



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

REPORTABLE

CASE NUMBER: 11872/2022

In the matter between

ANDREW WESLEY RICHARDS

FIRST APPLICANT

ADRIANA RICHARDS

SECOND APPLICANT

JAMES RICHARDS

THIRD APPLICANT

and

GHER RABIE

FIRST RESPONDENT

PHILLIPUS JAKUBUS LODEWIKUS SWART

SECOND RESPONDENT

ELAINE PAULSEN

THIRD RESPONDENT

ADELE VAN TONDER

FOURTH RESPONDENT

ANNA-MARIE SWART

FIFTH RESPONDENT

HENNIE DE BOD

SIXTH RESPONDENT

JUDGMENT

Date of hearing: 15 November 2024

Date of judgment: 2 December 2024

BHOOPCHAND AJ:

1. There are three Applicants in this matter, but this application involves the First Applicant alone (“The Applicant”). The First Applicant was the Apostolic leader of the Kings Church International, Robertson (“the Church”, “KCI-R”), the Chairperson and member of the Church’s Board (“the Board”). The Church was affiliated with the Kings Church International, United Kingdom (“KCI-UK”). The Applicant is a spiritual leader of KCI-UK and a senior pastor of that Church. The First to Third Respondents are members of the Board.

2. This application began as a two-part application where urgent interim interdictory relief was sought against the First to Third Respondents to stop them from executing the resolutions taken on 22 June 2022, pending the determination of the relief sought in part B of the application. The resolutions resulted in the adoption of a new constitution for the Church (“the 2022 Constitution”) which parted ways materially from its predecessor (“the 2017 Constitution”), particularly in severing ties with KCI-UK and paving the path for the exclusion of the Applicant. This Court is assigned to determine the relief sought in Part B, except for the declaration that the Second and Third Applicants are members of the Church Board. The Applicant states that the Second and Third Applicants, who are his wife and son, are no longer parties to the application.

3. The Applicant seeks orders declaring that two meetings held by the Board of the Church on 22 June and 16 November 2022 were invalid and that all decisions and resolutions adopted at those meetings are void. The Applicant seeks ancillary relief against the First to Third Respondents. They are to attend a meeting to be called by the First Applicant to enable the appointment of two spiritual leaders from KCI-UK, alternatively one, to the Board and to pay the costs of this application. The First, Second, and Third Respondents feature prominently in this application. The remaining Respondents do not. The First to Third Respondents

shall be referred to as the Respondents unless the context requires them to be cited separately.

4. The history of the Church relevant to this application is that it began in the nineteen eighties as the Filadelfia Church. The Applicant became involved in the Church in 2009. The Church changed its name to the KCI-R in the same year. In 2014, the Applicant was appointed Chairperson (“Chair”) of the Board. The Church is a non-profit organisation, constituted as a voluntary association. The Church operates under a constitution. The 2017 and 2022 iterations are the subject of this application.
5. The Applicant explained that the partnership between Kings Church International, United Kingdom (“KCI-UK”) and KCI-R began when the Filadelfia church was struggling and Pastor Erasmus, who led it, and other leaders of that church, asked for the Applicant’s assistance. The Applicant alleged that he helped the Church for several years until the Filadelfia church was closed, and a symbolic burial was held to mark the moment. On 29 March 2009, the KIC-Robertson was launched in close partnership with KCI-UK. The partnership was fundamental to the new church. It was announced that the Church was neither Afrikaner nor English but one where all races were welcome.
6. The 2014 Constitution reflected the partnership between the Robertson leaders, churchgoers, and the KCI-UK. KCI-UK substantially supported the Church financially, spiritually, training and assisting local people to undertake leadership positions in the Church. The Applicant elaborated on the cooperation between the two churches. The constitution of the Church reflected the shared history, activities, and continuing partnership. The constitution was drafted and adopted to incorporate, regulate, and ensure the continuation of the relationship between the two churches. The relationship is a core element of its essence.
7. The Respondents answered the Applicant’s allegations about the partnership between the Church and KCI-UK by describing the Applicant’s narrative as being

false. They assert that the Church existed long before the Applicant attempted to take it from the community of Robertson. As a Board, they have not had insight into the KCI-UK. There were no joint Board meetings, and nobody from KCI-UK, apart from the Applicant and his son, was actively involved in the sermons or management of the Church. The Respondents referred to certain aspects of the constitution to assert the Church's independence.

8. The Respondents contended that KCI-UK's involvement arose from the familial relationship between the Applicant and Pastor Gert Erasmus. The Applicant's children married the children of Pastor Gert Erasmus. This did not mean that the churches had entered into a partnership. KCI-UK's apostolic vision based on the G12 disciple movement was incorporated into the Church's teachings through the Applicant's involvement. The Respondents and most congregants had become disillusioned with the G12 theology and moved away.
9. The Respondents deny that the Filadelfia Church struggled and that it was symbolically terminated and reborn as a partner or branch of KCI-UK. They accept that the Church's name changed in 2009. The Church was not dependent on the relationship with KCI-UK. The Respondents did not acknowledge the substantial contributions made by KCI-UK, including purchasing the ground where a new church is to be built. The Respondents eventually conceded this aspect in oral argument.
10. The Respondents asserted that the Board had not met since November 2019, and the Applicant did not intend to call a meeting. The Respondents noted that the Church was not joined as a party to this application but took this aspect no further. The Board members became estranged over the years, and their discord peaked in 2021. They grew concerned about the Applicant's attitude as Chair. He unlawfully assumed unfettered control over the Church and the Board for reasons unrelated to the Church but more to his family's financial interests. The 2017 Constitution specified a two-year tenure for Board members, permitting them to avail themselves of further appointment. The provision was replaced with a

practice developed since 2014 that permitted members to remain until they resigned or retired. On 24 February 2021, the Applicant convened a Board meeting at the Respondents' behest, ending with them not attending when they learnt they would not be re-appointed. The Applicant appointed his wife and son and removed the First to Third Respondents from the Board. The First to Third Respondents asserted their right to remain Board members.

11. The Applicant instituted an earlier application in this Court to prevent the First to Third Respondents from claiming they remained members of the Board. The Honourable Willie J dismissed the application for interdictory relief on 27 October 2021 but declared that as at 23 February 2021 and 27 October 2021, the members of the Board were the Applicant and the First, Second, and Third Respondents ("the 27 October 2021 order"). The Applicant sought leave to appeal the 27 October 2021 order. Wille J denied leave to appeal. The Appellant petitioned the Supreme Court of Appeal ("SCA") to no avail.
12. Emboldened by the 27 October 2021 order and the refusal of leave to appeal it, the First to Third Respondents proceeded to convene a Board meeting simultaneously with the Applicant. The Applicant had to adjourn his meeting because it lacked a quorum. Although the Applicant had appointed his wife and son as Board members, and the three would have been quorate in terms of the numbers, the 2017 constitution prohibited appointing more than two members with familial ties. The First to Third Respondents proceeded with their meeting and made extensive amendments to the Church's constitution, culminating in them adopting the 2022 Constitution on 22 June 2022. The Respondents interpreted the 27 October order to mean that the Court had overrode the constitutional qualification requirement, and the Board, with four members, them and the Applicant, were constituted to conduct the Church's business.
13. The expected fallout and legal wrangle that ensued from the Respondents' interpretation of the 27 October 2021 order led them to seek clarification of the order through a variation application under Rule 42(1)(b) of the Uniform Rules of

Court (“URC”). Wille J ordered on 30 September 2022 (“the 30 September 2022 order”) a variation of the 27 October 2021 order. The order differed from the 27 October 2021 order in its wording. The Church's Board members as of 24 February 2021 and 27 October 2021 were the Applicant, the First, Second, and Third Respondents, **and no other person or persons.**

14. The relief sought by the Applicant, i.e., to declare the Board meetings of 22 June 2022 and 16 November 2022 invalid, requires this Court to determine whether the Board was properly constituted on those days to conduct the Church's business. To adjudicate this application, the Court has to interpret the 2017 Constitution and the 27 October 2021 and 30 September 2021 orders.

15. In his written argument, the Applicant cited case law relevant to the administration of voluntary associations. A voluntary association's constitution and rules and regulations constitute a contractual agreement between its members.¹ Notice of a meeting should be given in terms of an association's constitution. Only the agenda items can be considered at the meeting. A meeting has to be properly convened and properly constituted. A quorum and the proper person in the chair are essential for a properly constituted meeting.² The meeting must be a meeting of the Board constituted as per the constitution. A group of people who do not comply with the constitution's requirements are not the Board and cannot act as such. The exception to this rule raised by the Applicant shall be addressed under the following heading in this judgment.³ A quorum of members (i.e., the number specified in the constitution) must be present. A quorum is the minimum number of qualified members entitled to attend and vote and whose presence is required at a meeting for the business transaction to be valid.⁴

¹ Mcovi v Inkatha Freedom Party , Maqwazi-Msibi v Inkatha Freedom Party 2011 4 SA 298 (KZP) at paras 30 and 38

² LAWSA, 3RD ed. Vol 24 at para 190

³ Deutsche Evangelische Kirche zu Pretoria v Hoepner 1911 TPD 218

⁴ LAWSA at para 191

16. The proper approach to interpreting legal documents is to read the words used in the context of the document as a whole and in light of all relevant circumstances attendant upon its coming into existence.⁵ The court in *Endumeni* explained that this is how people use and understand language. Whatever the nature of the document, consideration must be given to the ordinary rules of grammar and syntax, the context in which the provision appears, the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible, each possibility has to be weighed against all these factors. The process is objective, not subjective. A sensible meaning is preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.⁶ Construction is a unitary exercise.⁷

THE 2017 CONSTITUTION

17. The 2017 Constitution outlines the fundamental principles and rules regulating the Church's activities, operations, and business. It has fourteen Articles, many clauses, and two appendices. The Church had changed its name from Filadelfia to Kings Church International, perhaps the most compelling symbol of its relationship with its United Kingdom counterpart.
18. The Articles include a 'Definitions and Roles' section, which defines the Board as the body with overall responsibility for the Church's management and comprised of its leaders. The Apostolic leader is assigned the task of Chairing the Board and setting the agendas for Board meetings.
19. Article 8 of the constitution, 'Appointment and Removal', regulates the Board members. Clause 8.1 requires the Board to attempt to reach a consensus on

⁵ Natal Joint Municipal Pension Fund v Endumeni Municipality (920/2010) [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) (16 March 2012) at para 24

⁶ Endumeni at para 18

⁷ Endumeni at para 19

appointing and removing its members. Where consensus is impossible, decisions are made based on majorities indicated in the other sub-clauses of Article 8. Clause 8.2 specifies that:

“The Board shall consist of at least three Board members. At least two Board members **must** be spiritual leaders of King’s Church International in the UK...At least three Board members will not be connected persons in relation to each other and no single person directly or indirectly controls the decision making powers relating to such organisation.”

20. The first two requirements of clause 8.2 are couched in obligatory language, i.e., the Board shall have at least three members, and at least two must be spiritual leaders of KCI-UK. The second requirement of clause 8.2, using the word ‘must’, conveys a strong and definitive imperative that is even stronger than ‘shall’. The phrase ‘at least’ sets a minimum requirement. It establishes a baseline or threshold that must be met, allowing for the possibility of exceeding it. The Board has to have a minimum of three members and two spiritual leaders of KCI-UK to be properly constituted. The Board can have more than three members and more than two spiritual leaders of KCI-UK. Failure to comply with obligatory provisions results in invalidation of the action taken or other legal consequences.
21. The circumstances that eventuated on 22 June 2022 is that the Board had four members, one of which was a spiritual leader of KCI-UK. The Board was not properly constituted under the second obligatory requirement of clause 8.2 of the constitution. If clause 8.2 was properly applied, there was no longer a constituted Board capable of making any lawful decisions on behalf of the Church. Could this Board remedy the defect before conducting any further Church business? Perhaps the better question would have been whether a Board in a similar situation could remedy the situation. This Board had split into two camps, pulling in different directions. They were incapable of remedying anything collectively, and each side was also pursuing their own agendas, to the exclusion of that of the Church. If the

constitution were to be applied literally, then neither side could conduct the business of the Board. The drop in the number of spiritual leaders appointed by KCI-UK rendered the Board inert unless it could appoint another spiritual leader of KCI-UK as a Board member in an improperly constituted state.

22. If the answer to the previous question is in the affirmative, then the following one is whether there is a provision in the constitution to enable the Board to appoint another spiritual leader of KCI-UK once the number has fallen to below two. Clause 8.3 refers to Appendix 1 of the constitution, which lists the names of the eight members, including the Chair of the Board, at its inception. Clause 8.5 provides two guidelines for selecting Board members. These include biblical directives on leadership qualities and the need to mix skills, knowledge, experience and diverse backgrounds to foster good governance and operational experience. Clause 8.6 is couched in the present tense and contains directory language:

“Board members are appointed for a period of two years, after which they may offer themselves for re-appointment if they so desire...”

23. Clause 8.6 contains exceptions about the position of the Chair of the Board, who enjoys a protected status until two years after they cease to be the Chair. The appointment of a new Chair follows a prescribed process involving the Church and KCI-UK. Clause 8.7 permits members to resign. Clause 8.8 allows the Board to remove members by a two-thirds majority of those participating in the meeting. Clause 8.4 bears duplication:

“Any subsequent Board members are appointed by a resolution of the Board: a two-thirds majority of those participating in the meeting is required.”

24. Clause 8.4 is cast in the present tense, and its provision requires a prescribed majority rather than a consensus decision. The situation that prevailed on 22 June

2022 was that the Board was not properly constituted in that it lacked one KCI-UK spiritual leader. To rectify the situation, the Board had to appoint at least one further KCI-UK spiritual leader through a resolution supported by two-thirds of its members. The First to Third Respondents did not do this in their meeting. They proceeded to conduct the business of the Church and amend its constitution. The Court returns to the pertinent question. Was an improperly constituted Board capable of implementing clause 8.4 to achieve the obligation contained in clause 8.2 to achieve constitutional compliance?

25. The Applicant relied upon a 1911 decision of the full bench of three judges of the Transvaal Provincial Division to support his contention that a Board can act if the constitution gives the members of the Board the power to appoint additional members even though it is improperly constituted in that its numbers as prescribed have fallen below a minimum. The remaining members may meet to appoint additional members, as the Board's first task is to realign it with the constitution's provisions.⁸

26. *Deutsche Evangelische* is distinguishable in more than one sense on the facts with this application but not on the legal principles that apply. It addressed a reduction in the numbers and not in the qualification of members of the Board. The case involved *locus standi* of an improperly constituted Board to demand the release of a title deed from the Respondent who had served as its treasurer. The constitution required the church council to include the pastor as the permanent chair and at least four and not more than seven wardens as members. It specified that the church council elected by the congregation “shall consist of the pastor, as the permanent chairman, and at least four and not more than seven wardens as members for the time being... In the event of a vacancy occurring...the Church Council shall...elect a warden as a substitute”.

⁸ *Deutsche Evangelische Kirche zu Pretoria v Hoepner* 1911 TPD 218 (“*Deutsche Evangelische*”)

27. The council was empowered to elect a warden as a substitute if a vacancy arose. The number of wardens reduced to three, i.e., below the prescribed minimum after others resigned. In the latter respect, the facts track those *in casu*, in that the number of spiritual members of the Board reduced to one, rather than the obligatory two specified in the KCI constitution, except that the number of Board members had not fallen to the minimum threshold of three. The two other distinguishable features of the case were that the council convened the church meetings, and the congregation elected the council. The constitution of KCI-R listed the inaugural Board members, and the Board appointed subsequent members. The KCI-R empowered the Chair to set the agenda for its meetings, and by the time this matter was heard, the issue of whether a Board member could call or convene a meeting had been resolved in that any Board member could call a meeting of the Church Board.
28. The court a quo in *Deutsche Evangelische* restricted its inquiry to the clause specifying the number of wardens on the church council. It found that the clause specifying the number of wardens was obligatory. The Court decided that once their number fell below the prescribed minimum, there was no church council, and the members acted as private individuals. They had no right to ask the Court to compel the past treasurer to hand over the title deed. As in this case, the judgment alluded to dissatisfaction amongst a certain portion of the church community. The meeting that had been called to authorise the council to obtain the title deed had co-opted two wardens to comply with the constitutional requirement that at least four wardens be on the council. The Respondent objected to the council's power to co-opt further wardens once its number had fallen below the minimum. The congregation alone had that power.
29. The KCI constitution acknowledged the inaugural Board members and empowered the Board to appoint subsequent Board members every two years. A practice had developed where the Board recycled its members until they ceased being so by resignation or other reasons. The issue in *Deutsche Evangelische* was not about the qualification of the council but about its numbers. The constitution

of that church required a minimum of five council members: the pastor and four wardens. The number had fallen to four. The only course available to the council was to call a congregation meeting to fill the vacancies.

30. In their respective judgments, the three appeal judges in *Deutsche Evangelische* considered the relationship between the clause that specified the number of wardens and that which permitted the substitution of wardens once their number fell below the threshold of four. A direct interpretation of the clauses would be that once the council fell to below five members, no church council could transact the church's business without filling the vacancy. The clause permitting substitution would not have assisted as no council could implement it. The first of three judges found that the latter argument was untenable. Upon properly constructing the two obligatory clauses, the Judge reasoned that the remaining elected members had the right and were under a duty to fill the vacancy. The latter interpretation avoided making the substitution clause inoperative when only four members remained on the council. The situation when the council was reduced to four members was a legal subtlety that the parties never contemplated (or, more probably, the drafters of that constitution did not foresee). All three appeal judges upheld the appeal.
31. *Deutsche Evangelische* would be authority for the proposition that when a council or board reduces below a number specified in the constitution of a corporation or organisation, and there is a provision for that council or board to fill the vacancy occurring, then the council or board should first fill that vacancy and become properly constituted before it conducts any further business of the corporation or organisation.
32. *In casu*, clause 8.4 empowers the Board to appoint any subsequent members. Clause 8.4 follows clause 8.3, which lists the inaugural members of the Church Board. When clause 8.4 refers to "any subsequent board members," it means any board members appointed after the inaugural board, and it caters to the situation that existed on 22 June 2022. Using the word "are" as in "any subsequent Board Members are appointed by a resolution..." functions as a form of the verb 'to be'

and indicates the present tense describing the state or condition of subjects, usually nouns or pronouns. It qualifies the subsequent appointment of Board members. Clause 8.4 is cast in the present tense, meaning that it applies whenever a vacancy arises either from a drop in the minimum numbers, i.e., three Board members or a drop in the qualification criteria, i.e., at least two spiritual leaders of KCI-UK, the Board is empowered to rectify its constitutional profile before it conducts any further business of the Church. It is also couched in permissive or directory terms, meaning that the peculiar circumstance is less onerous to overcome than the facts in *Deutsche Evangelische*, where the full Bench had to contend with two obligatory clauses.

33. As the Board had recourse to clause 8.4, meaning that it could fill a vacancy on it without referral to the congregation, and whose wording did not present any insurmountable legal obstacle, the Applicant and First to Third Respondents could have regularised the Board to make it properly constituted. They had a duty to do so.
34. The Applicant contended that the Respondents recognised they had to be a validly constituted Board to amend the constitution. They attempted to meet this difficulty by asserting that the orders made by Willie J constituted the Board and removed the obligatory requirement that it must include at least two spiritual leaders of the KCI-UK. The Respondents rely upon Willie J's judgments to contend that a court order overrode the composition of the Board as specified in its constitution. Willie J declared that the Applicant, the First to Third Respondents, and no other persons comprised the Board. Whether Willie J's judgments permit the construction contended by the Respondents would depend upon the interpretation of the judgments.
35. Three judgments pertain to this application: the 29 October 2021 order, the leave to appeal judgment, and the 30 September 2022 order. The 22 June 2022 meeting intervened. The Court shall follow the temporal sequence in examining each of these events.

THE 27 OCTOBER 2021 ORDER

36. The principles of interpretation in *Endumeni* apply equally to the interpretation of judgments and orders.⁹ In interpreting a judgment or order, the court's intention should be ascertained primarily from the language of the judgment or order. As in the case of interpreting a document, the judgment or order and the court's reasons for giving it must be read as a whole to ascertain its intention.¹⁰ The intention of the Judge giving the order has to be established from the judgment itself. It serves no purpose to second guess the thinking of the Judge when he made the order. The starting point is to determine the manifest purpose of the order.
37. It is necessary to place the order in proper perspective and to consider the context in which it was made.¹¹ There is no essential difference between an 'order' and a 'judgment'. In some cases, an 'order' refers to a decision given upon relief claimed in an application on notice of motion, petition or other machinery recognised in practice. In contrast, a 'judgment' refers to a decision given upon relief claimed in an action. When used in the general sense, the word 'judgment' comprises both the reasons for the judgment and the judgment or order.¹²
38. The manifest purpose of the judgment is to be determined by considering the relevant background facts that culminated in its being made.¹³ A fairly recent illustration of the linguistic, contextual and purposive approach to the

⁹ HLB International (South Africa) v MWRK Accountants and Consultants (113/2021) [2022] ZASCA 52; 2022 (5) SA 373 (SCA) (12 April 2022)

¹⁰ HLB at para 26

¹¹ Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others [2012] ZASCA 49; 2013 (2) SA 204 (SCA) para 14; Van Rensburg and Another NNO v Naidoo and Others NNO; Naidoo and Others NNO v Van Rensburg NO and Others [2010] 4 All SA 398 (SCA); 2011 (4) SA 149 (SCA) para 43 et seq, HLB supra at para

¹² Administrator, Cape and Another v Ntshwaqela and Others 1990 (1) SA 705 (AD) at 715B-F

¹³ Cross-Border Road Transport Agency para 22, see also Speaker, National Assembly and Another v Land Access Movement of South Africa and Others [2019] ZACC 10 (CC); 2019 (6) SA 568 (CC) para 43, HLB at para 27

interpretation of a judgment or order is to be found in *Elan Boulevard (Pty) Ltd v Fnyn Investments (Pty) Ltd*, in which it was said that '[a]n order is merely the executive part of the judgment and, to interpret it, it is necessary to read the order in the context of the judgment as a whole'.¹⁴

39. The parties involved in the application that led to the judgment were the Applicant and the Church on the one side and the First to Third Respondents on the other. The Church and the Applicant shall be collectively referred to as the Applicant and the three Respondents as the Respondents in interpreting the judgment unless the context requires a specific reference to them as cited. The judgment begins by stating that it was initially about certain interdictory relief sought by the Applicant to prevent the First to Third Respondents from acting in any manner as members of the Board. The Applicant's position was that the tenure of the First to Third Respondents was for two years and lapsed automatically after that, even though they could avail themselves for re-appointment. The Applicant contended that the Respondents should not have automatic renewal to the Board. He appointed his wife and son as Board members in the interim.
40. The Respondents relied upon the 2017 Constitution for their appointment. They remained members of the Board even if their membership lasted for two years, as they were re-elected in September 2019. Their membership to the Board could not have elapsed until a duly constituted board meeting occurred. The Applicant convened a Board meeting on 24 February 2021. The Respondents insisted that they remained members of the Board. A further meeting was rescheduled for 5 March 2021. The Respondents requested that the persons responsible for the Church's finances ignore any direction given to them by the newly appointed Board. The Judge considered that the latter request triggered the Applicant's urgent application.¹⁵ The urgent application morphed into a full-blown application

¹⁴ *Elan Boulevard (Pty) Ltd v Fnyn Investments (Pty) Ltd* [2018] SCA 165; 2019 (3) SA 441 (SCA) at para 28

¹⁵ The Applicant, his wife and son were the initial Applicants who instituted the proceedings. The judgment does not state that the wife and son were appointed as members of the Board when the application was instituted.

for final relief with a referral of a limited number of issues in dispute to oral evidence

41. The Applicant relied on the 2014 Constitution, alleging that the 2017 Constitution merely amended certain terms of the earlier one. The Judge did not agree, finding instead that the 2017 Constitution applied. The judgment lists some clauses of the constitution, including the requirement that the Board have two spiritual leaders from KIC-UK. None of the clauses were examined in detail or relied upon for the ratio of the judgment, which emphasised the practice that had developed to automatically renew the tenure of Board members without formality since the adoption of the 2014 Constitution.
42. The judgment summarised the Applicant's case. The Applicant wanted the Respondents to cease performing any Church function as they were no longer Board members, were not re-elected, and their membership of the Church and the Board had lapsed. The Applicants stated that the First and Second Respondents were appointed to the Board on 30 November 2014. They were re-appointed on 30 November 2016, 2018, and 2020.
43. The Respondents' case was that there were no disputes about them being members of the Board. After they disagreed on certain issues, the Applicant's governance of the Church became a cause for concern. The governance concerns sparked the dispute about the Respondents' membership of the Board. No member of the Board was ever expressly re-elected or re-appointed. The Respondents continued in office consensually and unanimously. As the constitution speaks of consensus in appointing Board members, they were simply re-appointed, and their terms of office tacitly or impliedly extended. The Respondents believed a meeting scheduled for February 2021 would be postponed at their behest as they remained Board members.
44. The judgment then summarised the oral evidence. Following a pastoral visit of the Applicant, the Church came into being in November 2014. The Applicant set the

agendas for the Board meetings. No meetings were held in 2020 due to the Covid pandemic, and none between 24 November 2019 and 24 February 2021. The Applicant testified that he remained the only Board member after November 2020. After seeking legal assistance, a formal Board meeting was scheduled for 24 February 2021. The Applicant conceded that he never informed the Respondents they would not be appointed as Board members or were not Board members as of 24 February 2021. The Applicant's wife and son were appointed as Board members with him on 24 February 2021, the latter despite the 'connections clause' contained in the constitution. (Clause 8.2 prohibited at least three Board members from being connected persons in relation to each other). The only indication of an impending change was when the Applicant suggested a reshuffle was necessary as he no longer wanted couples on the Board. The applicant could not explain why he subsequently appointed his wife if he wished to exclude couples from the Board. The Applicant testified that the Board meeting of 24 February 2021 could not be postponed as it was the first scheduled meeting in fourteen months.

45. The Applicant's son testified that the persons involved in the Church initially enjoyed a close relationship. The appointment of the Board was never an issue as it occurred through consensus. He accepted responsibility for not holding meetings during 2020. He could not explain why the Respondents were not informed before 24 February 2021 that they were no longer members of the Board.
46. Ms. van Tonder testified on behalf of the Respondents. She is an auditor and volunteered to assist with the Church's finances until she became a salaried employee. Van Tonder resigned in January 2020. She testified that the Church purchased a property in 2018 to erect a new church. Funds amounting to about R13.8 million were raised for the church's construction. She confirmed that no formal nomination process was followed for appointing Board members. The tenure of Board members continued beyond the two years specified in the constitution. No discussion about re-appointment or re-election ever ensued during her tenure as an employee and Board member. Her attempts to register the

Church as a non-profit organisation under the Non-Profit Organisation Act 71 of 1997 were not pursued by the Applicant.

47. In his 'Discussion', the Judge dealt with the First Respondent's membership of the Board. It began before the Applicant's involvement but became contentious before the Applicant appointed his wife and son as Board members. The Respondents' membership became an issue after they raised governance matters relating to the Church. No Board member was expressly re-appointed or re-elected. The Respondents continued in office consensually and unanimously without any complaint or resistance and under the consensus provision in the constitution. The 28 November 2018 meeting minutes reflected, among others, that the First and Second Respondents would continue as Board members. At that meeting, the board considered implementing a structure for re-appointing members serving two years, but none was adopted.
48. The Respondents were precluded from participating in the Board meeting held on 24 February 2021. They expected the meeting to be postponed. Two-thirds of the Board members had to be present to constitute a quorum for a valid Board meeting. The Judge agreed that the Applicant was not authorised to appoint his wife and son as Board members. It was also in direct violation of the connections clause. At all material times after November 2020, the Respondents continued with their duties with the knowledge and acceptance of the Applicant. The Respondents received an invitation to attend the Board meeting on 24 February 2021. The Judge agreed that the Board had assented to and acquiesced in the continued membership of the Respondents as Board members. The Respondents were not properly notified of the meeting where their tenure was terminated. This was contrary to the constitution and occurred without any procedural fairness.
49. The Applicant conceded that a split had occurred between him and the Respondents regarding certain affairs of the Church.¹⁶ The Respondents

¹⁶ The judgment refers to "certain affairs of the Second Respondent", which probably referred to the Second Applicant, the Church, in that application.

embarked on steps to unseat him. The Respondents' status as Board member was not in jeopardy before the 24 February 2021 meeting. The Applicant added the issue of the Respondents membership of the Board to the agenda of the 24 February 2021 meeting. The Respondents requested that the meeting be postponed and took legal advice. The Judge described the situation as the Respondents being somewhat "ambushed". The refusal to postpone the Board meeting was not declined emphatically. The Applicant agreed that his response to the request for the postponement was ambiguous. The result was that the Respondents were removed from the Board in less-than-ideal and transparent circumstances. The Applicant contended that removing the Respondents from the Board was merely a holding pattern. The Judge found the flaw in this argument was that the Applicant appointed his wife and son, who remain members of the Board. The Applicant's son and van Tonder testified that the reappointment of Board members after their two-year term would continue through unanimous assent.

50. The Honourable Willie J concluded by stating that the entire application had eventuated because the Respondents had expressed their displeasure and concerns about the Applicant's governance of the Church. The Applicant proceeded irregularly and questionably to exclude the Respondents from the Church's decision-making process impermissibly. The evidence of the Applicant's witnesses was, at times, extremely evasive¹⁷. The Respondents' witness persuaded the Judge to accept their version. For the reasons provided and mostly on the common cause facts, the Judge favoured the doctrine of unanimous assent relied upon by the Respondents. The Judge believed that the provisions, timelines and periods of the 2017 Constitution, and not the 2014 Constitution, found application. The Respondents were members of the Board at the very least until 9 September 2021. The Church was not validly authorised to raise the application by way of the resolution upon which it purportedly relied for this authority. There was no reason why the Applicant should not have approached the Court for a

¹⁷ The Applicant and his son testified. The reference in the judgment to the Applicant's witnesses was taken to mean the TESTIMONY OF THE Applicant and his son.

declarator instead of the interdictory relief sought. The Court understood that the parties were seeking a declarator as the agreed order requested a determination of the identity of the persons who made up the Board as **at** 23 February 2021. A declarator was sought as to the identity of the persons who comprised the Board as **at** the date of the determination of the opposed application.

51. The order granted was that the application for interdictory relief was dismissed. The members of the Board as at 23 February 2021 were the Applicant and the First to Third Respondents. The members of the Board as at the date of the order (27 October 2021) were the Applicant and the First to Third Respondents. The Court *a quo* and the Supreme Court of Appeal dismissed the Applicant's leave to appeal the judgment.
52. The order was made up of three parts. The first was the dismissal of the interdict sought by the Applicant so that the First to Third Respondents could desist from performing any function or role as members of the Board. The second part of the order declared that the Applicant and the First to Third Respondents were the Board members as at 23 February 2021 and 27 October 2021. The third part of the order granted costs against the Applicant. The text of the order in the second part is clear except for the use of the preposition "at" to define the date on which the Applicant and the Respondents were members of the Board. The context wherein it was used appears from paragraph 46 of the judgment, which refers to the parties seeking a declarator from the Court. The Judge states that he was asked to decide the identity of the persons who made up the Board on the two dates. He declared who the Board members were **on** two separate dates. The circumstances relating to this order were that it followed from a failed order for interdictory relief seeking to exclude the Respondents from the Board. The purpose of the order was to reinstate the Respondents to the Board in the context of their exclusion at the Board meeting held on 24 February 2021.

THE APPLICATION FOR LEAVE TO APPEAL

53. The Applicant accepted that the application for an interdict was correctly dismissed. The Applicant argued for the first time that the Honourable Willie J should have found the Applicant's wife and son were members of the Board on the two dates specified in the 27 October 2021 order. The Judge believed that the Applicants were introducing new factual material on appeal. The core issue for leave to appeal concerned the status of the Board meeting of 24 February 2021, which precluded the Respondents from participating. The Respondents believed that the meeting would be postponed. The Applicants pleaded that only the Applicant was left as the remaining Board member. To allow the new factual material on appeal would be prejudicial to the Respondents.
54. The Judge reasoned that constitutionally, two-thirds of the members of the Board had to be present to constitute a quorum for the meeting. On the Applicant's version, the only member of the Board on 23 February 2021 was the Applicant. The Applicant's son had resigned from the Board. No evidence was placed before the Court that supported the appointment of the Applicant's wife. The Respondents argued that the Applicant, acting alone, was not subsequently authorised to appoint his wife and son as Board members. The appointment of the wife and son directly violated the "connected persons" clause in the 2014 and 2017 Constitutions. The Respondents continued as Board members with the assent of all parties.
55. The judgment on the application for leave to appeal takes issue with the Applicant's contention that the Court should have found that the Applicant's wife and son were members of the Board on the two dates specified in the order. Although the judgment denies the ground of appeal premised on the Court's alleged omission to ratify the appointment of the Applicant's wife and son, it does state that the Respondents' contention that the Applicant, acting alone, was not authorised to appoint his wife and son, was correct.

THE 2022 CONSTITUTION

56. The Respondents, believing that the membership of the Board had been resolved, called for a meeting on 22 June 2022 and sent the proposed agenda to the Applicant. By this time, the application for leave to appeal to this Court and the SCA had been denied. The circumstances that led to the adoption of the 2022 Constitution can be gleaned from the 27 October 2021 order and the answering affidavit. The Respondents had become increasingly concerned before 2021 that the Applicant's conduct and pronouncements displayed a disregard for the constitution and the values of the Church. The Applicant dealt with the affairs of the Church and the Respondents in an increasingly autocratic manner, culminating in their exclusion from the Board.
57. The Third Respondent sent out a notice for the 22 June meeting after a month had elapsed since the SCA denied the Applicant leave to appeal and he had not convened a meeting of the Board. The Applicant agreed to have the meeting but insisted that his wife and son would attend as they were members of the Board. Applicant contended that the Chair of the Board determined the agenda for Board meetings. The Applicant provided the invitation and agenda for the meeting of 22 June 2022. He augmented the agenda with further items that needed the Board's attention, including his son's membership. The Applicant indicated that he sought to provide a way forward for the good of the Church by seeking broad agreement between the Board members. The Respondents subsequently added these items to the agenda of their meeting.
58. The Applicant's legal representative informed the Respondents that the Court had not addressed the position of the Applicant's wife and son on the Board. The Applicant then sought to exclude the Respondents' attorney from attending the meeting, claiming that legal representatives had never attended Board meetings. The Respondents took umbrage at this allegation as the Applicant had previously invited legal representatives to the meetings. The effect of the further exchanges

between the Applicant's attorney and the Respondents was that both parties decided to proceed with simultaneous meetings. The Applicant's attorney informed the Respondents that if they proceeded with their meeting, it would have no legal effect. The Applicant's meeting was adjourned for lack of a quorum, but the Respondents proceeded.

59. The Respondents contended that the Applicant was invited, was available, and could have attended their 22 June 2022 meeting, where his agenda items were added to theirs. The only substantial reason advanced by the Applicant for refusing to attend the meeting the Respondents' called was that his wife and son were not invited. He insisted they attend the meeting. The Respondents contended that nothing in the 2017 Constitution suggested that meetings may only follow an agenda determined by the Chair nor that only the Applicant is entitled to call meetings. The Applicant had testified before Willie J that anyone can call a meeting and that he expected the Respondents to call a meeting and prepare an agenda. The Respondents reminded the Applicant that attending a meeting on his own would not constitute a quorum, nor would there have been a quorum if his wife and son were in attendance. The Respondents asked what the purpose of calling a meeting would be if they could not determine what was discussed there. It would render democratic participation in board meetings a sham. The Chair could decide what is discussed, limit the agenda to items he wanted, and avoid anything contentious.
60. The Respondents asked the First Respondent to preside as Chairperson in the absence of the Applicant, who had not nominated any of them in his stead. The Respondents allege that they complied in all respects with the requirements of Article 14 concerning amendments to the constitution and Article 7 relating to meetings, resolutions, and procedures. They made substantial amendments to the 2017 Constitution, eleven in all. The new clause 2.2, which defined the Chair of the Board, excluded the Apostolic Leader of the Church as its Chair. The Chairperson would be selected from the rank of Board members by a majority vote and shall preside over Board meetings. The Chairperson would not have a deciding

vote. Clause 7.4 removed the casting vote of the Chairperson. Clause 7.6 removed the right of the Chair to appoint a Board member to substitute for them in their absence from meetings. The members present at future Board meetings were empowered to appoint an acting Chairperson to preside over a meeting unattended by the Chair.

61. Clause 8.2 removed the requirement that at least two Board members must be spiritual leaders of KCI-UK. The new clause 8.2 was subdivided into three subclauses. It made provisions for the Board to comprise at least three members or more, provided the total was an odd number. The connection clause was extended to exclude three or more persons connected through familial or marital ties from serving on the Board. Clause 8.3 reflected the Board members as the Applicant and the three Respondents on the date of approval and acceptance of the constitution. The Applicant did not sign the acceptance and approval of the 2022 Constitution. Clause 8.6 removed any preferential position of the Chair and set a procedure for appointing Board members every two years.
62. Clause 8.11 removed the procedure for appointing a subsequent Chair of the Board, which previously included the participation of spiritual leaders from KCI-UK. The new clause required that a simple majority of the members of the Board appoint any subsequent Chair of the Board. Clause 8.12 removed the requirement to consult relevant advisors and the leadership of closely related churches when appointing a Chair of the Board. Clause 8.14 excluded the participation of the KCI-UK in removing the Chair of the Board. The new clause allowed for the removal of the Chair or any other member of the Board by a two-thirds majority of Board members present at the meeting. Clause 11.4.1 excluded the approval of remuneration for the Chairperson by members of the Board.
63. The Applicant bemoaned the adoption of the 2022 Constitution without his participation despite the agenda items he submitted being tabled at the meeting. He asserted that the Board meeting on 22 June 2022 did not comply with the 2017 constitutional requirements in place on that date. The Board was not constituted

per the requirement that at least two members be spiritual leaders of KCI-UK. The amendments replaced the Chair without the involvement of KCI-UK.

64. The Applicant asserted that the amendments were fundamental to the character of the Church. The Respondents had purported to give themselves unchecked power to control the Church, including the power to remove him as Chair and member of the Board. The Applicant repeated the constitution's requirement that the Board must include at least two persons who are spiritual leaders of KCI-UK. On the Respondent's version, the Board, which met on 22 June 2022 and took the decisions, had only one such member, namely him. It was, therefore, not validly constituted. The Applicant was advised that where a Board is not properly constituted, and the Board is itself responsible for appointing members, the remaining members can take the necessary steps to fill the vacant positions to enable the Board to be properly constituted. It is impermissible for an improperly constituted Board to amend the constitution. An improperly constituted group of members is not a Board.
65. The Applicant contended that the meeting of 22 June 2022 was unconstitutional, unlawful, and invalid as it breached the Church's constitution. The agenda was not properly determined, and the members present did not constitute the Board as the constitution prescribed. The Respondents had already mooted the proposed amendments to the constitution that occurred on 22 June in February 2022. The Respondents had never explained how a Board not properly constituted could amend a constitution.
66. The Respondents denied that the Board was not properly constituted when the June and November meetings occurred. They amended the constitution to, among others, bring it in line with the October 2021 order, thereby overcoming the problem created by clause 8.2 of the 2017 constitution. Given the opportunity, the Applicant would have removed them at his first opportunity. The Applicant never mentioned that the Board was dysfunctional or inoperative through the

September 2022 order, or that this needed to be addressed, and that two members from KCI-UK needed to be added for this purpose.

67. The Applicant contended that the Respondents became disillusioned with the G12 disciple theology and had moved away from it. This represented a fundamental change in the doctrine and nature of the Church. It is established in law that a voluntary association, like a church, cannot change its fundamental nature and doctrine and take over its assets.¹⁸
68. The Respondents took issue with the Applicant's reliance on *Murray v SA Tattersalls*¹⁹ to contend that a voluntary association cannot change the fundamental nature and doctrine of the association and take over its assets. The Respondents position was that they had not changed the core of the Church's objectives, rather that they moved away from the G12 disciple theology. The Respondents contended that the relevance of this authority is uncertain. The case was an application for liquidation under the provisions of the 1909 Companies Act. The Respondent had operated as an association for betting and gambling on horseracing, an activity that had been declared illegal. The Respondent contended that it was more of a social club to meet for social or convivial purposes, which contention was rejected by the Court. The Court held that the principal object or business of the Respondent had been rendered illegal and that the purpose for which it was formed had become impossible. On that basis, it was held that it would be just and equitable for the Respondent to be wound up, despite the resolution of a three-quarters majority of owner members to reconstruct with another object of association. The situation is wholly distinguishable from this case, where the Church and the Board intend to continue operating as a Christian church. The Board had no intention of changing the fundamental nature of the association. The Court agrees with the Respondents

¹⁸ *Murray v SA Tattersall's Subscriptions* 1910 WLD 35 at 41. *Wilken v Brebner* 1935 AD 175 at 192, 193, 196, 197, 198, *ex Parte Gill and Others* 1955 (2) SA 418 (W) at 419-420

¹⁹ *Murray v SA Tattersall's Subscriptions* 1910 WLD 35 at 41

interpretation and agrees that the cited case has no application to the facts *in casu*.

69. Similarly, the Respondents contended that reference to *Wilken v Brebner*²⁰ was misplaced. In that matter, the chairperson of a branch of the National Party sought interdictory relief based, in part, on a majority resolution that the entity would unite with the South African Party to form a new party. The amalgamation would have the effect of using the assets of the National Party to further the interests of the new party to be formed. The Applicants sought to rely on the judgment of the minority. The majority judgment explicitly stated that the majority of the voluntary association could not act contrary to the express terms and conditions of the association. Still, it noted that whether an individual member has such a right depends on the nature of the voluntary association's constitution. The Court, in that matter, noted that the constitution must be interpreted to give effect to the party's objects.
70. The Applicant contended that in the case of a body like a church, the majority cannot change the fundamental nature and doctrine of the church and take over the assets of the church. The Respondents protested that nothing was alleged in the papers to suggest that the Respondents wished to do anything that would change the Church's core objectives or fundamental nature.
71. The Applicant alleged that the largest asset of the Church is a property in Robertson, which it bought in 2018. KCI-UK contributed about R5 million (in current value) to the purchase of the property. The Applicant contended that the Church had always been organically linked to KCI-UK. The Applicant assumed a central role at the request of the senior pastor in establishing the Church, or according to the Respondents' version, the conversion of Filadelfia church into KCI-Robertson. KCI-UK assisted in the formulation of the constitution of the Church. The constitution provides that the Chair of the Board is appointed by a

²⁰ Wilken v Brebner 1935 AD 175 at 192, 193, 196, 197, 198

resolution of a joint meeting of the Board together with the spiritual leaders of KCI-UK. Two-thirds of the members of both bodies must vote in favour of a Chair before they are appointed. KCI-UK had, from 2014 to 2021, made grants totalling more than £300 000 (about R7 million) to the Church. KCI-UK had made many ministry trips to assist the Church at a cost of £109 227. Leaders of the Church had visited the UK on many occasions for training and conferences. The constitution reflected that shared history, activities, and continuing partnership.

72. The Applicant contended that the Respondents had unilaterally dissolved the Church and reconstituted it under the same name with a fundamentally different structure. They had given themselves unchecked power to control the Church to the exclusion of KCI-UK. In response to the contention that the exclusion of the representatives of KCI-UK from the Church would sever the link between the Church and KCI-UK, the Respondents contended that this was never an issue until these proceedings commenced and not intimated until the filing of the supplementary founding affidavit. This the Respondents characterised as a last-gasp attempt on the Applicant's part to cling to the unilateral power he exercised over the Board. No reference was made to the putative partnership, added as an afterthought in the supplementary founding affidavit. The only intimation in the founding affidavit is the bare assertion that the Church was affiliated with Kings Church International. On the Applicant's version, the relationship was one of affiliation rather than a partnership. The Respondents contended that the Applicant became involved in the direction of the Church after 2012. The Applicant's role before that was of spiritual oversight.
73. The evidence before this Court is that the Church had a relationship with KCI-UK beginning with the Applicant and sustained through generous financial, spiritual, and educational benefits. The Respondents have acknowledged that the emphasis of KCI-UK was discipleship from a G12 perspective, even though they have moved away from it. The First to Third Respondents, all of whom were inaugural members of the Board when the 2017 Constitution was adopted and probably Church leaders before that, cannot deny that relationship, which is

entrenched in certain clauses of a document to which they were signatories. The name adopted by the Church further belies any submission to the contrary.

74. The Respondents contended that nowhere in the founding papers did the Applicant allege any facts that the Respondents' conduct in amending the constitution amounted to a change in the fundamental nature of the Church, as contended in the argument. As to the appointment of a single KCI-UK member to the Board, at no time during the presentation of evidence or argument in the first application heard by Willie J did the Applicant seek to contend that a member of KCI-UK should have been appointed as a necessity for constitutional compliance. Neither did the Applicant contend in the application to the SCA that a second member of KCI-UK, in addition to the Applicant, had to be appointed as a necessity for constitutional compliance. This Court finds that the Applicant did not have to make those submissions as they were unnecessary to sustain the relief he sought. The Respondents' conduct in changing the fundamental nature of the Church is irrelevant if the Court finds that the 22 June 2022 meeting is null and void. The Applicant did not have to make the remaining submissions as they flowed naturally from a proper interpretation of the constitution.
75. The objectives of the Church and its Board are stipulated in Article 4 of the constitution, namely the advancement of the Christian faith, relief for those in need, and education based on Christian principles. The Respondents contended that they never intimated that the Church and its Board intended to move away from these principles by amending the 2017 Constitution.
76. The Court must conclude the narrative relating to the judgments to ascertain whether the variation order obtained on 30 September would add anything material to the Respondents' contention that the judgments overrode the Church's constitution on the issue of a properly constituted Board. The circumstances relating to the 22 June 2022 meeting and the Applicant's insistence that the Respondents' meeting was invalid led them to seek clarification of the 27 October 2021 order from Willie J.

THE VARIATION ORDER OF 30 SEPTEMBER 2022

77. The Respondents approached the Court to identify the members of the Board. The dispute over the identity of the members rendered the Board dysfunctional. The Applicant attempted to persuade the Court not to clarify the extent of its orders, so they were incapable of practical implementation. The Judge found that the Applicant was continuing irregularly and questionably to exclude the First to Third Respondents from the Church's decision-making process impermissibly.
78. The Honourable Willie J summarised his judgment of 27 October 2021 before considering the Respondents' application for clarity regarding the content and meaning of his order. The Judge found that the Applicant's affidavit did not comply with the court rules and had very little if any, probative weight. The Judge reviewed the Applicant's position relating to his wife and son as members of the Board. The variation judgment referred to the testimony of the Applicant during oral evidence. The Applicant testified that the appointment of his wife and son was a 'stage post' measure. The Court again disavowed that the issue of whether the Applicant's wife and son were members of the Board was a dispute for determination between the parties. However, he stated that it may have been an issue for inclusion in the agreed order. The son testified that he was not a member of the Board. No evidence was presented supporting the belated contention that the wife was an existing member of the Board.
79. Willie J granted the First to Third Respondents' application for variation. The second and third orders read as follows:
- 79.1. That as **of** 24 February 2021, the members of the Board of the Church were the Applicant and the First to Third Respondents and no other person or persons,

79.2. That as **of** 27 October 2021, the members of the Board of the Church were the Applicant and the First to Third Respondents and no other person or persons.²¹

80. The reason for the addition of “and no other person or persons” to the 27 October 2021 is evident from the judgment, which addressed the Applicant’s contention that the Applicant’s wife and son were members of the Board and they should have been included in the original order. The use of the preposition ‘of’ by the Honourable Justice is a subtle change in the wording of the 27 October 2021 order. The original order uses the preposition “at”. The preposition ‘of’ in the phrase “as of a particular date” means that the specified date marks the date from which it becomes effective. The intention of the Judge to change the preposition is not apparent in the judgment. This means that the Applicant and the Respondents were members of the Board from 24 February 2021 and 27 October 2021 and beyond rather than on those dates.
81. Neither party raised this subtle change between the original and variation order. In the premises, the Court need not traverse its implications any further. The variation order again confirmed the purpose of the original judgment and the relief sought. The variation judgment excludes other persons apart from the Applicant and the First to Third Respondents as Board members on 24 February 2021 and 27 October 2021.

THE 16 NOVEMBER 2022 MEETING

82. The Third Respondent states in the answering affidavit that they were emboldened after the variation order to rid the Church of the Applicant. The Applicant could not work with them or the other Respondents, so he left them no choice but to remove him.

²¹ The reproduction of the order has minor corrections to render it consistent with the citation of the parties followed in this judgment and does not alter its meaning.

83. On 16 November 2022, the First to Third Respondents removed the Applicant as Chairperson, Board member, and Senior Pastor of the Church at a meeting they convened, which proceeded in the Applicant's absence. The Applicant received notice of the 22 June and 16 November meetings and elected not to attend either. The Respondents clarified that the Applicant had been removed as a member of the Board and as senior pastor as they feared that the Applicant would contend at the end of this application that he remained senior pastor of the Church.
84. The Respondents denied that there was any longer a requirement in November 2022 to have two spiritual leaders from KCI-UK on the Board after they had removed that requirement in the 2022 Constitution. The Applicant insisted on the two KCI-UK members to enable him to appoint his allies to the Board to ensure a deadlock over his removal and any other resolution they put forward. The Applicant should have raised the KCI-UK issue at the June meeting if he needed one or more of his family or friends to be appointed to the Board.

TWO SPIRITUAL LEADERS OR ONE

85. The Applicant sought ancillary relief pursuant to him prevailing with the declaratory relief. The Applicant asked for clarity on clause 8.2 of the 2017 Constitution as it stipulates that the Board shall consist of at least three members, of which at least two must be spiritual leaders of KCI-UK. The Applicant contended for the interpretation that the constitution required two KCI-UK spiritual leaders in addition to the Chair. He asserted that the Chair is a member by virtue of his capacity as the Apostolic leader of the Church, not as a spiritual leader of KCI-UK. It had always been the practice for the Board to include two KCI-UK leaders in addition to the Applicant. The Applicant contended that the Respondents did not answer this allegation effectively. The practice of the parties in allowing three KCI-UK members indicates how they understood the constitution and is material in

resolving any ambiguity. The Applicant asked in the alternative that the Board have one further spiritual leader who must be a member of the KCI-UK

86. The Respondents refuted the Applicant's prayer for ancillary relief. They argued that the Applicant's attempt to appoint two spiritual leaders to the Board was not foreshadowed in the 2017 Constitution. The Respondents contended that the sole purpose of this aspect of the application was to place the Applicant back in a position where he had unfettered control over the Board. The insistence that two spiritual leaders from the KCI-UK be appointed ensured that the Applicant had control of the Board by virtue of his casting vote. There was no justification for the inclusion of two further spiritual leaders. Section 8.2 of the 2017 Constitution specified that at least two Board members must be spiritual leaders of KCI-UK. The Applicant is a spiritual leader of KCI-UK. No basis is laid for the contention that a third spiritual leader of KCI-UK be appointed. The 2017 constitution noted that the inaugural Board members consisted of two members of the KCI-UK, namely the Applicant and his son.
87. The Respondents submitted that the argument the Applicant relied on was contained in the replying affidavit. It was not open to an Applicant in motion proceedings to make out a case in reply.²² Similarly, a party may not raise a point that is not presaged in the founding papers. The case in the founding affidavit was the one the Respondent was called upon to meet and had to contain sufficient facts upon which a Court may find in the Applicant's favour. The only contention the Applicant made regarding those three members of KCI-UK being members of the Board is the contention that it has always been the understanding that what is required is two such members other than the chair. A bald assertion does not establish facts for a legal conclusion.²³ An Applicant must stand or fall by what is contained in the founding affidavit.²⁴

²² National Council of Societies for the Prevention of Cruelty to Animals v Openshaw 2008 (5) SA 339 (SCA) at para 29, Betlane v Shelly Court CC 2011 (1) SA 338 (CC) at para 29

²³ Syntheta (Pty) Ltd (formerly Delta G Scientific (Pty) Ltd v Janssen Pharmaceuticals NV and Another 1999 (1) SA 85 (SCA) at 91 C.

²⁴ Director of Hospital Services v Mistry 1979 (1) SA 626 (A) at 635 H-636B

88. The Respondents are incorrect in alleging that the interpretation sought by the Applicant that the constitution requires two KCI-UK spiritual leaders in addition to the Chair was raised for the first time in the replying affidavit. The argument was foreshadowed in paragraph 25 of the supplementary founding affidavit. The Court considers it prudent to resolve this issue considering the less than amicable relationship between the two groups and facetiously to ensure that the Applicant does not obtain two for the price of one. The Applicant was incorrect in alleging that it was the practice of the Board always to include two KCI-UK spiritual members. The list of inaugural Board members to the 2017 Constitution belies this submission. The list contains the names of the Applicant and his son, who are the only spiritual leaders of KCI-UK. The Respondents confirmed the latter. The Applicant was incorrect in alleging that the Respondents had not answered his contentions effectively.

EVALUATION

89. The Applicant seeks declaratory and ancillary relief. The Applicant has asked the Court to declare that the meeting held by the Respondents on 22 June 2022 and the decisions and resolutions adopted at that meeting were invalid and void. The Applicant sought the same declaratory relief concerning the 16 November 2022 meeting. The applicant sought, in addition, ancillary relief requiring the Respondents to attend a Board meeting to appoint either one or two spiritual leaders of the KCI-UK to the Board and the costs of this application.
90. The parties agreed that the declaratory relief sought depended upon whether the Board was properly constituted on 22 June and 16 November 2022. The Applicant asserted that interpreting the Church's constitution would resolve the issue. The Respondents relied on the three judgments and orders of Willie J to contend that the Board was properly constituted and that the orders, in particular that of 30 September 2022, had determined the members of the Board to be the Applicant,

the First, Second, and Third Respondents and no other persons. The Respondents' interpretation of the judgments of Wille J was that he stipulated unequivocally that the Applicant and the First to Third Respondents were the members of the Board and specifically excluded any other persons. He did not declare they were provisional Board members or board members for a specific purpose. The Respondents contended that there is little if any, authority that a contract, articles of association, or private constitution supersedes an order of the Court.

91. The Court interpreted the clauses material to the adjudication of this application according to the established principles of interpreting legal documents. It considered the case cited by the Applicant as authority for the situation where the number of church council members fell below the minimum threshold. The 2011 case permitted the remaining council members to overcome an obligatory clause in its constitution without reverting to its congregation, provided that the constitution allowed for the substitution of members once a vacancy arose. The legal principles applied to this application meant that the Board comprising the Applicant and the First to Third Respondents had a duty to appoint a qualified member, i.e., a spiritual leader from KCI-UK, to its Board before it could conduct the business of the Church. The constitution of the Church contained a clause to members after the inaugural appointees.
92. The proper interpretation of the 2017 constitution leads to the ineluctable finding that the meeting held by the First to Third Respondents on 22 June 2022 was not properly constituted as it did not comply with the obligatory prescripts of the constitution. Clause 8.2 required appointing two spiritual leaders from KCI-UK to the Board. It stood as an insurmountable obstacle to the Respondents. The Board remained improperly constituted until the obligation was resolved. The Respondents were, on 22 June 2022, a group of individuals meeting and not a meeting of the Church Board.
93. The Applicant's presence at their meeting would not have eased their difficulty in overcoming an unlawful situation when they proceeded to conduct the Church's

business. As the constitution allows for the appointment of subsequent members, the Board had to rectify a drop in the number of spiritual leaders from KCI-UK by resolution of the remaining members supported by a two-thirds majority. The Applicant had augmented the agenda of the June 2022 meeting to include his son's membership on the Board. This item may have been directed at reconstituting the Board before it could conduct any further business. The Respondents did not contemplate the constitutional imperative of appointing a further spiritual leader from KCI-UK as they intended to remove this obstacle and pave the way for removing the Applicant from the Board. The Court is not concerned with the merits of their cause, just the legality thereof.

94. As long as the Board was improperly constituted, the decisions the group of individuals made had no legal force or effect. The Court would have had no hesitation in declaring that the meeting of 22 June 2022 invalid but for the defence raised by the Respondents.
95. A careful and detailed examination of the circumstances, text, context, purpose, and intention of the Judge when making his orders across the three judgments fails to uncover any finding or suggestion by the Judge that the orders were intended to overrule the composition of the Board as required by the 2017 Constitution. The judgments convey the impression that the Judge was constrained in making any pronouncements beyond the interdictory relief sought by the Applicants and the declaratory orders sought by agreement between the parties. Hence, the Judge disavowed any attempt by the Applicant to suggest that the Judge should have included the Applicant's wife and son as members of the Board in his order.
96. The Judge's intention involved in arriving at the order is easily discernible from the judgments. The judgments and orders were all directed to answer the relief sought by the Applicant to exclude the First to Third Respondents from the Board on 24 February 2021. The Judge repeatedly said that the Applicant had resolved to exclude the First to Third Respondents, and the judgments rectified that situation by reinstating them onto the Board. Paradoxically, the Respondents argued in the

immediate aftermath of their exclusion from the Board that they remained members until a duly constituted Board meeting occurred. If the Honourable Judge intended that the composition of the Board was a duly constituted Board, which he did not do, the Board would have been rendered unconstitutional and inoperable. The Applicant was alive to this consequence, not out of generosity towards the Respondents but pursuant to his own plan to rid the Board of them. The constitution did not contemplate a Board without two spiritual leaders from KCI-UK. Until that defect was remedied by the Applicant, the First, Second, Third Respondents, and no other persons, the Board was not properly constituted. There was no Board. The Applicant, First, Second, and Third Respondents had a duty to appoint a further spiritual leader from KCI-UK to the Board to enable the Board to be properly constituted. The constitution permitted the remaining Board members to make further appointments by resolution supported by two-thirds of them voting in favour.

97. In the premises, the Court finds that the Board convened by the Respondents on 22 June 2022 and the decisions and resolutions taken at that meeting and those taken at the 15 November 2022 meeting are invalid, null and void.
98. Concerning the ancillary relief sought by the Applicant as to whether the constitution permits the appointment of two spiritual leaders from KCI-UK in addition to him, the Court considered clause 8.2 and concluded that it did not. Clause 8.2 of the 2017 constitution requires at least two spiritual leaders of KCI-UK to be members of the Church's Board. In a minimum incarnation of the Board with three members, at least two should be spiritual leaders of KCI-UK. Whilst it is correct that a Board with a larger number of members could conceivably have more than two spiritual leaders from KCI-UK, each of their appointments accorded with clause 8.4, which required a resolution of the Board supported by a two-thirds majority. The position that the Applicant contended for is unsustainable. Nothing in the 2017 Constitution implies that the obligation is to appoint two KCI-UK spiritual leaders in addition to the Chair.

99. Having found that the 22 June and 15 November 2022 meetings were invalid, null and void, it is unnecessary to determine whether the 2022 Constitution attempted to change the core objectives of the Church or whether the G12 disciple theology is fundamental to the core objectives or a method of achieving them. The Church's congregation, advised by their leaders, best determines these issues. A Court of law is ill-equipped to make these distinctions in the context of an application.

CONCLUSION

100. This judgment could have been disposed of in three paragraphs for the material issues to be determined are questions of law. Clause 8.2 of the 2017 Constitution concerning the appointment of two spiritual leaders of the KCI-UK was couched in obligatory language, which prevented the Respondents from conducting the business of the Church without first appointing another spiritual leader from KCI-UK. The judgments of Willie J did not allow for the interpretation that the Respondents sought to attach to them. Clause 8.2 of the constitution concerning the appointment of spiritual leaders did not permit the Applicant to interpret it to mean two other spiritual leaders from the KCI-UK in addition to him. The judgment has struck a century of paragraphs before it hands over the spoils to the victor. The Court takes no pleasure in doing so, as trawling through the quagmire that informs this application has been dismaying. When Church leaders engage in battle rather than engaging each other constructively, where does the congregation seek the expansive values enshrined in clause 5.2 of the constitution?
101. The interpretation of the constitution meant that the meetings held by the Respondents on 22 June and 16 November 2022 and the resolutions and decisions they made were invalid, null and void. The interpretation of the three judgments of Willie J was directed at the interdictory relief sought and the declaratory orders that had to be made. Willie J did not stray beyond that mandate and pronounce on whether the Board was properly constituted or not. The judgments did not support the defence raised by the Respondents to the relief

sought by the Applicant. Clause 8.2 concerning the appointment of two spiritual leaders from KCI-UK did not lend itself to an interpretation that it meant two others in addition to the Applicant.

102. This judgment asserts the principle that in a case where the constitution of a voluntary association, corporation, or organisation has an obligatory clause specifying the qualification of members of the Board, then the Board is not properly constituted until it complies with that clause. Suppose the number of qualified persons drops to below the minimum, and the constitution allows for their substitution by the Board. In that case, the remaining members of the Board must first elect or appoint a member satisfying the qualification criteria to fill the vacancy before the Board can conduct any further business of the organisation, corporation, or association. This, a Board or council has to do, even though it may be quorate in numbers.
103. A Court does not stoop to being pedantic if the parties decline its directions and assistance. However, after trawling through accusations, counteraccusations, and a history of misinterpreting court orders, this Court shall venture to tabulate the effect of its order to avoid any misunderstanding. The Court has tweaked the prayer sought in paragraph 7 of the notice of motion to reflect the findings in this judgment and ensure compliance with the order made.

103.1. The 2022 Constitution adopted by the First to Third Respondents is null and void and has no further application in the conduct of the Church's business,

103.2. The business of the Church reverts to being conducted under the 2017 Constitution as of the date of this judgment,

103.3. The Applicant shall provide the requisite notice to himself and the First to Third Respondents and no other person of a meeting of the Board to be convened within sixty days of this judgment,

- 103.4. The sole item of the agenda is to appoint one spiritual leader of KCI-UK by resolution supported by two-thirds of the four members of the Board attending the meeting,
- 103.5. Should the Applicant elect not to provide notice and the agenda item and to convene the Board meeting within thirty days of this judgment, then any of the First to Third Respondents may comply,
- 103.6. Should any of the First to Third Respondents elect not to attend the meeting either singularly or jointly, then the remainder of the four may proceed with the Board meeting in their absence,
- 103.7. Once one further spiritual leader is added to the Board as specified in paragraph 97.4 of this judgment, and the Board is properly constituted, then the Board may conduct the business of the Church as per the provisions of the 2017 constitution, including effecting any amendments to the 2017 Constitution.
104. The Court has allowed sixty days for the next Board meeting to enable the parties and the Church's congregation to reconcile. It has considered that the approaching season may impact the four members' availability to attend a Board meeting. This does not prevent the four members from agreeing to convene the Board earlier.
105. The Applicant sought the costs of the attorney and Senior Counsel on Scale C and the costs of junior Counsel on Scale B. As this Court has previously held²⁵, the insertion of Rule 67A does not entitle an attorney attending Court solely to assist and instruct an advocate to claim fees per the table of fees specified in the amended Rule 69 of the Uniform Rules, even if they have the right of appearance. An attorney with a right of appearance who presents or argues a case in Court is entitled to claim fees under the table of tariffs in Rule 69(7). Advocates or attorneys with a right of appearance can claim fees as stipulated in Rule 67A, read with Rule 69 only if costs are awarded on a party and party scale. The Court shall

²⁵ Raubex Building (Pty) Ltd v Bitou Municipality and Another (13787/2024) [2024] ZAWCHC 378 (19 November 2024) at paras 46-49

award the Applicant costs, including Senior Counsel's fees, on the C scale and the costs of Junior Counsel.

106. Finally, the Court feels compelled to offer the parties some gratuitous advice. It has worked through over seven hundred pages and produced this judgment. After all, it has earned the right to impart wisdom beyond its legal duties. You occupy the role of leaders of a Church in a democratic dispensation based on freedom, equality, and human dignity. There is no room for autocratic or unlawful conduct when steering the business and affairs of the Church. Be the role models that society expects you to be.

ORDER

1. It is declared that the purported meeting of the Board of Kings Church International, Robertson ("the Church") held by the First to Third Respondents on 22 June 2022 was invalid and a nullity and that all decisions and resolutions adopted at that meeting are invalid and null and void,
2. It is declared that all decisions and resolutions adopted at the purported meeting of the Board of the Church on 16 November 2022 are invalid and null and void,
3. The Applicant, the First, Second, and Third Respondent, and no other person shall attend a Board meeting of the Church convened by the Applicant within sixty days of this order to appoint one spiritual leader of Kings Church International-United Kingdom to the Board of the Church,
4. The First, Second, and Third Respondents are ordered to pay the costs of this application, including the costs of Junior Counsel. Senior Counsel's fees shall be taxed or agreed on scale C.



Ajay Bhoopchand
Acting Judge of the High Court
Western Cape Division
Cape Town

Judgment was handed down and delivered to the parties by e-mail on 2 December
2024

Applicant's Counsel: G Budlender SC, C M van Der Merwe

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Instructed by: Kellerman Joubert Heyns, Stellenbosch