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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No:47085/2021

(1) REPORTABLE: YES/**NO**

(2) OF INTEREST TO OTHER JUDGES: YES/**NO**

(3) REVISED.

DATE 31 January 2025

SIGNATURE

In the matter between:

THE ELECTS APOSTOLIC CHURCH NPS

APPLICANT

and

ZWELI DUMILE BLACKFESI MOHAMMAD

1ST RESPONDENT

THE STANDARD BANK OF SOUTH AFRICA

2ND RESPONDENT

JUDGMENT

HF JACOBS, AJ:

[1] This application concerns a dispute about a church's leadership, ownership and entitlement to assets, and income stream from those assets. On 2 August 2024, the matter was referred to oral evidence in terms of Rule 6(5)(g) and a Rule Nisi, which had been issued earlier and extended. The rule Nisi was again extended to 27 January 2025.

[2] The matter was allocated to me as one of the matters on the opposed motion court roll. The purpose of the enrolment was, so I was informed by the applicant's counsel, to lead the parties' evidence on the issues before the court.

[3] I note from the order of 2 August 2024 (at CaseLines record: 0020:1) the following referral to evidence appears:

- "1. The rule nisi is extended to the 11th October 2024;*
- 2. The matter is hereby referred for oral evidence in terms of Rule(6)(5)(g), and the applicant may approach the Deputy Judge President for a special allocation date;*
- 3. The parties have elected to refer the matter for arbitration. An arbitration agreement shall be concluded as soon as reasonably possible;*
- 4. The applicant shall transfer the available funds of the Standard Bank account bearing account number 0[...] ("the account"), into the trust account of its attorney of record, being Rama Annandale & Munonde Attorneys;*
- 5. The applicant's attorney of record shall account to the 1st respondent's attorney regarding the available balance and all subsequent payments towards the municipal account.*
- 6. Costs are reserved."*

[4] It must be noted from the preamble of the order of 2 August 2024 that the order was made by agreement between the parties and is, therefore, a consent paper and not an order by the judge on the day after considering and ruling on disputes of fact that were found to exist, not capable of resolution in motion proceedings.

[5] Rule 6(5)(g) of the Uniform Rules of Court reads as follows:

"6(5)5(g) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as to it seems meet with a view to ensuring a just and expeditious

*decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for him or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.*¹

- [6] Our courts apply rule 6(5)(g) with the following object in mind:
- “The object of rule 6(5)(g) is manifestly to restrict the scope and ambit of the enquiry and the number of witnesses to limits defined by the court, and so to inhibit the abuse of the procedure that the sub-rule provides by attempts to convert the application into a full-dress trial, while at the same time enabling the court to enquire fully into the “specified issues” on which there is a dispute of fact. It has been said that the ordering of oral evidence does not give either party the right to a roving commission and to put before the court any facts which the party thinks it would like the court to be aware of. The issues must be defined and the enquiry must be limited to its proper scope.”*²

- [7] Absent an agreement between the parties (or an order of court) on the “specified issues” and the number of witnesses, the trial will continue out of control without pleadings and without a limitation on the number of witnesses to be called and the benefit of having the issues distilled to their essence.

- [8] I have requested counsel to consider the abovementioned principles and the possibility of referring the matter to trial. Counsel each

¹ My underlining

² See *Ngar v Omar Salem Essa Trust* 1970 (1) SA 77 (N); *Wepener v Norton* 1949 (1) SA 657 (W) at 659; *Atlas Organic Fertilisers (Pty) Ltd v Pikkewyn Ghwana (Pty) Ltd* 1978 (4) SA 696 (T) at 699A-B; Herbstein and Van Winsen, *The Practice of the High Courts of South Africa*, Fifth edition, Vol 1 page 465

returned with a draft order, and counsel for the applicant presented heads of argument in which the relevant chronology is recorded. I found these convenient.

[9] In my view, both sides are to blame for the matter appearing on the opposed roll of this week, and I am not prepared to, in my discretion, award the wasted costs of the week to any of the litigants. In my view, the costs of the enrolment on 27 January 2025 must be costs in the cause.

Under the circumstances, I grant the following order:

1. The *rule nisi* is extended to the 2nd of June 2025;
2. The matter is hereby referred for oral evidence in terms of Rule(6)(5)(g), and the Applicant must approach the Deputy Judge President for a special allocation date, on the following disputes:
 - 2.1. the leadership of the Elects Apostolic Church;
 - 2.2. ownership of the monies held in the bank account with Standard Bank Ltd bearing account number 0[...]; and
 - 2.3. the right title and interest in the property known as 18882 Mamelodi Township and the income from that property.
3. The following persons may be called to give oral evidence:
 - 3.1. Theminkosi Madikane;
 - 3.2. Raymond Matlala;
 - 3.3. Charles Gomba and
 - 3.4. Zweli Dumile Blackfesi Mohammad Josefa Dashe.
4. The parties shall make joint application for Judicial Case Management in terms of the Consolidated Practice Directives 1/2024, and the parties are ordered to adhere to the requirements for the successful management of the case.
5. The wasted costs of the enrolment of the matter during the week of 27 January 2025 shall be costs in the cause.

H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 11h00 on the 31st January 2025.

APPERANCES

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