



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

Not reportable / Reportable

Case no: 3572/2023

In the matter between

**HOLY SPIRIT APOSTOLIC CHURCH
MALEFETSANE PETRUS MASHININI**

**FIRST APPLICANT
SECOND APPLICANT**

And

**HOLY ANGELS APOSTOLIC CHURCH
SAMSON MAZIKIZELA MKWANAZI
REGISTRAR OF DEEDS, BLOEMFONTEIN**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT**

Neutral citation: *Holy Spirit Apostolic Church and Another v Holy Angels Apostolic Church and Others* (3572/2023) [2026] ZAFSHC 109 (20 March 2026)

Coram: NAIDOO J

Heard: 24 July 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 20 March 2026.

Summary: Application to declare administrative action invalid – Promotion of Administrative Justice Act 3 of 2000 and Uniform Rules make provision for challenging administrative action – application for a declaratory order not the appropriate

procedure – review proceedings should have been instituted.

ORDER

The application is dismissed with costs, such costs to include the costs of counsel on Scale B

JUDGMENT

Naidoo J

[1] The applicants seek a declaratory order, coupled with an order for the return of certain movable property. The first and second respondents opposed the application, while the third respondent did not oppose the application and played no part in these proceedings. This is a dispute arising from two groups laying claim to church premises, which each claims that it is entitled to. The applicants are the Holy Spirit Apostolic Church (Holy Spirit or first applicant), and Malefatsane Petrus Mashinini (Mr Mashinini or the second applicant) while the respondents are the Holy Angels Apostolic Church (Holy Angels or first respondent) and Samson Mazikizela Mkwanaazi (Mr Mkwanaazi or second respondent). Mr Mashinini and Mkwanaazi are clearly part of the controlling minds behind the first applicant and the second respondent respectively.

[2] The applicants sought, in effect, the following relief:

- a) The court exercises its discretionary powers and issues a declaratory order in terms of section 21(1)(c) of the Superior Courts Act 10 of 2013 as follows:
- b) Declare invalid the insertion of 'Holy Angels Apostolic Church' in the Deed of Transfer dated and signed on 21 January 2021, such insertion being endorsed in the Deed of Transfer on 29 June 2021 by the Registrar of Deeds, Bloemfontein;
- c) Declare the immovable property described as Erf 4621 Zamdela District, Sasolburg, Free State Province, in extent 1546 (One Thousand Five Hundred and Forty Six Square Metres) as indicated on General Plan L21/1986, and held by Certificate of Registered Title T1780/1996 to be the exclusive property of the Holy Spirit Apostolic Church,
- d) Order and declare that all movable properties in the possession of the first and second respondents be returned and restored back to the second applicant on behalf of the

leadership of the first applicant.

[3] The applicants' version is that Holy Spirit was established in 1940, by Archbishop Jacob J Mashinini, who was appointed to lead the church. Archbishop Mashinini's son, Jonas S Mashinini was appointed to lead the church after his father passed. When the latter passed in 2018, his wife referred, to as Lady-Archbishop Grace Mashinini, took over and led the church, together with a number of bishops, one of whom was the second respondent, Mr Mkwanazi. The applicants allege that Mr Mkwanazi was unhappy with the leadership of the Lady Archbishop and decided to leave the church. He then formed his own church, being the second respondent, Holy Angels. The first applicant, Holy Spirit, has a constitution which guides its processes. The applicants rely particularly on clause 37.12 of the constitution, which provides that 'All Church sides (sic), building, furniture, stationery, etc, shall be registered in the name of the Church and shall remain the property of the Church'

[4] When Mr Mkwanazi left the first applicant to form Holy Angels, he caused Holy Spirit's name to be changed on the title deed of the property on which the church stands, to reflect the name of Holy Angels as the owner of the property. The applicants complain that they did not consent to such a change, that they received no notification from Mr Mkwanazi of the intention to effect this change. Mr Mkwanazi and the congregants of Holy Angels occupy the church to the exclusion of Holy Spirit and its congregants, the latter of whom now occupy a shack in the Sasolburg area to worship. They are also unable to use the church's finances and resources. In spite of their attempts to resolve this matter amicably, the respondents have rebuffed such attempts, leaving the applicants with no choice but to approach this Court.

[5] The respondent's version is that Mr Mkwanazi was a member of Holy Spirit for approximately fifty years, having risen in the ranks of the church leadership, until he was ordained as a bishop in 2014. He thereafter served on Holy Spirit's board for more than twenty years when, according to him, he was 'unceremoniously terminated by the Mashinini family on 27 February 2021'. By virtue of his long tenure as a board member of Holy Spirit, Mr Mkwanazi claims to have detailed knowledge of the history and internal affairs of Holy Spirit. He alleges that the second applicant, Mr Mashinini, who is related to Lady-Archbishop Grace Mashinini, was not a member of Holy Spirit until Mr Mkwanazi's departure in 2021. Therefore, Mr Mashinini had no knowledge of Holy Spirit's pre-2021

internal affairs, including its constitution, which was adopted in 2009, and the amendments thereto over the years

[6] Mr Mkwanzazi, the deponent to the answering affidavit, attached thereto a copy of Holy Spirit's constitution which he alleges was adopted in 2009 (the 2009 constitution). I mention that the original was drafted in Sesotho. An English translation thereof was furnished to the court and the applicant's legal representatives. He alleged that in terms of the 2009 constitution, the organizational structure of Holy Spirit consisted of the head office of the church, situated in Heilbron, under the leadership of Archbishop JS Mashinini, with three circuits, each under the control of a bishop. He was the bishop in charge of the Viljoenskroon circuit. The circuits, he alleges, all had a level of independence where they controlled their own finances, raised their own funds and were responsible for the structure in which they worshipped. They received little or no assistance from head office and were only responsible to head office for the contributions to certain operational expenses. He further alleged that the local congregation raised some funds and he used his personal funds to build the church. When he was expelled from Holy Spirit, the congregation decided that he should start his own church, and so Holy Angels came into being. Mr Mkwanzazi confirms that the name of the church was changed on the title deed, by majority resolution of the congregation. This was accepted by the municipality and the papers were prepared and forwarded to the Registrar of Deeds, who duly effected the change in the name of the registered owner of the church from Holy Spirit to Holy Angels. The respondents relied on clause 37.12 of the 2009 which reads 'All church sites, buildings, furniture, other archives will be registered in the name of the church, again they will remain the church equipment, only if there is proof that the Bishop head office assisted the circuit to apply for the site and signed the title deed document or monetary assistance for the building of the church structure'. (My emphasis.)

[7] That is the background to this matter. The applicant tabulated certain issues, which they argued this court had to adjudicate, namely:

- a) whether the altering of the name of Holy Spirit to that of Holy Angels, without notice to the former, is valid;
- b) whether the second respondent, Mr Mkwanzazi, breached a fiduciary duty entrusted to him, in causing the title of immovable property belonging to Holy Spirit to be changed;
- c) whether granting of the relief sought by the applicants is justified.

[8] The respondents on, the other hand, argued that the applicants chose the wrong legal remedy for declaratory relief in order to circumvent the binding requirements of administrative law. The respondents, argued further that the court ought not to consider the merits of this matter, particularly as the applicants conceded the existence of the 2009 constitution, which provides for conditional ownership of the church premises. In accordance with clause 37.12 of the 2009 constitution, the respondents were entitled to change the name on the title deed to reflect the name of the Holy Angels Apostolic Church. The thrust of the respondents' argument was however that the application should be dismissed, because the decision of the Registrar to record the change of name of the title holder was an administrative act, which required the precepts of administrative law to be followed. The applicants had not done so.

[9] I have set out the relief that the applicants seek in this matter. That, and the applicants' exposition of what they allege are the issues for this Court to adjudicate reflect a failure to appreciate that at the heart of the relief they seek is an administrative act that is still valid and effective. In order for such an act or decision to be reviewed or set aside, the requirements of the relevant statutes and Rules of Court must be complied with. The Promotion of Administrative Justice Act 3 of 2000 (PAJA), which gives effect to s 33(3) of the Constitution of South Africa, comprehensively sets out the framework and the process that must be followed in order to challenge administrative acts and decisions. Uniform Rule 53 sets out the procedure, time frames and specific requirements to properly prosecute an administrative challenge. The applicants chose to ignore this and proceed by way of motion proceedings to obtain a declaratory order. While seeking declaratory relief, in spite of the alternative of the statutorily mandated process, is not incompetent, it will be relevant in determining whether the court will exercise its discretion in the applicant's favour.

[10] The Supreme Court of Appeal (SCA) established, in *Oudekraal Estates (Pty) Ltd*¹ (*Oudekraal*) the principle that an administrative act that is procedurally unfair does not, as a result of such unfairness, become a nullity. It remains valid and effective unless and until it is set aside by a court or other body with the necessary jurisdiction (the *Oudekraal*-principle). The SCA also held (at para 26) that 'Until the Administrator's approval (and thus also the consequences of the approval) is set aside by a court in proceedings for

¹ *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA).

judicial review it exists in fact and it has legal consequences that cannot simply be overlooked', confirming that a judicial review is the procedure to be followed when an administrative act is challenged. In *Oudekraal* the Administrator granted permission for the establishment of a township, which permission, the court found to have been unlawful and invalid from the outset. *Oudekraal* has since been followed in a long line of cases, which confirm the principle established in that case. The Constitutional Court has also emphasized that declaratory proceedings are not appropriate for the setting aside of administrative decisions, but that review proceedings would be more suitable. The Constitutional Court emphasized that a declaratory order that an administrative act is unlawful is inappropriate as it would give little regard to settled principles applicable to the review of administrative action²

[11] The third respondent in this matter adopted a totally supine attitude, in that he did not oppose the matter or file a notice to abide by the court's decision, as is the practice if he does not oppose the application. The Registrar is a public official who acts in terms of the Deeds Registries Act 47 of 1937. In this matter, his endorsement of the change of name on the title deed of the property is an administrative act, subject to the administrative law principles relating to review. The provisions of s 93 of the Deeds Registries Act are relevant:

'93 Registration of change of name

(1) If any person or partnership whose name appears in any registered deed or other document has changed his or its name, the registrar shall, upon written application by that person or partnership accompanied by proof of the change of name, and if he is satisfied that no change of legal personality is implied in such change of name, endorse on the said deed or other document that the name of the person or partnership has been changed to the name stated in the application: Provided that-

(a) if it appears from such deed or other document that any other person is affected by such change of name, such other person shall (save for the registration of a change of name of a company or close corporation) consent in writing to the aforesaid endorsement;

(b) the application shall (save for the registration of a change of name of a company or close corporation) be accompanied by any other operative deed registered in the same registry in which the applicant's old name appears as a party thereto other than as transferor or cedent'.

[12] It would have been proper for the Registrar to have delivered a report detailing the reasons for his decision. It is clear that any person (in this case Holy Spirit) who is affected

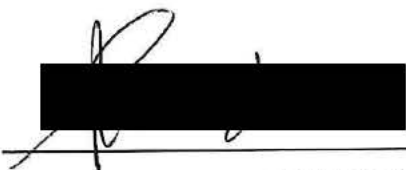
² *Swart v Starbuck and Others* [2017] ZACC 23; 2017 (5) SA 370 (CC) para 32.

by the name change is required to give consent to such change. Holy Spirit is adamant that it did not give such consent, which in my view ought to have triggered a response from the Registrar, who is cited as a party to these proceedings. At the very least, I would have expected Holy Spirit to have obtained the report from the Registrar. As things stand, no evidence or documentation has been put before this Court to support the applicants' contention that the Registrar's action was invalid. This would also bear upon the second leg of the relief they seek, namely to declare that the immovable property is the exclusive property of Holy Spirit. The underlined portion of clause 37.12 cited in para 6 above also indicates a material difference between the constitution attached to the founding affidavit and the 2009 constitution put up by the respondents, fortifying the findings of this Court that the incorrect procedure was followed by the applicants. Similarly, the applicants have failed to detail what movable property, in the possession of the respondents, belongs to them, making it inappropriate for a court to issue an order in the broad and vague terms sought in the third prayer in the notice of motion.

[13] The detailed legal framework, which I have mentioned earlier, designed to deal with challenges to administrative action, have not been followed by the applicants. The very purpose of such mechanisms is to provide a constitutional framework to protect administrative finality and procedural fairness. The applicants have clearly failed to timeously engage the machinery of PAJA and the Rules of Court, and seek inappropriately, in my view, to obtain a declaratory order, which would have the effect of circumventing the statutorily mandated procedures to challenge administrative acts. I am consequently of the view that the applicants have failed to make out a case for the relief they seek and the application must fail. With regard to costs, the respondents have asked for costs, such costs to include costs of counsel on Scale B. I do not see a bar to granting such an order.

[14] In the circumstances, I make the following order:

The application is dismissed with costs, such costs to include the costs of counsel on Scale B

A handwritten signature in black ink, appearing to be 'S. Naidoo', is written over a solid black rectangular redaction box.

S NAIDOO
JUDGE OF THE HIGH COURT

Appearances

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