



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **✓**



22 November 2024

SIGNATURE

DATE

CASE NO: 2023-032252

In the matter between:

PEOPLE OF HIS WAY MINISTRY

APPLICANT

And

SE MOKUKE

FIRST RESPONDENT

SAM MABASO

SECOND RESPONDENT

N MABASO

THIRD RESPONDENT

J MAILA

FOURTH RESPONDENT

MN MOKUKE

FIFTH RESPONDENT

A NEKU

SIXTH RESPONDENT

S MABASO

SEVENTH RESPONDENT

**DIRECTORATE: DEPARTMENT
OF SOCIAL DEVELOPMENT**

EIGHTH RESPONDENT

JUDGMENT

THOBANE AJ,

Introduction

[1] The applicant is a Non-Profit Organisation duly registered as such in terms of the laws of the Republic of South Africa. The applicant is a church which was established in the year 2000 and registered by the Department of Social Development in 2004, with its main branch at Heidelberg.

[2] The respondents are members of People of His Way Ministry church, the applicant. However, they “broke away” and now belong to an off-shoot of the applicant carrying on “business” of a church at Carletonville.

[3] The applicant is seeking a prohibitory and mandatory interdict against the first to sixth respondent. The applicant contends that the aforementioned respondents are misleading the public, since they are operating under its name and collecting funds from the public, in that guise. Thus, the applicant is seeking the return of keys to the building currently occupied by the respondents as a church, books of account as well as money which has already been collected by the respondents.

[4] The application is opposed by the respondents on numerous grounds. The grounds range from the fact that there is discourse (there are disputes) within the applicant and that those translate to among others, death threats and resignations

thus leading to lack of leadership. Further that there is failure to quorate meetings on the part of the applicants. The applicant it is said, is not properly structured, is disorganised, lacks leadership and that the actions by the respondents, that of opening an account and administering the money as they have, were warranted by the circumstances. The seventh respondent, the Department of social Development, abides a decision of this court.

Facts

[5] The facts that form the basis of the interdict are set out in the founding affidavit under the rubric, “Background”. A summary thereof, in no particular order or importance is as follows;

5.1. The applicant was created in the year 2000 as a no-profit organisation and was approved as such in the year 2004 by the Department of Social development;

5.2. On or about August 2011 the applicant purchased immovable property which was registered in its name in December 2011 and subsequently a church was built on the property;

5.3. When the founder of the church took ill in 2019 he nominated or appointed an executive member to oversee the Carltonville Church;

5.4. The nominee, Mr. Ngono took it upon himself to effect changes to the executive committee without consultation or approval, much to their dismay;

5.5. There was dissatisfaction and discontentment as result;

5.6. Although there was an attempt at mediation, it failed to yield any positive result and subsequent meetings equally failed;

5.7. In April 2021 a meeting was held between members of the executive committee of the main church and those of the branch church. Although frank discussions seemed to have taken place, the dispute between the two could not be resolved;

5.8. The applicant was made aware that certain members of the branch church had opened a bank account in the name of the applicant without its knowledge, consent or authority and that they utilized their own constitution, hence this application which is aimed at interdicting unlawful conduct on the part of the respondents as well as directing them to do certain things.

[6] Most of the facts that are relevant to the dispute between the parties are common cause. It is common cause that the respondents are members of the applicant. Whereas the respondents challenged the authority of various members of the applicant, they did so informally. They did highlight certain resignations but did not take the matter further.

[7] While admitting that they are members of the applicant, the respondents assert that they are congregants of the offshoot or one of the branches of the applicant, the Carltonville branch. They admit that because they receive money from the public, they approached the bank and presented a constitution to them. As a result, a bank account of their own was opened. The constitution they presented to the bank is their

own constitution that they drafted. The bank account that they opened, is operated by them in total exclusion of the applicant.

[8] The issue for determination therefore is whether the applicant has made out a case for a prohibitory and/or mandatory interdict.

The law

[9] The requirements for a mandatory interdict are well settled in our law. They are:

- (a) the applicant must show that he has a clear right;
- (b) the applicant must show actual or reasonable apprehension of violation or harm;
- and
- (c) that there is no other remedy that will give him/her adequate protection.

[10] In the event the requirements are met, the scope, if any, for refusing relief is limited¹. The legal position is in my view succinctly set out in *Levi and Another v Bankitny and Another*², from which I quote very generously;

“[61] To determine whether an applicant has a clear right is a matter of substantive law³. Whether that right is clear is a matter of evidence. In order therefore to establish a clear right, the applicants have to prove on a balance of probability, facts which in terms of substantive law establish the right relied on⁴.

¹ *Hotz v UCT* 2017 (2) SA 485 (SCA) at para [20]

² *Levi and Another v Bankitny and Another* (2611/2022) [2023] ZAWCHC 84 (13 June 2023)

³ *Minister of Law & Order, Bophuthatswana v Committee of the Church Summit of Bophuthatswana* 1994 3 SA 89 (BG) at 97–98.

⁴ LAWSA Vol. 11, 2nd Ed. 397

[62] In *NCSPCA v Openshaw*⁵, the SCA reiterated that an interdict is not a remedy for a past invasion of rights but is concerned with present or future infringements. According to the SCA, an interdict is appropriate only when future injury is feared. Where a wrongful act giving rise to the injury has already occurred, it must be of a continuing nature or there must be a reasonable apprehension that it will be repeated.

[63] The granting of an interdict is discretionary⁶ and the remedy of the interdict itself has been described as unusual⁷. The remedy of an interdict is termed discretionary in the sense that a court may not grant an interdict in circumstances where there is an alternative remedy available to an applicant for an interdict and which may satisfactorily safeguard the right sought to be protected. Put differently, the discretion of the court is bound up with the question whether the rights of the party complaining can be protected by an alternative and ordinary remedy.

[64] In *Hotz v UCT*⁸ the SCA held, in relation to the lack of an alternative remedy requisite, that the existence of another remedy will only preclude the grant of an interdict where the proposed alternative will afford the injured party a remedy that gives similar protection to an interdict against the injury that is occurring or is apprehended. The fact that one of the parties, or even the judge, may think that the problem would be better resolved, or can ultimately only be resolved, by extra-curial means, is not a justification for refusing to grant an interdict."

Analysis

⁵ *NCSPCA v Openshaw* [2008] ZASCA 78; 2008 (5) SA 339 (SCA) at para [20].

⁶ *United Technical Equipment Co (Pty) Ltd v Johannesburg City Council* 1987 (4) SA 343 (T); *Burger v Rautenbach* 1980 (4) SA 650 (C) and *Grundling v Beyers* 1967 (2) SA 131 (W).

⁷ *Transvaal Property Investment Co v SA Townships Mining and Finance Corp* 1938 TPD 521

⁸ *Hotz v UCT* 2017 (2) SA 485 (SCA) at para [36]

Clear right

[11] The applicant relies on ownership of the immovable property, from where the respondents are worshipping as establishing a clear right. The Tittle Deed in its assertion, is a clear indication of the property rights the applicant has. That the applicant is a NPO is not disputed. The respondents do not appear to dispute that the property is registered in the name of the applicant, their gripe it appears, is that the property belongs to the Carletonville branch. This however is not the issue, it is simply an obfuscation. The applicant has established that the property rights in respect of Erf 1707 Carletonville Ext 3, vest on it. The respondents even though they are members of the local committee of that church, are not the property right holders in respect of that property, that much is indirectly admitted by them. A clear right has therefore been firmly established.

Apprehension of harm

[12] In an endeavour to show that there is reasonable apprehension of harm and therefore that this requirement has been met, the applicant made four points, namely;

- That the respondents, in violation of the constitution of the applicant, drafted their own constitution;
- That the respondents, using the aforementioned constitution, opened a bank account to which all moneys are deposited. The respondents do not dispute this. In fact, they simply give an explanation why it had to be so. They explain that they were receiving money and had to deposit those moneys into an account. The bank wanted a constitution for purposes of opening a bank account and since they could

not obtain a constitution from the applicant, they drafted their own and submitted it to the bank;

- That whereas clause 9 of the constitution permits each branch to open a bank account, clause 5 stipulates that moneys collected by a branch are to be forwarded to the main branch, (the applicant) which the respondents failed to do;
- Lastly, that the respondents are failing to service the municipal account and as a result the applicant has had to pay over R8 000-00 to the municipality for services consumed by the respondents, in the name of the applicant, which services they did not pay for.

[13] That the respondents presented their own constitution to the bank, which they admit was drafted for expediency; opened a bank in the name of the applicant; collected money into that bank account but did not forward money collected to the applicant and incurred but did not pay municipal services which were paid by the applicant is harmful to the applicant. I find that all the mentioned factors either individually or cumulatively viewed, establish a case for apprehension of harm. The harm is in fact ongoing.

No other remedy

[14] The applicant contends that all attempts to resolve the dispute between the parties have failed and that the offending conduct of the respondents continues unabated. It would appear to be so because the respondents continue to collect money from the public; they continue to deposit the money collected into the account that was opened fraudulently; they continue to utilise the money themselves and they

do not pass or pay over any money to the main church (the applicant). The meetings that were convened between the parties, in an endeavour to resolve the dispute that exists between them, did not yield any result. It is said that at times the respondents simply declined invitations to attend meetings. The result of this is that the applicant is left with no other remedy to resolve the dispute that they are faced with, since they involve both the applicant and the respondents who seem reluctant or intransigent to get involved.

Conclusion

[15] A final interdict has been described as follows in *Minister of Law & Order, Bophuthatswana v Committee of the Church Summit of Bophuthatswana* 1994 (4) All SA 448 (BG): “An interdict is final if the court order is based upon a final determination of the rights of the parties to the litigation.” Once the applicant has established the three requisite elements for the grant of an interdict the scope, if any, for refusing relief is limited as there is no general discretion to refuse relief, it is often said⁹. I am satisfied that the three requisites for a final interdict have been established and have no hesitation in granting an order.

Order

[19] The following order is made;

⁹ *Lester v Ndlambe Municipality and Another* 2015 (6) SA 283 (SCA) paras 23-24; *United Technical Equipment Co (Pty) Ltd v Johannesburg City Council* 1987 (4) SA 343 (T) at 347F-H. The more general statement regarding discretion in *Wynberg Municipality v Dreyer* 1920 AD 439 at 447 does not reflect the approach adopted by our courts. It is different when dealing with an interim interdict, where the remedy is clearly discretionary because of the need to consider the balance of convenience. *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* [2012] ZACC 18; 2012 (6) SA 223 (CC) para 41-47.

1. The respondents are interdicted from:

- (a) Operating under the name "People of His Way Ministries" (applicant);
- (b) Collecting funds from any person under the guise of the applicant;

2. That the respondents are directed to do the following;

- (a) Return the applicant's books, keys to the building (church) and funds of the applicant to the applicant;
- (b) Furnish the entire banking account records from the inception of the bank account to the applicant.

3. The first to sixth respondent are ordered to pay the costs of the application on party and party scale.



SA THOBANE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES:

For Applicant: Adv Z E Mahomed

Instructed by: Shekera Timol Attorneys and Conveyancers

For Respondent: Mr J Moodie

Instructed by: Jooste and Moodie Attorneys

Date of the hearing: 20 May 2024

Date of judgment: 22 November 2024

This judgment was handed down electronically by circulating to the parties' legal representatives by e-mail, by being uploaded to the CaseLines platform of the Gauteng Division and by release to SAFLII. The date and time of hand down is deemed to be 10:00 on 22 November 2024.