



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable

Case no: 6722/2023

In the review application between:

MOKWEETSI SIMON MELALETSA

APPLICANT

and

**REGIONAL SYNOD FREE STATE AND LESOTHO
OF "DIE NEDERDUITSE GEREFORMEERDE KERK
IN AFRIKA – ORANJE VRYSTAAT"**

FIRST RESPONDENT

**BLOEMFONTEIN CIRCUIT OF: "DIE NEDERDUITSE
GEREFORMEERDE KERK IN
AFRIKA – ORANJE VRYSTAAT"**

SECOND RESPONDENT

**LADYBRAND CIRCUIT OF: "DIE NEDERDUITSE
GEREFORMEERDE KERK IN
AFRIKA – ORANJE VRYSTAAT"**

THIRD RESPONDENT

**CHURCH COUNCIL, THABA NCHU OF: "DIE
NEDERDUITSE GEREFORMEERDE KERK
IN AFRIKA – ORANJE VRYSTAAT"**

FOURTH RESPONDENT

Neutral citation: Melaletsa v Regional Synod Free State and Lesotho of the Nederduitse Gereformeerde Kerk in Afrika – Oranje Vrystaat and Others (6722/2023) [2025] ZAFSHC (4 February 2025)

Coram: Van Rhyn J et Greyling-Coetzer AJ

Heard: 4 November 2024

Delivered: 4 February 2025

Judgment by: Greyling-Coetzer AJ

Summary: Judicial review – procedural fairness – application of the Church Order – release of a Minister of the Word from service.

ORDER

1. The First Respondent's decision to appoint a Commission of Inquiry is reviewed and set aside.
 2. The decision of the Second Respondent, alternatively the First- or Third Respondent, alternatively First- to Third Respondents jointly, to release the Applicant from the Thaba Nchu congregation in terms of Article 10 of the *"Kerkorde en Bepalinge vir die Bestuur van die Nederduitse Gereformeerde Kerk in Afrika – Oranje Vrystaat"* is reviewed and set aside.
 3. The First- to Third Respondents are ordered to pay the costs of this application, jointly and severally, the one to pay the other to be absolved, which costs to include the costs of counsel on Scale B.
-

JUDGMENT

GREYLING-COETZER AJ (VAN RHYN J concurring)

[1] This is a judicial review brought by the Applicant challenging the decision of the First Respondent, the Regional Synod Free State and Lesotho of the Nederduitse Gereformeerde Kerk in Afrika – Oranje Vrystaat (Regional Synod), to appoint a

Commission of Inquiry. The review also challenges the recommendations made by the Commission, as well as the subsequent decisions of the Regional Synod and/or the Second Respondent, the Bloemfontein Circuit of the Nederduitse Gereformeerde Kerk in Afrika – Oranje Vrystaat (Bloemfontein Circuit), and/or the Third Respondent, the Ladybrand Circuit of the Nederduitse Gereformeerde Kerk in Afrika – Oranje Vrystaat (Ladybrand Circuit), to dissolve the Applicant's bond with the Thaba Nchu congregation (i.e., to release the Applicant from service).

[2] The application is opposed by the Regional Synod, the Bloemfontein Circuit and the Ladybrand Circuit. The Fourth Respondent, the Church Council, Thaba Nchu of the Nederduitse Gereformeerde Kerk In Afrika – Oranje Vrystaat ("Church Council") did not enter the fray. For ease of reference the opposing respondents will jointly be referred to as "the Respondents".

[3] The facts relevant to this application can be summarised as follows: The Applicant is an ordained Reverend of the Nederduitse Gereformeerde Kerk in Afrika. In 2013, he accepted a call to serve as a Reverend at the Thaba Nchu congregation of the Nederduitse Gereformeerde Kerk in Afrika – Oranje Vrystaat and Lesotho.

[4] The Applicant states that instability within the Thaba Nchu congregation arose following the resignation of the 2015 Church Council and the subsequent nomination and appointment of a new Church Council. The Applicant served as the Chairperson of the new Church Council. The Respondents contend that, since 2014, the Regional Synod had received several complaints from members of the Church Council and congregation concerning the Applicant.

[5] Upon stepping down, members of the 2015 Church Council joined an organisation called the "Mannebond." Although the Church Council later suspended the members of the Mannebond, the Regional Synod authorised the group to continue holding separate church services at an alternative venue, the "Ereskuld" church building. The instability within the congregation persisted. Consequently, the Regional Synod appointed a Commission of Inquiry to investigate the ongoing discord within the Thaba Nchu congregation.

[6] The Respondents state that the Applicant requested the Regional Synod to intervene and address the dispute between the Church Council and the congregation members. Based on this request, the Regional Synod decided to establish a Commission of Inquiry, comprising Reverend MS Makhele, Reverend MD Molifi, and

Reverend MJ Kofa, pursuant to Article 29.5 and Regulation 113.1 of the Kerkorde en Bepalings vir die Bestuur van die Nederduitse Gereformeerde Kerk in Afrika – Oranje Vrystaat en Lesotho (“Church Order”)¹. The Respondents later claim that the Commission of Inquiry was appointed on authority of Article 26 of the Church Order.

[7] The Commission of Inquiry convened on 5, 6, 12, and 13 October 2019. The record does not indicate the outcome or decision of the Commission. The Applicant contends that the Commission recommended his release in accordance with Article 10 of the Church Order. The Respondents maintain that, following the Commission's sittings, the Regional Synod appointed a Justice Commission to resolve the dispute between the Applicant, the Bloemfontein Circuit, and the Ladybrand Circuit.

[8] The Justice Commission produced its report on 12 February 2020, recommending the Applicant's release in terms of Article 10 of the Church Order. Additionally, the report recommended that the Ladybrand Circuit be placed under the management and leadership of the Bloemfontein Circuit. The Regional Synod accepted these recommendations.

[9] The Applicant was suspended on 15 September 2021, or alternatively on 27 September 2021, by a decision made by the Urgent Synodical Commission on 24 September 2021.

[10] The Regional Synod recommended to the Bloemfontein Circuit that the Applicant be released as per Article 10 of the Church Order. Accordingly, on 2 October 2022, the Bloemfontein Circuit officially released the Applicant in terms of Article 10 of the Church Order.

[11] A further letter of release was issued by the Ladybrand Circuit on 6 June 2023, in similar terms. The Respondents assert that the Ladybrand Circuit did not exist from 24 September 2021 until 15 April 2023, as the Regional Synod had decided on 24 September 2021, or alternatively 12 February 2020, to merge the Ladybrand Circuit with the Bloemfontein Circuit.

[12] This application is primarily based on the procedural unfairness of both the Commission of Inquiry and the decision to release the Applicant in terms of Article 10 of the Church Order.

¹ Consisting of the Constitution of the Dutch Reform Church in Africa and Regulations, per the record

[13] The Applicant argues that, although the Commission of Inquiry was intended to investigate the relationship between the Church Council and the "Mannebond," the main focus of the inquiry was directed at the Applicant. The Applicant claims that the inquiry proceeded without affording him the right to be heard (*audi alteram partem*), leading to further actions that culminated in his release from the congregation under Article 10 of the Church Order. The Applicant further contends that the entire process was tainted by a failure to observe the principles of natural justice and was conducted in violation of the Church Order.

[14] It is undisputed that the Regional Synod, the Bloemfontein Circuit, the Ladybrand Circuit, the Church Council, and the Applicant are all governed by the Church Order, which has been developed over many years. The powers of the Regional Synod, Ladybrand Circuit, Bloemfontein Circuit, and Church Council are derived from this Church Order.

[15] The Church Order regulates a wide range of matters, including the roles and responsibilities of church offices, the admission of ministers to the ministry of the Word, the duties of Elders and Deacons, church meetings, the establishment of the Church Council, circuits, the Regional Synod, and the General Synod, as well as their respective roles. It also addresses matters related to church oversight and discipline. The church structure is further governed by four levels of governance: the Church Council, circuit, Regional Synod, and General Synod.

[16] The Church Order outlines the circumstances and procedures under which a minister of the Word, such as the Applicant, may be released from service or subjected to disciplinary action.

[17] The Respondents rely on various points *in limine*, which must be resolved before the merits of the matter can be considered.

Point in limine: Jurisdiction

[18] The challenge to this Court's jurisdiction was first raised in the Respondents' heads of argument. As a result, the Applicant was afforded the opportunity at the commencement of the hearing to file supplementary heads of argument. Counsel for the Applicant, however, chose to address the jurisdictional challenge during oral argument.

[19] The Respondents contend that the Applicant, during proceedings before the Commission for Conciliation, Mediation, and Arbitration ("CCMA"), admitted to being an employee of the Church Council. They further argue that, although the Applicant does not rely on any specific terms of an employment contract, the undisputed facts demonstrate that the Applicant was subject to the control and regulations of the Respondents, particularly in relation to how the Respondents applied the Church Order. Based on this, the Respondents assert that the Applicant qualifies as an employee in terms of Section 213 of the Labour Relations Act 66 of 1995 ("LRA").

[20] The Respondents argue that, as the relief sought by the Applicant effectively seeks reinstatement to the Respondents' service, the Applicant's recourse is governed by Section 188(1)(a) of the LRA. As such, the matter falls within the jurisdiction of the Labour Court, as indicated *Phori v Minister of Police and Other* (2552/2021) [2021] ZAFSHC 221 (17 September 2021).

[21] According to the Applicant, this Court has the required jurisdiction as the Applicant has not placed reliance on any employer-employee relationship, which would be a prerequisite to establish the jurisdiction of the Labour Court. The Applicant highlighted that in contrast to the Respondents' current jurisdiction challenge, the Respondents in the CCMA pertinently denied that any employment relationship existed between the Applicant and the Respondents. The Applicant's contention in the CCMA that he was employed by the Church Council does not bring the current application within the realm of the Labour Court, nor does the fact that the Applicant challenges the procedural unfairness of the decision by the Respondents.

[22] The Applicant contends that there is clearly no employee-employer relationship when regard is had to *Universal Church of the Kingdom of God v Myeni and Others* [2015] 9 BLLR 918 (LAC) and *Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA and Others* [2001] 11 BLLR 1213 (LC) where the Labour Court held that:

'... the church must be seen as providing the space for those called upon to give effect to that calling. The fact that in providing that space it may be providing all the features of an employment relationship cannot make that relationship an employment one.'²

² At par 35

[23] The Constitutional Court in *Gcaba v Minister of Safety and Security* [2009] ZACC 26; 2010 (1) SA 238 (CC); 2010 (1) BCLR 35 (CC) and *Baloyi v Public Protector and Others* (CCT03/20) [2020] ZACC 27; 2021 (2) BCLR 101 (CC); [2021] 4 BLLR 325 (CC); (2021) 42 ILJ 961 (CC); 2022 (3) SA 321 (CC) (4 December 2020) made it clear that an assessment of jurisdiction must be based on an applicant's pleadings, as opposed to the substantive merit of the case.

[24] In *Gcaba* it was held that:

'...in the event of the court's jurisdiction being challenged ... the applicant's pleadings are the determining factor. They contain the legal basis of the claim under which the applicant seeks to invoke the court's competence. While the pleadings – including in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits; must be interpreted to establish what the legal basis of the applicant's claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognizable only in another court. If however the pleadings, properly interpreted, establish that the applicant is asserting a claim under the LRA, one that is to be determined exclusively by the Labour Court, the High Court would lack jurisdiction'.³ (own underline)

[25] The Applicant's papers reveal that he considered himself bound by the Church Order, and that in serving as a Reverend, he was carrying out the church's mission through reliance on the Word of Christ. The Applicant receives, and continues to receive, remuneration in this role.

[26] The Applicant's claim is based solely on the Respondents' failure to comply with the Church Order, and that the actions taken by the Respondents—allegedly grounded in the Church Order—were procedurally unfair and/or ultra vires.

[27] The remaining of the papers, more particularly the Respondents' answering affidavit reveals that, in the CCMA proceedings, the Applicant contended that he was an employee of the Church Council, while the Respondents denied any employment relationship. However, the Applicant seeks no relief against the Church Council.

[28] It is well-established that the same set of facts can give rise to multiple causes of action. In some instances, legislation prescribes a specific forum for the adjudication of a particular cause of action. A litigant must choose the appropriate

³ *Gcaba (supra)* at par 75

cause of action based on the facts and prepare its pleadings accordingly. As held in *Baloyi*:

'The fact that a cause of action is limited to certain for a must not be interpreted as obliging an applicant only to pursue that particular cause of action.'⁴

[29] The mere potential that a claim, based on an unfair release or dismissal, may be framed as one of unfair dismissal does not obligate a litigant to approach the Labour Court. This is the case even though other potential causes of action might exist.

[30] Whether a court believes that a litigant should have pursued a different cause of action, or that doing so would have increased the likelihood of success, is irrelevant to the court's competence to hear the matter.⁵

[31] In the present matter the Applicant does not rely on a contract of employment with the Respondents, nor does the Applicant in other terms plead that he was employed by the Respondents. The Respondents do not contend that the Applicant was employed by them. The high-water mark of the Respondents' contention is that the Applicant considered himself to be under the control and regulation of the Respondents through the Church Order. Considering the Applicant's pleadings and that revealed in the Respondents' opposing affidavit, this Court's jurisdiction is not ousted by the mere presence of some jurisdictional requirement of a claim founded on an unfair dismissal, as contemplated in the LRA, nor because the Applicant's cause of action is founded on the absence of procedural fairness.

[32] The Respondents' jurisdictional challenge is without merit. This court has the required jurisdiction to determine the application.

Point in limine: Non-joinder of General Synod and non-compliance with the Church Order

[33] The Respondents argue that, pursuant to Article 76 of the Church Order, the Applicant had the right to appeal to the General Synod. However, they assert that the Applicant failed to first appeal to the Regional Synod or the Bloemfontein Circuit. The Respondents further claim that the Applicant did not join the General Synod to these

⁴ Par [39]

⁵ Par [42]

proceedings, despite it being the highest authority within the governance of the church.

[34] In response, the Applicant contends that the General Synod does not have a direct and substantial legal interest in this matter that could be prejudicially affected. Out of an abundance of caution, and without conceding the validity of the Respondents' *point in limine*, the Applicant notified the General Synod of the proceedings and inquired whether it wished to intervene. No response was received from the General Synod. Furthermore, the Applicant argues that Article 76, read in conjunction with Article 34 - which provides for a right of appeal - excludes matters related to the discipline of ministers of religion from the competence of the General Synod.

[35] It appears that the Respondents' *point in limine* raises two issues: first, the issue of non-joinder, and second, the failure to exhaust internal remedies.

[36] Regarding non-joinder, the Respondents merely allege that the Applicant failed to cite the General Synod, as the highest authority in the governance of the church. However, the Respondents have failed to substantiate how this omission constitutes a non-joinder warranting dismissal of the application.

[37] In *Judicial Service Commission and Another v Cape Bar Council and Another 2013 (1) SA 170 (SCA)*⁶ the court held that:

'it has by now become settled law that the joinder of a party is only required as a matter of necessity – as opposed to a matter of convenience – if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned (see e.g. *Bowring N.O. v Vrededorp Properties CC 2007 (5) SA 391 (SCA)* para 21)). The mere fact that a party may have an interest in the outcome of litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one.'

[38] The mere fact that the General Synod is the highest authority in the governance of the church does not satisfy the test of necessity, as outlined above.

[39] Even if the conclusion above is incorrect, and the General Synod could be regarded as a necessary party, the Applicant remedied the alleged defect by issuing

⁶ Par [12]

an informal notice, seeking the General Synod's indication of whether it wished to intervene in the proceedings. In *BOE Trust Ltd and Others NNO 2013 (3) SA 236 (SCA)*⁷ the Supreme Court of Appeal held that such an informal extra-judicial notice was sufficient notice of the proceedings and that eventually each of the organizations involved in that matter was properly informed of the nature and purpose of the proceedings.

[40] On the strength of aforementioned, the General Synod received due notice. Its failure to respond can therefore be accepted as a waiver of the right to be joined.⁸

[41] Regarding the failure to exhaust internal remedies, the Respondents' position is unclear. If the Respondents intend to argue that, based on Article 17 of the Church Order, read with Regulations 76 and 113.1, the Applicant had a right of appeal to the General Synod against any decision made by the Respondents, but failed to exercise that right, thereby warranting the dismissal of the application, such an argument is without merit.

[42] Even if the Applicant may have had a right of appeal in terms of Article 17, without deciding this issue, the existence of an internal remedy is, under common law, not sufficient to preclude access to judicial review. A court may condone a failure to exhaust internal remedies where the available remedy is illusory or inadequate, or where it is tainted by the alleged illegality. The two primary considerations under common law are whether the domestic remedies are capable of providing effective redress and whether the alleged unlawfulness undermines the integrity of the internal remedies themselves.

[43] In *Koyabe v Minister of Home Affairs 2010 (4) SA 327 (CC)*⁹ the Constitutional Court said:

'The duty to exhaust internal remedies is therefore a valuable and necessary requirement in our law. However, the requirement should not be rigidly imposed. Nor should it be used for administrators to frustrate the efforts of an aggrieved person or to shield the administrative process from judicial scrutiny.'

[44] Even though the duty to exhaust internal remedies is not absolute, the aggrieved party, such as the Applicant in the present matter, is still bound to exhaust

⁷ Par [19] to [20]

⁸ *Road Accident Fund v Legal Practice Council and Others 2021 (6) SA 230 (GP)*

⁹ At 343A-B

internal remedies prior to embarking on a judicial review, unless the aggrieved party can show exceptional circumstances to excuse him or her from this requirement.¹⁰

[45] In determining whether exceptional circumstances exist, factors to be considered include whether the internal remedy is effective, available, and adequate. An internal remedy is deemed effective if it provides a realistic prospect of success and can be objectively implemented, in line with the relevant principles and values of administrative justice as enshrined in the Constitution and our law. It is considered available if it can be pursued without obstruction, whether arising from systemic issues or improper administrative conduct. An internal remedy is adequate if it is capable of providing effective redress for the complaint.¹¹

[46] Based on the assumption outlined above, the proposed internal remedy would, in the context of this matter, fail to meet the necessary test. In the event of the Applicant's release from service, if such a decision were made by either the Bloemfontein Circuit or the Ladybrand Circuit, an appeal would lie to the Regional Synod. The Regional Synod, according to the Respondents' version, was the church body that recommended the release to the Bloemfontein Circuit and/or the Ladybrand Circuit.

[47] Furthermore, considering that the Applicant attempted to appeal his suspension to the General Synod, which advised that the appeal should have been directed to the Regional Synod, it is evident that the Regional Synod was the effective cause of the suspension, as the suspension resulted from its decision to appoint a Commission of Inquiry.

[48] For the reasons outlined above, the argument that dismissal is warranted due to the failure to exhaust internal remedies is without merit. This point *in limine* stands to be dismissed.

Point in limine: The existence of a material factual dispute

[49] The Respondents assert that a genuine and material dispute of fact exists, and that such a dispute was foreseeable, thereby warranting the dismissal of the application. It is further contended that this factual dispute is evidenced in the application under case number 669/2021, the criminal proceedings against the

¹⁰ *Nichol and Another v Registrar of Pension Funds and Others* 2008 (1) SA 383 (SCA)

¹¹ *Basson v Hugo and Others* [2017] ZASCA 192 (1 January 2018)

Applicant in the Regional Court, the meeting held on 27 February 2020, and the CCMA hearing.

[50] In contrast, the Applicant argues that the issue for determination is limited to whether the Regional Synod, the Bloemfontein Circuit, and/or the Ladybrand Circuit acted within their authority in making the decision under review. The Applicant further asserts that, to the extent a factual dispute may arise in respect of certain allegations, such a dispute is capable of resolution through the application of the *Plascon-Evans* principle.

[51] It is well established that a genuine dispute of fact arises in motion proceedings when the court is satisfied that the party raising the dispute has properly and unequivocally addressed the facts it contends are disputed in its affidavit.¹²

[52] A court will typically find that a genuine dispute of fact exists where the party raising the dispute provides a detailed and credible response, demonstrating knowledge of the relevant facts and the ability to present countervailing evidence. The determination of this matter hinges on an assessment of whether the Respondents properly applied the established Church Order in the creation of a Commission of Inquiry and in the decision to release the Applicant from service.

[53] Upon a conspectus of the papers, any dispute of fact that may exist pertains to peripheral matters with limited relevance, if any, to the central issue of whether the Respondents acted in accordance with the prescribed procedure and the Church Order when establishing the Commission of Inquiry and releasing the Applicant from service.

[54] Therefore, there is no genuine or bona fide dispute of fact of sufficient materiality to justify the dismissal of the application as sought by the Respondents. Even if there was such a dispute of fact, this Court is reminded of the finding of the Constitutional Court in *Mamadi v Premier, Limpopo and Others* 2024 (1) SA 1 (CC)¹³ where it was confirmed that in order to give proper effect to Section 34 of the Constitution. A litigant is entitled to invoke Uniform Rule 53 in review proceedings and, accordingly, cannot be penalized for doing so by the application of Uniform Rule 6(5)(g), solely on the basis that Uniform Rule 53 was utilized. The Constitutional Court

¹² *Wightman t/a JW Construction v Head Four (Pty) Ltd and Another* 2008 (3) SA 371 (SCA)
¹³ at par [43]

has held that a court does not possess the discretion, under Uniform Rule 6(5)(g), to dismiss an application brought under Uniform Rule 53 solely on the grounds that reasonable and anticipated disputes of fact arise from the papers.

Merits

[55] I now turn to the merits of the application. The Applicant's case, put simply, is that the Regional Synod, in appointing a Commission of Inquiry—whose recommendations led to the Applicant's release under Article 10—acted beyond their power and in a procedurally flawed manner. This, the Applicant argues, was in violation of the Church Order, disregarded the principles of natural justice, and ignored the *audi alteram partem* rule, which is a prerequisite to a fair hearing.

[56] The Respondents, in response, maintain that the Regional Synod consistently acted in accordance with the Church Order. They assert that the appointment of a Commission of Inquiry, which was initiated at the Applicant's request, as well as the Applicant's release under Article 10, were both procedurally and substantively fair.

[57] The concept of *natural justice* refers to the fair and just treatment of all parties involved in a legal or administrative process. It is a broad term encompassing various procedural rights that ensure decisions are made transparently, fairly, and impartially.

[58] In *Joseph and Others v City of Johannesburg and Others* [2009] ZACC 30; 2010 (3) BCLR 212 (CC); 2010(4) SA 55 CC¹⁴, procedural fairness was described as '...being concerned with giving people an opportunity to participate in the decisions that will affect them, and – crucially – a chance of influencing the outcome of those decisions...'

[59] Courts are generally hesitant to interfere in the internal matters of a religious body such as a Church. The Constitutional Court in *De Lange v Presiding Bishop of the Methodist Church of Southern Africa for the Time Being and Another* CCT223/14C [2015] ZACC 35; 2016 (1) BCLR 1 (CC); 2016 (2) SA 1 (CC), referred to this view as follows:

'The Supreme Court of Appeal held that the doctrine of entanglement strongly informs courts not to get involved in religious doctrinal issues. The effect of the doctrine is that courts are reluctant to interfere with religious doctrinal disputes.'

¹⁴ at par [41]

[60] As mentioned in the minority judgment of *Hendricks v The Church of the Province of Southern Africa, Diocese of Free State* (108/2021) [2022] ZASCA 95 (20 June 2022) the following dictum in *De Lange* is significant, as it provides important context for paragraph 39 of that judgment:

'In *Lakeside Colony of Hutterian Brethren v Hofer*, Gonthier J said of the complex issues involved in reviewing the decisions of a religious tribunal in Canadian law:

"It is not incumbent on the court to review the merits of the decision to expel. It is, however, called upon to determine whether the purported expulsion was carried out according to the applicable rules, with regard to the principles of natural justice, and without mala fides."¹⁵ (Emphasis added).

It is plain from the passage above that there are circumstances in which courts are required to intervene in disputes involving religious bodies. To my mind, this can only mean that where religious bodies have proceeded in a manner that is not consonant with the principles of natural justice, courts will intervene.' (own emphasis)

[61] The Supreme Court of Appeal minority judgment in *Hendricks*¹⁶ further held that: '...the majority judgment in *De Lange* did not introduce a blanket prohibition on the determination of disputes that involve religious bodies...'

[62] The present matter is one such exception, here the focus is on the fairness in process rather than doctrinal beliefs or practices nor about an individual who has voluntarily committed himself to a religious association's rules and find himself now in conflict with same.

[63] As set out above, it is common cause between the parties that the Respondents and the Applicant are regulated by the Church Order, which makes provision for *inter alia* the establishing of commissions, the release of ministers of the Word and discipline in general.

[64] The Church Order is integral in the determination of this matter. As such it is necessary to briefly outline the structure thereof. As already mentioned, the Church Order consists of the Constitution and the Regulations. The Constitution is divided into eight chapters. Under each chapter there are various headings and sub-headings

¹⁵ *De Lange v Presiding Bishop, Methodist Church of Southern Africa and Another* [2014] ZASCA 151; 2015 (1) SA 106 (SCA); [2015] 1 All SA 121 (SCA) para 38.

¹⁶ (108/2021) [2022] ZASCA 95 (20 June 2022) para [53].

with specific regulations resorting under specific articles. From the available record it can be summaries as follows:

CHAPTER I	CONFESSION OF THE CHURCH	Art 1
CHAPTER II	THE DENOMINATION	Art 2 - 3
CHAPTER III	THE OFFICES OF THE CHURCH	Art 4 – 16
	General regulations	Art 4 -5 & Reg 5 - 39
	Ministers of the Word	Art 6 -12 & Reg 40 - unknown
	Elders and Deacon	Art 13 – 15
	The Believers	Art 16
CHAPTER IV	THE ASSEMBLIES OF THE CHURCH	ART 17 – 40
	The Church Council	Art 20 – 22 & Reg 82-89
	The Circuit	Art 23 -25
	The Regional Synod	Art 26 – 31 & Reg 112-138
	The General Synod	Art 32 - 40
CHAPTER V	THE LABOUR OF THE CHURCH	Art 41 – 49
CHAPTER VI	THE CHURCH OVERSIGHT AND DISCIPLINE	Art 50 – 58 & Reg 173 - 221
CHAPTER VII	ECUMENICAL RELATIONS	Art 59
CHAPTER VIII	CHURCH AND GOVERMENT	Art 60

[65] The challenge to the Regional Synod's decision to appoint a Commission of Inquiry serves as a logical starting point.

[66] The Regional Synod alleges that its decision to establish the Commission of Inquiry at the Applicant's request and in accordance with Article 29.5, read with Regulation 113.1. However, the Applicant denies ever requesting the Regional Synod's intervention. Whether the Applicant sought the Regional Synod's intervention or not is of little consequence, either way the Church Order had to be observed in appointing a Commission of Inquiry.

[67] Article 29 sets out the tasks and competences ascribed to the Regional Synod. Article 29.5 reads: 'dealing with matters which must be brought to it in the first instance or on appeal..'. Regulation 113.1 in turn grants the Regional Synod the authority to oversee the general work of the church, particularly matters related to worship and church activities. It is also responsible for receiving and processing all complaints and disputes brought before it, whether initially or on appeal, and for issuing decisions. Additionally, the Synod holds the same powers as a circuit under Article 57. Article 57 specifically outlines the procedure for appealing decisions made by an ecclesiastical meeting.

[68] The further relevant provisions are found in CHAPTER IV: ASSEMBLIES OF THE CHURCH, being Article 26 to 31 and Regulations 112 to 138. From aforesaid, the Church Order does not deal explicitly with the authority of the Regional Synod to appoint a Commission of Inquiry. In applying the trite *Plascon-Evans* principle its accepted that, the Regional Synod intervened to resolve the dispute between the Church Council and the congregation members and knowing that complaints against the Applicant has been forthcoming since 2014. The Regional Synod resolved to attend to the dispute by first investigating and did so by appointing a Commission of Inquiry. This is to some extent confirmed by the minutes of the Commission of Inquiry meeting held on 5 October 2019.

[69] The Applicant alleges that he was not invited to said Commission of Inquiry meeting, which fact the Respondents deny boldly and without providing a contrary version. According to the Applicant he attended on 5 October 2019. He was however requested to leave the meeting by the Commission and the Church Council, and the Mannebond remained behind.

[70] It stands to be noted that the Respondents allege that the Commission of Inquiry convened on 5, 6, 12 and 13 October 2019, the only minutes before Court is that of 5 October 2019. It is therefore unclear what transpired on the remaining three days, or what recommendations were issued pursuant thereto.

[71] The available minutes do however reveal that the Church Council of Thaba Nchu and the members of the Mannebond were present, yet the Church Council was excused early on with only the Mannebond being left behind. According to the minutes, the meeting involved the receiving of grievances and complaints directed at the Applicant, even though the goal of the inquiry, according to the Respondents, was to investigate the relationship between the Church Council and the Mannebond. The objections raised by the Mannebond, directed at the Applicant, related to the content of his sermons and church services, funeral and the like. The broad consensus expressed at the meeting was that the Applicant should be released from the congregation.

[72] A key issue to consider is the process by which the Regional Synod decided to appoint the Commission of Inquiry. According to the Respondents, the decision to establish the Commission was made after the Applicant requested the Synod's intervention. It follows, therefore, that this decision must have been made during a

Regional Synod meeting. In this regard Article 28¹⁷ and Regulations 115,¹⁸ 116,¹⁹ 117²⁰ and 118²¹ are apposite.

[73] This issue was not expressly raised nor dealt with by either of the parties, and although most relevant in my view, does not constitute an specific issue for determination by this Court. The Applicant's challenge is framed much broader, and that the Regional Synod was not clothed with authority to appoint a Commission of Inquiry on the strength of Article 29.5 and Regulation 113.1. It is argued that the decision to constitute a Commission of Inquiry requires the procedure to be followed as outlined in Article 55 and Regulation 185.

[74] Article 55 is contained in CHAPTER VI: CHURCH OVERSIGHT AND DISCIPLINE. Regulation 185 stipulates that members of a church meeting are required to report harmful rumours to the meeting, without forfeiting their right to assess and judge the matter during the meeting. Further that where adverse rumours or objections are noted, the relevant meeting must determine whether there are sufficient reasons to investigate them further. The Church Council must appoint a Commission of enquiry and act in accordance with Regulation 195, to establish whether there are sufficient grounds for a proper complaint. If same exists, the commission or one of its members must act as complainant and submit a proper complaint in terms of Regulation 201²².

[75] The Respondents deny that they acted incorrectly or that they ought to have acted in terms of Article 55 and Regulation 185. They aver that the interpretation is factually and legally incorrect. They failed to place reliance on a different interpretation, save to re-state that they acted in terms of Article 29, read with Regulation 113.1.

¹⁷ Regional Synod will normally meet every four years

¹⁸ The ordinary meetings of the synod take place at a place and date determined by the moderator or by order of the synodal commission, or when at least 24 members of the previous synod apply to this commission with a statement of reasons

¹⁹ The ordinary as well as extraordinary meeting of the synod is called by the scribe at least three months before the specific date by means of a notice in the official page

²⁰ At least 2/3 of the possible number of members must be present before a meeting of the synod may be declared legally constituted

²¹ Of the number of members at the attendance list, more than 50% forms a quorum for the ordinary activities. For the treatment of disciplinary matters, 2/3 of the members on the attendance list be present (Regulations 176 and 177)

²² Complaints against office bearers (Art 54.3), include ministers of the Word, in respect of their teachings, conduct and ministry, must be submitted in writing to the Chairperson of the circuit with reference to nature, time and place excluding in re persons listed in Art 5.5.4

[76] In this regard, the minutes of the Commission of Inquiry are instructive, as they show that during the sitting, adverse rumours, complaints, and/or objections from the Mannebond, directed at the Applicant, were presented. This brings it in line with the provisions of CHAPTER VI: CHURCH OVERSIGHT AND DISCIPLINE. Aforesaid is further supported by the subsequent actions taken, notably the appointment of the Justice Commission, the suspension of the Applicant, and his eventual release in accordance with Article 10.

[77] Aligned with the principle of natural justice, Article 52 (under CHAPTER VI: CHURCH OVERSIGHT AND DISCIPLINE) prescribed that no disciplinary action may be applied before a complaint has been investigated and without an accused having had sufficient opportunity to defend himself.

[78] For as far as the Commission of Inquiry was disciplinary in nature, it clearly offends aforementioned Article 52 of the Church Order, the *audi alteram* principles and the principle of natural justice. The Applicant should have been given an opportunity to be present and audience at said meeting.

[79] For as far as the Commission of Inquiry was not at that stage disciplinary in nature, Articles 18.3 and 19 under CHAPTER IV: ASSEMBLIES OF THE CHURCH, and Regulations 77 and 78 are relevant. Aforementioned provide that no matter may be brought before a higher assembly which should have first been dealt with by a lower assembly, except in cases of high necessity in relation to matters of teaching and discipline, and then only after notification to the relevant lower assembly. The assemblies regulate their operations within the bounds of their competence, so that they do not deal with anything that is exclusively within the competence of another assembly.

[80] Aforesaid establishes a hierarchy which requires the Church Council to first deal with a matter, whereafter it stands to be elevated to the circuit, and thereafter only to the Regional Synod. Unless it was a case of high necessity in relation to matters of teaching and discipline. There is no allegation that the dispute between the Church Council and members of the congregation followed this hierarchy. Conversely on the Respondents' version, the Commission of Inquiry was established at the behest of the Applicant. The Respondents have also not placed reliance on Regulation 77 nor was it alleged that this as a case 'of high necessity in relation to

matters of teaching and discipline' therefore the Regional Synod was authorised to disregard the hierarchy mentioned above.

[81] The minutes dated 5 October 2019, bares that the entire meeting was consumed by complaints and objections against *inter alia* the Applicant's conduct, sermons and teachings. Regulation 96 states that 'it is also the duty of the circuit to take care of ... 96.4. investigate objections regarding teachings, services and conduct of office bearers which stands to be done in line with Regulation 200.1.'

[82] Article 54 under CHAPTER VI: CHURCH OVERSIGHT AND DISCIPLINE provides that ministers of the Word, are subject to oversight and discipline by the circuit to which they belong. Instead, the Regional Synod *in casu* took the step of appointing a Justice Commission, which is a standing commission of the Synod, and which convened on 12 February 2020. The Respondents contend that the appointment of the Justice Commission was made in terms of Article 29.5 and Regulation 129 of the Church Order, with the purpose of resolving the dispute between the Applicant and the Bloemfontein and Ladybrand Circuits, rather than addressing the earlier dispute between the Church Council and members of the congregation, which had been the focus of the Commission of Inquiry. From aforementioned it is clear that the Regional Synod pursuant to the Commission of Inquiry's meetings determined that the issue was the Applicant.

[83] Regulation 129 provides that at each ordinary meeting of the Regional Synod a permanent law commission is appointed. It is thus reasonable to accept that the reference by the Respondents to the Justice Commission is a reference to the Law Commission as provided for in Regulation 129. For ease of reference the commission will be referred to as the "Justice Commission".

[84] Such a commission is made up of seven members of which the actuary is *ex officio* the second member. The Regional Synod also nominates a jurist and an authoritative person in respect of the field of church law, and when the actuary is of the opinion that their presence is necessary, they are called to the meeting.

[85] The Justice Commission has four identified tasks, being to consider all discussion points which relate to law changes and to advise the synod and propose the wording in terms of which it stands to be accepted into the statute book

(Regulation 123.3.2)²³; to include all legal changes in the statute book as soon as possible after the meeting of the synod²⁴; to issue a new law book if the synod so decides²⁵ and to provide church councils with legal advice on their request²⁶.

[86] From the Justice Commission report their task was to further investigate the content of the minutes of the Commission of Inquiry. On the papers before Court that can only mean to investigate the complaints levied against the Applicant.

[87] It is common cause between the parties that the Applicant attended the meeting of the Justice Commission on 12 February 2020. The Applicant however contend that the commission refused to provide him or the Church Council with the report of the investigation conducted on 5, 6, 12 and 13 October 2019, and was told that the report would be provided to the Ladybrand Circuit. From the report dated 12 February 2020 it does not appear that there was any participation by the Applicant nor that evidence was received on the issues at hand. Nor does it appear the Applicant was provided with an opportunity to be heard and answer or produce evidence in addressing the allegation against him.

[88] By the time the Justice Commission was appointed, it was evident that the core issue was the actions, conduct, behavior and teachings of the Applicant. The report produced by the Justice Commission recommended the Applicant's suspension and release from service in terms of Article 10 of the Church Order. These recommendation cannot be categorized as anything other than disciplinary measure, aimed at addressing the issues concerning the Applicant.

[89] For the reasons outlined above, and in the absence of placing reliance on Regulation 77, the decision of the Regional Synod to appoint a Commission of Inquiry is subject to review and should be set aside.

[90] Having reached this conclusion, and founded upon the Respondents' version, which asserts that the report of the Justice Commission, along with its recommendations, served as the basis for the Applicant's suspension and release, rather than the recommendations of the Commission of Inquiry as alleged by the Applicant, the relief granted in this respect must be confined to the decision to appoint

²³ Regulation 129.1

²⁴ Regulation 129.2

²⁵ Regulation 129.3

²⁶ Regulation 129.4

a Commission of Inquiry. This relief does not extend to the broader terms sought by the Applicant in his notice of motion.

[91] In light of the foregoing findings, it does not necessarily follow that the decision to release the Applicant should be reviewed and set aside, as sought by the Applicant. A more comprehensive assessment is required, particularly with regard to the procedural requirements governing the release of a minister of the Word from service.

[92] The Applicant challenges his release under Article 10, asserting that this provision cannot be applied without considering Article 55, read together with Regulation 199 of the Church Order. Additionally, the Applicant argues that any actions taken under Article 10 to release a minister of the Word must be initiated by the circuit, and only after the Church Council has made efforts to restore peace that have proven unsuccessful.

[93] It was further contended that Article 25, read with Regulation 96, grants exclusive authority to the Circuit to investigate objections regarding the doctrines, teachings, or conduct of an office bearer, such as a minister of the Word, and to address disputes between the Church Council and the congregation. This argument is supported by the provision in Article 54, which places the supervision and discipline of a minister of the Word under the responsibility of the circuit.

[94] The Respondents alleged that the decision to release the Applicant under Article 10 was recommended by the Justice Commission. The Regional Synod accepted this recommendation, and the release was subsequently carried out by the Bloemfontein Circuit on 2 October 2022, followed by the Ladybrand Circuit on 6 June 2023. The Respondents further assert that the Applicant's interpretation of the articles and regulations of the Church Order is factually and legally incorrect, although they did not place any alternative interpretations before Court. The Respondents also failed to specifically address the Applicant's argument that Article 55 and the regulations thereunder, specifically Regulation 199, should be read and applied in conjunction with Article 10.

[95] The dissolution of the bond between a minister and a congregation and by implication the release of a minister of the Word from service is addressed in two separate chapters of the Church Order: CHAPTER III: THE OFFICE OF THE

CHURCH and CHAPTER VI: CHURCH OVERSIGHT AND DISCIPLINE, with only minimal overlap between the two.

[96] CHAPTER III: THE OFFICE OF THE CHURCH²⁷ sets out the procedures for the appointment of office bearers, including confirmation, objections, resignations, and death of a minister. Articles 6 to 12 specifically address ministers of the Word, detailing their admission, tasks, transfer, cessation of service, incapacity to serve a congregation, remuneration, and retirement.

[97] Article 10 reads: 'In the event that a minister of the Word (minister or evangelist) can no longer serve a congregation, the circuit may dissolve the bond between the minister of the Word and the congregation, given that reasonable provision has been made for the minister of the Word. The normal remuneration without travelling allowance for a period of no less than three months, and no more than six months, as decided by the circuit, is considered reasonable.' (own emphasis)

[98] In light of the foregoing, and considering the structure and composition of the Church Order, Article 10 is not a provision to be invoked for the purpose of securing the release of a minister of the Word where the need for such release arises from the minister's conduct, misconduct, objections to teachings, or other disciplinary matters, independent of the procedures outlined in CHAPTER VI: CHURCH OVERSIGHT AND DISCIPLINE. Article 10 must be interpreted within the context in which it appears. The wording of Article 10 is also instructive, as it refers to circumstances in which a minister of the Word is no longer able to serve a congregation, which pertains to issues of capacity rather than matters involving teachings or disciplinary concerns. Accordingly, where Article 10 is invoked to release a minister of the Word due to teachings or disciplinary issues, Regulation 199 under Article 55 of CHAPTER VI: CHURCH OVERSIGHT AND DISCIPLINE must be followed.

[99] Even if the above interpretation is found to be incorrect, a release from service pursuant to Article 10 must still comply with the principles of natural justice. The provisions of CHAPTER VI: CHURCH OVERSIGHT AND DISCIPLINE are essential in determining whether, in the present case, those principles were followed and, moreover, whether the Church Order was adhered to. A brief overview of

²⁷ Article 4 to 16 read with Regulations 5 to 39

CHAPTER VI: CHURCH OVERSIGHT AND DISCIPLINE is instructive in this regard.²⁸

Chapter VI	THE CHURCH OVERSIGHT AND DISCIPLINE
Art 50	Church oversight is kept and discipline exercised: 50.1 for the glory of God, for the salvation of the church and for the preservation of the sinner, 50.2 according to the prescripts of the Word of God and as set out in the church Order and regulations of the church
Art 51	Avoid civil administration of justice: Since church oversight and discipline have a spiritual character, the overseer must avoid the spirit of the civil administration in their application. They may never see themselves as judges, but should see themselves as fatherly overseers, meet deeply before God and must bring back the trespasser with love and bring the trespasser back from his wandering ways without regard for person
Reg 173	Purpose of necessity of ecclesiastical punishment: Churchly punishment is necessary to reconcile the sinner with the church and with their neighbours, and to atone for the wrongdoings
Art 52	Disciplinary action <u>may not be applied</u> before a complaint has been <u>investigated</u> and without the accused having had <u>sufficient opportunity to defend himself</u>
Art 53	53.2 Those who stand in relation to the congregation (Art 3.1.2) also fall under the supervision and abnocation of the <u>church council</u>
Reg 174	The church assembly should take in consideration that listed in Reg. 174.1 to 174.3
Art 54	54.1 All members of the congregation have the obligation to address each other in brotherly love and to accept such reprimand in a similar fashion 54.2 Where a member of the congregation is guilty of a false doctrine and publicly displayed offending conduct, he falls under the discipline of the church council 54.3 <u>All office bearers who have been confirmed in the congregation, such as ministers of the Word, are subject to the oversight and discipline of the circuit whereunder they fall</u> , with the understanding that the church council's oversight does not impede the church council's ability to act as complainant
Art 55	In the case where someone has made himself guilty of punishable sins and has shown remorse before any disciplinary measures have applied, the relevant assembly which imposed discipline must make a decision whether the case can be walked away from without further disciplinary action
Reg 175	Ecclesiastical oversight and discipline are exercised by church councils, circuits, Regional Synod and General Synod
Reg 176	In respect of oversight and discipline, Church council may take <u>decisions</u> if 50% of church council members are present (Reg. 6.3). At the circuit and synod 2/3 of all the members on attendance register is required (Reg. 118)
Reg 177	177.1 Members of church council or church council commission may not be involved in matters where they are involved in, nor their wives or persons two degrees of blood relation, nor where they were part of a decision by a minority assembly. 177.2 Persons mentioned in Reg.112.1 and 112.2 do not have standing 177.3 If a quorum is not reached, it stands to be filled by retired elders
Reg 178	Church assemblies can determine whether the proceedings will be dealt with orally or in writing
Reg 179	Disciplinary matters to be dealt with <u>expediently</u>
Reg 180	Prohibition of legal practitioners
Reg 181	Written submissions need to be personally undersigned by the person submitting same

28

This overview is not a verbatim nor complete translation but a summary of the relevant articles and regulations

Reg 182	Congregation members have the right to submit written objections or complaints to a competent church assembly (Art.54.3)
Reg 183	Costs in relation to cases
Reg 184	Complaints without merit, complainant may be subject to discipline in terms of Article 56
Reg 185	185.1 Members of church assembly are obliged to bring negative rumours to the attention of church assembly. In doing so they don't lose the right to consider the merits of same. 185.2 On negative rumours being raised the assembly should determine if there is sufficient cause to investigate further. 185.3 <u>Investigations are to take place in terms of Reg 195</u> 185.4 The circuit should <u>appoint a commission of inquiry</u> which are not the circuit commission, to gather evidence and determine if there are sufficient cause to warrant a complaint. If such cause exists, one of the <u>commission members should act as complainant and lodge a complaint – Reg.201</u> 185.5 If the circuit is not sitting, the chairperson of the circuit should request the circuit commission to appoint aforesaid commission, or if he is involved the scribe should do so.
Reg 186	Withdrawal of complaint only with permission from church assembly and accused
Reg 187	If accused is to appear before assembly, he needs to be provided with the written complaint - Reg. 195 & 203.2
Reg 188	Accused to appear in person before assembly
Reg 189	Failure of accused to appear, he must be called upon a set time and matter determined
Reg 190	Church assembly must summons witnesses, hear their evidence
Reg 191	Evidence may be taken under oath
Reg 192	<u>Outcomes or verdicts of a church assembly must state the grounds and the article of the church order, as well as the provision of the regulation relied on</u>
Reg 193	In serious matter and where legal action are threatened, the permanent law committee may be engaged to avoid costs -Reg.129
Reg 194	All congregation members are subject to discipline, except those mentioned in Art.54.3
Reg 195	If a written complaint is handed to the Chairperson of the church council, the church council should investigate through a commission of elders – Reg. 185
Reg 196	If the church council is of the view that the complaint has merit, the parties involved need to be informed, parties be heard and the matter needs to be adjudicated in terms of Reg. 192
Reg 197	The full of the outcome or judgment needs to be noted and made known to the accused, as well as a written copy if so requested
Reg 198	The minister of the Word may if the church council is not able to meet, deny the accused the use of sacraments and report to the church council
Reg 199	199.1 If there is <u>dissatisfaction in the congregation, in the absence of a specific complaint against a Minister of the Word</u>, which is fatal to the spiritual interest of the congregation, <u>the church council must restore the peace in terms of Reg 194</u>. With consent of the concerned parties, it may call upon help or support from a consultant or two pastors. 199.2 If two-thirds of the congregation hand in complaints originally undersigned, to the scribe of the circuit, the <u>circuit commission</u> must attempt to address the concern. 199.3 In the event that the church council does not act as per 199.1 above, the <u>circuit commission on instruction of the circuit Chairperson</u> must restore peace. 199.4 If necessary, the circuit commission should request the circuit Chairperson to call an extra-ordinary meeting to finalise the matter. 199.5 If negotiations fail, the circuit may take steps to break the bonds between the minister of the Word and the congregation in terms of Art 10, and also hand over a Deed of demission (Deed no 5).

	199.6 All parties have the right to appeal to the synod, who will make final determination.
Reg 200	The circuit has the following competency: 200.1 oversight and discipline over persons per Art 54.3 200.2 attend to church disputes nl. conflict in the church council meetings between church council and congregants and other matter within their power
Reg 201	<u>Complaints against</u> office bearers (Art 54.3), include <u>ministers of the Word</u> , in respect of their teachings, conduct and ministry, <u>must be submitted in writing</u> to the Chairperson of the circuit with reference to nature, time and place excluding in re persons listed in Art 5.5.4
Reg 202	Chairperson of the circuit submits these documents to the chairperson of the circuit commission to investigate. In his absence to the Scriba – Reg 177.2
Reg 203	Chairperson of the circuit commission: 302.1 calls for a ring commission meeting advising of the complaint 302.2 he gives notice to the accused and copy of complaint – Reg 188 302.3 calls accused and complainant up with 3 weeks' notice before a circuit commissioner meeting, to appear with their witnesses for purpose of investigation of the complaint.
Reg 204	At enquiry referred to in Reg 203 the complainant and accused are required to be present and should be given the opportunity to give evidence, call witnesses, be cross-examined and put their cases fully.
Reg 205	If matters are of a serious or sensational nature, and the <u>commission</u> is of the view that the complaint has merit, the commission is empowered to <u>suspend</u> the accused pending the final determination. Immediate notice needs to be given to church council, chairperson of circuit and should speedily call a circuit meeting.
Reg 206	The circuit commission must give a full report to the circuit with all the relevant documents, the circuit reserves the right to call for the parties to appear and hear further evidence, to determine the matter and give judgment. The members of the circuit commission retain their right to be part of the circuit.
Reg 207	Circuit must immediately provide written notification of the verdict to the parties involved (as per Reg 192) and, upon request, also supply a copy of the verdict.
<i>Ecclesiastical disputes</i>	
Reg 208	Complaints must be submitted in writing, signed by the complainant, and handed to the chairperson of the circuit. The documents will then be handed over to the chairperson of the circuit commission.
Reg 209	The circuit commission should handle the matter via correspondence, if possible. If the commission is unable to resolve the issue this way or decides to investigate the matter further, it, along with the circuit assembly, must proceed as prescribed in Reg 202 and the following.
Art 56	When disciplinary measures are implemented, the following are applied, depending on the assembly exercising the discipline: 56.3 <u>Ministers of the Word</u> (Pastors and Evangelists): 56.3.1 A reprimand delivered either within or outside the circuit assembly. 56.3.2 Censure until there is evidence of genuine repentance. Such censure can only follow suspension from duties by the circuit. This suspension may occur with or without loss of livelihood and with or without the administration of the sacraments. 56.3.3 <u>Dismissal from duties by the Regional Synod upon the recommendation of the circuit.</u> For probationary ministers, this includes the nullification of their certificate of ordination. For evangelists, it includes the nullification of their evangelist certification. 56.4 In cases of serious misconduct by office bearers, the <u>circuit</u> has the right to <u>immediately suspend</u> such office bearers with the intention of conducting a thorough investigation and resolving the matter promptly.
Reg 210	Minister of the Word's liability towards costs if found guilty and suspended from service

Reg 211	Dismissal or suspension with the loss of livelihood immediately results in the minister losing all income associated with his position, as well as any rights to free housing.
Art 57	57.1 Every accused person who feels aggrieved by the verdict of a church council has the <u>right to appeal</u> to the next higher council, namely the circuit and Regional Synod. 57.2 In disciplinary matters affecting the doctrine of the church, both the complainant and the accused, regardless of acquittal or conviction, have the right to appeal to the General Synod.
Reg 212	212.1 Anyone wishing to lodge an appeal must, within 21 days after the judgment of a church assembly, give written notice of their intention. 212.2 The chairperson of the relevant church assembly must provide the appellant with a copy of the judgment and immediately inform the opposing party of the appeal.
Reg 213	Every church assembly that dealt with a case being appealed must, upon request by the higher assembly, send certified copies of all documents related to the case. If necessary, they must also provide additional motivation for the basis of their judgment.
Reg 214	The party lodging the appeal must do so within thirty days of the outcome to the higher assembly; otherwise, they lose their right to appeal
Reg 215	In the case of the circuit, the appellant must submit the following documents To the chairperson of the circuit or in their absence, the circuit's scribe, and in the case of the Regional Synod to the scribe of the Regional Synod: A copy of the judgment from the relevant church assembly. A copy of the reasons for the appeal against the judgment. All evidence that the appellant believes supports their case.
Reg 216	The circuit chairperson submits copies of the documents mentioned in Reg 215 to the church council for response. They must submit their response in writing to the circuit, which will then send the reply to the appellant. The circuit will then handle the matter, taking into account Reg 206, and deliver a verdict (as per Reg 213)
Reg 217	If the scribe of the Regional Synod receives a request for an appeal (as per Reg 215), they must obtain certified copies of all relevant documents from the circuit's scribe. The request for an appeal must then be added to the agenda of the synod or synodical committee.
Reg 218	Interested parties are free to present their case further in writing to the relevant church meeting or synodical committee.
Reg 219	Synod commission to place all the documents in the hand of the temporary legal commission for investigation and report, and then gives a verdict on the case
Reg 220	Appellant is bound by lower decision pending higher appeal
Art 58	Lifting of sanction
Reg 221	Process for lifting of sanction

(own emphasis)

[100] In consideration of the facts of this matter and the application of the provisions of the Church Order as summarized above, the procedures for addressing concerns involving a Minister of the Word may be categorized into three distinct types of complaints and corresponding procedures: 1) negative rumours, 2) general dissatisfaction within the congregation without a specific formal complaint, and 3) formal complaints against a Minister of the Word concerning teachings, conduct, and ministry.

[101] Each of these categories will be addressed in turn. With regard to a complaint against a Minister of the Word concerning his teachings, conduct, or ministry, Regulation 201 requires that such a complaint be made in writing and submitted to the Chairperson of the relevant circuit. In the present case, this would mean that the written complaint should have been submitted to the Chairperson of the Ladybrand Circuit.

[102] The Respondents assert that various complaints have been received since 2014 from church council members and the congregation, directed against the Applicant. However, the record provided does not contain any written complaint, as required by Regulation 201, that was submitted to the Chairperson of the Ladybrand Circuit, or to any other authority. Had such a complaint been submitted, the procedures set out in Regulations 202 to 207 would have applied.

[103] The minutes of the Commission of Inquiry, dated 5 October 2019, indicate that the entire meeting was devoted to complaints and objections regarding the Applicant's teachings and conduct. However, none of these complaints were recorded in writing, nor does the record reflect any written complaints. In circumstances where the complaints, according to the Respondents, were raised either since 2014 or during the meeting of 5 October 2019, and were not submitted in writing, two possible processes could have been followed. The complaints could have been addressed in accordance with either Regulation 185 or Regulation 199.

[104] In terms of Regulation 185, the Ladybrand Circuit would have been required to appoint a Commission of Inquiry to gather evidence and determine whether there was sufficient cause to justify a complaint. If such grounds existed, one of the members of the Commission of Inquiry would have been required to act as the complainant and submit a written complaint in accordance with Regulation 201. However, as in the case outlined above, no such written complaint appears on record.

[105] That leaves Regulation 199. Regulation 199 addresses situations where there is dissatisfaction within the congregation, in the absence of a specific complaint against a Minister of the Word, which threatens the spiritual well-being of the congregation. The prescribed process for addressing such a situation requires the Church Council to restore peace in accordance with Regulations 199.1 and 199.2. If the Church Council fails to act as mandated under Regulation 199.1, the Circuit

Commission, on the instruction of the Circuit Chairperson, must take steps to restore peace. Should these efforts fail, the Circuit may then take steps to dissolve the bond between the Minister of the Word and the congregation in terms of Article 10.

[106] Considering the facts of this matter and the events as presented by the Respondents, it appears that the Applicant's release was, at least in part, based on Regulation 199, as it is the only disciplinary provision in terms of which a release under Article 10 is authorised. However, Regulation 199 must not be interpreted in isolation, but rather in conjunction with the remaining provisions of CHAPTER VI: CHURCH OVERSIGHT AND DISCIPLINE.

[107] In this regard, Article 50 expressly provides that oversight and discipline shall be exercised in accordance with the Church Order. Article 52 prohibits the imposition of any disciplinary action until a complaint has been properly investigated and the individual concerned has been given an adequate opportunity to defend themselves. Furthermore, Article 54 specifies that the discipline of an office bearer falls within the jurisdiction of the relevant circuit.

[108] In accordance with Articles 18.3 and 19 of CHAPTER IV: ASSEMBLIES OF THE CHURCH, and Regulations 77 and 78 thereunder, the Church Order establishes a hierarchical structure as dealt with earlier in this judgment. Consequently, no matter may be brought before a higher assembly that should have first been addressed by a lower assembly, except in cases of urgent necessity concerning matters of teaching and discipline, and only after notifying the relevant lower assembly. Each assembly is responsible for regulating its operations within the scope of its competence, ensuring that it does not address matters that fall exclusively within the competence of another assembly.

[109] It was therefore incumbent upon the Ladybrand Circuit to address the complaints against the Applicant in accordance with Regulation 199 and taking into account the prohibition in Article 52. The Regional Synod could only have intervened and acted under Regulation 199 by virtue of Regulation 77, which authorizes the Regional Synod to do so in instances of urgent necessity concerning matters of teaching and discipline. The Regional Synod has not asserted that this is such a case and that in acting as they did they rely on Regulation 77.

[110] According to the Regional Synod's version, it became involved at the request of the Applicant to resolve the dispute between the Church Council and members of the congregation by establishing a Commission of Inquiry. The establishment of such a commission is governed solely by Regulation 185, the procedural requirements of which were not followed as stipulated in Regulation 185 in conjunction with Regulation 195 and on the strength of Regulation 77. The Regional Synod further asserts that it appointed a Justice Commission, which was tasked with resolving the dispute between the Applicant, the Bloemfontein Circuit, and the Ladybrand Circuit, again without placing any reliance on Regulation 77.

[111] Although Regulation 193 provides for the involvement of the permanent Justice Commission, the scope of its function is limited as outlined in Regulation 129. Notwithstanding the fact that Regulation 129 only provides for the commission to provide legal advice to the Church Council, in the present circumstances, and applying a generous interpretation to Regulation 129, the permanent Justice commission could, at most, offer legal advice to the Regional Synod and/or the Circuit.

[112] The Respondents, as a side, contend that the Ladybrand Circuit ceased to exist from 24 September 2021 until 15 April 2023, following a resolution by the Regional Synod on 24 September 2021, or alternatively on 12 February 2020, to merge the Ladybrand Circuit with the Bloemfontein Circuit. However, the Ladybrand Circuit was in existence when the complaints against the Applicant were initiated in 2014 and when the Commission of Inquiry convened on 5 October 2019. Accordingly, the Ladybrand Circuit was the appropriate body to take action under Regulation 199. Alternatively, should it be accepted that the Ladybrand Circuit did not exist during the period in which such action was required, the Bloemfontein Circuit would have been obligated to act in accordance with Regulation 199. For the Regional Synod to have assumed the function as outlined in Regulation 199, it was required to do so by relying on Regulation 77.

[113] Applying the principle of parity of reason, the same rationale would apply to determining which assembly is competent to make a decision regarding the release of the Applicant under Article 10.

[114] Even if the above interpretation is deemed incorrect and upon a conspectus of all the relevant facts, the procedure followed by the Regional Synod, as well as the

subsequent decision by the Regional Synod and/or the Bloemfontein Circuit and Ladybrand Circuit to release the Applicant under Article 10, breaches the principles of natural justice and Article 52 of the Church Order. Although the Applicant was present at the hearings of the Justice Commission and the Commission of Inquiry, he was not given the opportunity to be heard. Differently put, the *audi alteram partem* principle was not observed prior to the decision to release him from service. Said decision be it taken by the Regional Synod, Ladybrand Circuit or Bloemfontein Circuit stands to be reviewed and set aside.

[115] Both parties seek cost against each other. The Applicant does so on a party and party basis, scale C and the Respondents seek an undefined punitive costs order. I find that there is no reason that the general principles that costs should follow the event, should not find application. As to the applicable scale, scale B is appropriate in the circumstances of the matter.

[116] Consequently, the following order is made:

1. The First Respondent's decision to appoint a Commission of Inquiry is reviewed and set aside.
2. The decision of the Second Respondent, alternatively the First- and/or Third Respondent, alternatively First- to Third Respondents jointly, to release the Applicant from the Thaba Nchu congregation in terms of Article 10 of the "*Kerkorde en Bepalinge vir die Bestuur van die Nederduitse Gereformeerde Kerk in Afrika – Oranje Vrystaat*" is reviewed and set aside.
3. The First- to Third Respondents are ordered to pay the costs of this application, jointly and severally, the one to pay the other to be absolved, which costs to include the costs of counsel on Scale B.



D. GREYLING-COETZER
Acting Judge of the High Court

I agree and it is ordered



I. VAN RHYN

Judge of the High Court

Appearances:

For the Applicant:

ADV LBJ MOENG

Instructed by:

KRAMER WEIHMANN ATTORNEYS
nortje@kwinc.co.za

For the Respondents:

ADV G S JANSE VAN RENSBURG

Instructed by:

DU RANDT & LOUW INC
C/O ROSENDORFF REITZ BARRY
liza@rosendorff.co.za