is incapable of resolution on papers.

[29] With regard to costs, though the respondents argued for punitive costs, the court could find no facts justifying such an award. However, there is justification to follow the general rule that the successful party should be awarded costs.

[30] For these reasons, I make the following order,

Order:

[30.1] The applicant's urgent application is hereby struck off the roll due to lack of urgency.

[30.2] The applicant will pay the costs, including that of two counsel, on a Scale B.

  
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N G M MAZIBUKO  
Acting Judge of the High Court  
Gauteng Division, Pretoria

Date of Hearing: 17 December 2024

Judgment delivered: 13 January 2024

*APPEARANCES:*

For the applicant: Adv M M Rip SC with Adv S G Webster

Attorney for the Applicant: Gildenhuys Malatji INC.

For the Respondent: Adv M Coetzee

Attorney for the Respondent: J C Scheepers Attorneys