



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

Case No: 1091/2020 &
15254/2023

In the matter between:

CARLO MAREE

First Applicant

LORENDA ADAMS

Second Applicant

BERESFORD PEARCE

Third Applicant

WARNICK OCTOBER

Fourth Applicant

ARON VAN BREDA

Fifth Applicant

PIERRE APPOLIS

Sixth Applicant

AMANDA CLOETE

Seventh Applicant

TOMLIN WYNGAARD

Eighth Applicant

HELECYNE AUGUST

Ninth Respondent

THE TRUSTEES FOR THE TIME BEING OF THE

ELIM MORAVIESIE GEMEENTESKAPTRUST

Tenth Respondent

(Registration: IT3433/2001)

And

THE MORAVIAN CHURCH OF SOUTH AFRICA

First Respondent

MCISA PROPERTY MANAGERS (PTY) LTD

Second Respondent

Neutral citation: *Maree and Others v Moravian Church of South Africa and Another*
(Case no A15254/2025 and 1091/2020) [2026] ZAWCHC ... (03 August 2026)

Coram: LEKHULENI J

Heard: 12 February 2026

Delivered: 3 August 2026

Summary: Contempt of Court Application – Divergent views on the interpretation of the court order – Mala fides not established on the respondents' part for noncompliance with the court order. Notwithstanding, the applicants are ordered to pay the respondent 50% of the rental collected, as directed by the previous court order.

Review: Respondents, Moravian Church, a voluntary association instituting disciplinary proceedings against members of the Overseers Council – Respondents imposing a sanction against the Overseers Council and removing them as members of the Council - Such disciplinary proceedings and the imposition of a sanction are not provided for by the Church order and Ordinance – The Church acted beyond its authority – Decision of the Church reviewed and set aside.

JUDGMENT

LEKHULENI J:

Introduction

[1] This is an application for contempt of court instituted by the applicants against the respondents. The applicants seek an order finding that the respondents failed to comply with the order issued by Slingers J on 21 February 2022, which ordered the respondents to pay 50% of the rental income collected from land leased to government institutions to the applicants. Accordingly, the applicants seek an order holding the respondents in contempt of the court's order. Additionally, the applicants have filed a review application to contest certain decisions made by the respondents concerning the discipline and sanctions imposed on members of the Church's Overseers Council (first to fifth applicants). The parties have agreed to consolidate

these applications, and they were subsequently heard together. Therefore, this Court is tasked with considering these two separate applications. Although both applications are based on the same factual circumstances, for clarity and systematic analysis, I will first examine the contempt of court application, followed by the review application.

[2] In the contempt of court application, the applicants seek an order declaring that the respondents are in contempt of paragraphs 12(d) and 12(f) of this Court's order dated 21 February 2022, handed down by Slingers J in the above case number. The applicants also seek an order directing the Court to impose a fine on the first and second respondents in an amount the Court deems appropriate. In addition, the applicants seek an order requiring the first and second respondents to account to the Elim Overseers Council ("the EOC") for the period from the end of February 2022 to the date of this order, within five days of the date of this order.

[3] Furthermore, the applicants seek an order that the first and second respondents pay to the EOC's bank account, within 5 days of the date of this order, the amount due to the EOC, being 50% of the rental collected in respect of the land rented to government institutions in terms of paragraph 12(d) of this Court's order, from the end of February 2022 up until the date of this order. The applicants seek an order that the costs occasioned by this application be borne by the members of the first respondent's Provincial Board, alternatively by the executive members of the first respondent's Provincial Board, personally, on a scale as between attorney and client.

Material Background Facts

[4] The material background facts in the contempt application are interwoven and relevant to the review application. These salient facts can be summarised as follows: The Elim Moravian Mission Station is a historic Mission Station located in the Overberg in the Western Cape. The majority of people who live in Elim (the Mission Station) are members of generational families who have lived on the land for more than 200 years. The land comprising Elim is registered in the name of the Moravian Church. Elim is

governed by the Moravian Church Order (“the Church Order”) and the Elim Mission Station Ordinance (“the Ordinance”). The Ordinance governs occupational rights and life on the Mission Station. The powers, duties, and responsibilities of the EOC are set out in the Ordinance. The Moravian Church is the registered landowner of Elim, although residents of Elim are required to build their own homes at their own expense. At the hearing of this application, the Court was informed that ownership of the land comprising Elim is the subject of action proceedings currently pending before this Court.

[5] For completeness, the Moravian Church was founded in the 15th century in what is now the Czech Republic and is one of the oldest Protestant churches in the world. In 1737, a Moravian missionary entered South Africa and established the first mission station at Genadendal in the Western Cape. Thereafter, additional mission stations were established by Moravian missionaries in the Western Cape and later in the Eastern Cape. The primary focus of the Moravian missionaries was to educate the communities residing at these mission stations. Three mission stations that still exist today in the Western Cape are Elim, Goedverwacht, and Wupperthal. The communities in these towns consist predominantly of members of the Moravian Church. Every inhabitant of each mission station is a member of the Moravian Church. The Church owns various immovable properties in South Africa, including agricultural land situated in Elim. These properties exist for the benefit of the Elim community and members of the Church.

[6] In terms of the Mission Station Ordinance, every citizen of Elim has the right to a plot of land at no cost on which to build a house, as well as the right to use agricultural land for subsistence farming. The land is allocated to members for both subsistence and commercial farming. Since the land on which the village is built is owned by the Church, all residents of the Mission Station are occupiers, even though they have lived on the land for generations and have built their own homes at their own expense. The Mission Station Ordinance itself provides that every citizen has rights of residence, including the right to a plot and the use of agricultural land in Elim.

[7] Deep conflict has persisted for many years between the residents of Elim and the leadership of the Church. The applicants contend that the Church's leadership continues to assert its authority as the landowner in flagrant disregard of the constitutional and other rights of the residents who live there. This led the residents to challenge the Church's ownership of the land comprising Elim in an action currently pending before this Court. That action impugns the Church's ownership of the land and seeks a declaration of the rights of the inhabitants as the true owners of the land. The Elim community asserts that the Church is merely the titular owner of the land and that it holds the land in trust for the inhabitants.

[8] The residents and inhabitants of Elim have, over generations and through rental payments, community labour, community fundraising efforts and direct financial contributions, made substantial contributions to the purchase of additional farms adjacent to Elim, which were subsequently incorporated into the Mission Station. Elim has historically been governed by communal rules and practices set out in the Mission Station Ordinance. The community has always understood and lived in accordance with a system of shared rules and values prescribed by the Church.

The Church Hierarchy

[9] The governance of Elim constitutes a significant factor for the Court to consider in the determination of the two applications and the relief sought by the applicants. As previously indicated, Elim is a Mission Station established by the Moravian Church. The hierarchy within the Moravian Church, according to its Church Order and Ordinance, is structured as follows: the supreme regulatory authority of the Church is the Provincial Synod, which convenes quadrennially, followed by the Provincial Board, District Councils, Congregations, and the Overseers Council. Each Moravian Mission Station is endowed with a local Overseers Council.

[10] The Overseers Council is responsible for the daily operations of the Mission Station, including the maintenance of the village and the supervision of basic service provisions. It functions as a quasi-municipality for the Elim Mission Station. Members of the Council are elected democratically by the community and act as representatives of its interests. Additionally, the Church maintains a Central Treasury (finance department) situated at the Provincial Board's office in Lansdowne, Cape Town, where all income from various congregations and other sources has historically been collected and centrally managed. Concerning the Elim Mission Station, all revenue generated from property leases and projects owned by Elim has traditionally been paid directly to the Overseers Council.

[11] In terms of the Church Order, the Provincial Synod embodies the unity of the Church and serves as its legislative body. It has the authority to administer and control all immovable property of the Church. During the inter-synodal period, the Provincial Board governs the Church and makes decisions affecting it. The Provincial Board, as the executive body, represents the Provincial Synod and is responsible for executing the Synod's decisions. It is accountable to the Provincial Synod. Its function is to exercise the duty assigned by the Provincial Synod to control all transactions involving immovable property.

[12] The District Council, in contrast, bears the responsibility for executing the legitimate resolutions passed by the District Conference and for handling any matters referred to it by the congregation. Each congregation elects two representatives to serve on the District Council. At the lowest tier of the organisational structure is the Overseers Council. An Overseers Council is established for each Mission Station. Each Overseers Council submits its annual budget to the Provincial Board no later than October 31st of each year for the subsequent year. The Overseers Council remains accountable to the Provincial Board. Additionally, each Overseers Council provides an annual report, within two months following the conclusion of the financial year, to the inhabitants and the Provincial Board, which subsequently forwards this information to the Finance Department.

The Conflict between the applicants and the Church (the respondents) and the subsequent order of Slingers J

[13] A longstanding conflict has persisted over many years between the residents of Elim, particularly the EOC, and the church leadership represented by the Provincial Board. This discord culminated in litigation before this Court in 2020, when the Church leadership sought remedial measures against the EOC through an urgent application. In that application, the Church's Provincial Board requested a declaratory order determining that exclusive rights to conclude lease agreements concerning land within Elim's boundaries reside solely with the Church. Additionally, the Church sought an urgent order to void all lease agreements made with the EOC. Moreover, the Church sought an interdict preventing the EOC from entering into rental agreements and collecting rental income pertaining to land owned by the Church. Furthermore, the Church requested an order directing the EOC to remit the rental income collected, amounting to R1,758,155.22, to the Central Treasury of the Church within five days of the granting of the order.

[14] The Church's application was opposed by the EOC, as constituted at the time and as mandated by the Elim community. On behalf of the community, the EOC also filed a counterapplication seeking, among other things, an order that the inhabitants of Elim are the beneficial owners of the land comprising Elim and that the Church is only the nominal and/or titular owner of the land. The EOC noted that the Church holds the land comprising Elim in trust for the benefit of the inhabitants of Elim and the Elim community. In its counterapplication, the EOC contended that the Church has failed in its fiduciary duties to hold, govern, and manage Elim for the benefit of the inhabitants of Elim and the Elim community. To this end, the EOC sought an order that the land constituting Elim be transferred into the Elim community Trust or an alternative trust in which the inhabitants of Elim or the Elim community are entitled to nominate and appoint the majority of trustees.

[15] As an alternative to the relief sought in the counterapplication, the EOC sought an order to stay the Church's application pending the determination of an action to be instituted by the EOC, together with the Elim community comprising the inhabitants of Elim and the Elim Community Trust, within 30 days of the date of any such order to stay the proceedings. The Church's application and the counterapplication were enrolled for hearing before Slingers J on 8 February 2022. At the hearing, the Court gave the parties time to engage with one another and to explore the possibility of settling the matter or narrowing the issues. The Court was later informed that the parties had not settled the matter but had narrowed the issues for determination.

[16] Both parties presented the Court with draft orders that they proposed would suit them. In substance, the parties, particularly the Church, ultimately agreed to a stay of its application pending the launch and determination of the action proceedings to be instituted by the Elim community. As foreshadowed above, at the hearing of the present application, this Court was informed that those proceedings have been instituted and are pending before this Court under case number 9312/2022. Slingers J considered the two orders and issued an order staying the proceedings instituted by the Church. Among other things, Slingers J granted the following order, which is the subject of this application.

'(b) In respect of the land rented to government institutions (schools, police station, Elim clinic and MISPAH LSN) the Applicants (in the main application) shall have the authority to negotiate the terms of the lease agreements; to conclude such leases; and to collect the rentals from the various government departments. In respect of such properties, the payment of VAT and property rates levied by the local municipality shall be the responsibility of the Applicants. An amount of 50% of the rental so collected for the government institutions described above, shall be paid to the Overseers Council by the Provincial Board monthly and by the 30th of every month. This amount shall be applied to the payment of property rates and taxes which has been paid by the Overseers Council to date and in respect of the upkeep and maintenance of the Mission Station which includes the communal property and infrastructure. This amount shall be applied to the payment of property rates and taxes which has been paid by the Overseers Council to date and in respect of the upkeep and maintenance of the Mission Station which

includes the communal property and infrastructure. The Provincial Board shall provide a spreadsheet of the rental so collected on a monthly basis and by the 30th of the month to demonstrate the amount that is collected, and which shall be paid to the Overseer Council.'

[17] In summary, under this order, the Church is obligated to pay the EOC 50% of the total monthly rental collected for the land leased to government institutions. The Church must also, on the 30th of every month, provide a spreadsheet showing the total rental collected for the land leased to government institutions, to demonstrate the amount that shall be paid to the EOC. This obligation is independent and must be complied with. On the other hand, the EOC has an obligation under this order to report to the Church's Provincial Board on a monthly basis, before the Church pays 50% of the rental collected by the Church in respect of the government institution to the EOC, and to set out in a statement what is to be paid in respect of municipal property rates and taxes, and what amount is to be paid in respect of the upkeep and maintenance of the Elim Mission Station.

[18] The EOC's statement must specify the required upkeep and maintenance and the associated costs. The Church is permitted to withhold 50% of the rental collected and retain those funds in a trust account only if the EOC fails to comply with its monthly accounting obligations. Notwithstanding this, the Church remains obliged to report monthly on the rental collected to demonstrate to the EOC the amounts received. As I understand it, the order of Slingers J is intended to regulate the parties' conduct pending the determination of the action proceedings concerning ownership of the land in Elim. Until that determination is made, the order issued by Slingers J governs how the parties are to conduct themselves. However, this application demonstrates that the parties disagree on the application and interpretation of the Slingers J order, as discussed hereunder. It is this disagreement that gave rise to the present application.

The Dispute between the parties on the implementation of the Slingers J order

[19] The applicants contended that, since the order was granted in February 2022, the EOC has complied with its monthly reporting obligations by submitting monthly statements detailing the actual expenditure for the preceding month and the forecasted expenses for the next month. The EOC contends that the Church and/or the Provincial Board (the respondents) have since about mid-2022 resorted to victimising and harassing the EOC and have continued to systematically deprive the Elim inhabitants and community of their rights, in blatant disregard of the court order. The EOC asserted that the conduct of the Church and its noncompliance with the court order continue to have a prejudicial effect on the EOC and the Elim community.

[20] The EOC has argued that, as a direct consequence of the church's noncompliance, it has a deficit in its budget required to maintain and manage the Mission Station. The EOC believes that the Church persistently failed and refused to provide monthly spreadsheets of the rental collected, as set out in paragraph 12(d) of Slinger J's order. As a result, the EOC notes that it has no insight into the actual rental collected by the church or the amount due to it. The EOC contended that, instead of paying the money due to the EOC and the Elim community, the church has sent numerous letters containing various queries relating to what the church alleges is the EOC's noncompliance with the order.

[21] According to the EOC, the respondents' non-compliance with the court order has materially affected the EOC's functioning. In its founding affidavit, the EOC drew the Court's attention to various correspondences addressed to the respondents, in which it provided the information required by paragraph 12(d) of Slingers J's order on a monthly basis. Notwithstanding these monthly reports, as required by the order, the EOC contends that the Church has sought to evade compliance and has instead demanded documentation and information not relevant to the terms of the order.

[22] The EOC stated that, despite providing the Church (the respondents) with monthly statements of expenses, rates, and taxes, the respondents have failed to comply with the binding court order issued by Slingers J, which directed them to pay

50% of the rental collected to the EOC. In the EOC's view, this noncompliance constitutes a breach of the court order. Accordingly, the EOC instituted this application for an order directing the Church to pay the EOC 50% of the rental collected and for an order holding the Church, in particular, members of the respondents' Provincial Board, in contempt of the court order.

[23] The respondents, on the other hand, maintain that they have made several requests to the applicants and/or the EOC to comply with the court order, but they did not receive a meaningful response from the applicants. According to the respondents, Slingers J's order envisaged a reciprocal process. The EOC had to provide a list of expenses, including property rates and taxes, for the upkeep and maintenance of the Mission Station, which includes the communal property and infrastructure. Upon receipt of those expenses, the Church was obliged to pay 50% of the rental received to the EOC.

[24] To this end, the respondents contended that the EOC cannot produce a single document showing any payment made by the EOC toward property rates and taxes, or any amounts used for upkeep and maintenance, with the specific details as required by the court order. The nub of the respondents' position is that the monthly statements provided by the EOC do not comply with the court order, as they simply list all the EOC's monthly expenses, including overheads such as administrative staff, pension scheme contributions, security, photocopier and bank costs. According to the respondents, these expenses have nothing to do with the upkeep and maintenance of the Mission Station envisioned in the court order.

[25] The respondents contend that they have repeatedly requested disclosure of the actual amounts spent on property rates and taxes, as well as on the maintenance of the Mission Station. According to the respondents, this request is compounded by the numerous requests and demands on the EOC to produce the annual budget for approval by the Provincial Board, as required by the Church Order. The respondents believe that the applicants have failed to comply with the court order and have

repeatedly refused to account to the Church (the respondents) as prescribed by the order of Slingers J and the Church Order.

[26] In addition, the respondents (the Church) raised two preliminary issues in response to the applicants' application. The respondents stated that on 6 April 2023, the first to fifth applicants were suspended in their capacities as members of the EOC, pending the outcome of an inquiry by an independent chairperson instituted against the members of the EOC (the first to fifth applicants). On 30 July 2023, the chairperson of the independent inquiry provided her report, which was served before the Provincial Board on 15 August 2023. The Provincial Board considered the chairperson's recommendations and decided to remove the first to fifth applicants in their capacities as members of the EOC. As a result, the respondents asserted that all seats on the EOC are currently vacant. The respondents stated that the first respondent urgently seeks to call elections to fill the vacancies on the EOC.

[27] The respondents also asserted that the EOC constitutes a subordinate structure within the first respondent and lacks independence from it. Due to multiple resignations and the removal of the remaining five members in their capacities as members of the EOC, the committee is not correctly constituted and therefore lacks the legal capacity to operate or make lawful decisions. Furthermore, the respondents argued that the applicant's application is premature, as the EOC is unable to satisfy the quorum requirement. They pray that the applicant's application be dismissed with costs.

Issues to be decided

[28] The issues to be decided in this contempt of court application are very crisp and narrow. The *first* question to be determined is whether the applicants' application is premature, as alleged by the respondents, due to the removal and/or suspension of the members of the EOC. *Second*, the Court must determine whether the respondents are in contempt of the court order issued by Slingers J and, if so, whether an appropriate sanction is to be imposed. For brevity, I deal with these disputed issues seriatim.

Is the applicants' application premature?

[29] As stated above, the respondents in the answering affidavit argued that this application is premature because the first to the fifth applicants were removed as members of the EOC, and, as a result, the EOC is not quorate. I must mention that at the hearing of this matter, these preliminary issues were not raised, nor did Mr Cooke, the respondent's counsel, pursue them. This may be because, pursuant to the interdict application in Part A of this application, it was ordered on 28 November 2023 that by-elections be held and that the applicants remain in their positions until their status is determined by this Court. The Court was informed that the EOC has now been reconstituted after the by-elections, such that it now enjoys a quorum, can manage the town, and that the inquiry has been concluded. The need to suspend the EOC has therefore fallen away and/or the suspension has lapsed.

[29] I have noted these assertions; however, for the purpose of clarity and completeness, I consider it appropriate to address these issues, as they are pertinent to this application and to the review application which I shall address subsequently herein. In paragraph 4 of the founding affidavit, the deponent stated that, *ex abundanti cautela*, this application is brought on behalf of the first to the fifth applicants in their personal capacities and/or as former members of the EOC. The deponent further stated that he was deposing to the affidavit in his personal capacity as a former member of the EOC. Additionally, the deponent stated that he is authorised to institute this application and to depose to this affidavit on behalf of the Elim Community Trust (the Trust), cited as the 11th respondent, and the Elim Litigation Steering Committee, whose members are cited as the 6th to the 10th applicants. The Trust and the Litigation Steering Committee were parties in the counterapplication, alongside the EOC, before Slingers J when the interim order was granted under the above case number.

[30] Moreover, the Litigation Steering Committee and the Trust represented the inhabitants of Elim and are parties to the interim court order issued by Slingers J.

Importantly, the deponent attached two resolutions to his founding affidavit as annexures CM1A and CM1B, authorising him to act on behalf of the Trust and the Litigation Steering Committee.

[31] From the above, it is evident that the respondents' preliminary point overlooks that this application for contempt of court was brought not only by the EOC but also by the remaining applicants, including the first to fifth applicants acting in their personal capacities, the Litigation Steering Committee, and the Trust. Thus, the allegations regarding the EOC's quorum, or lack thereof, are not dispositive of this application. Significantly, the suspension of the EOC was never implemented as alleged, and the Provincial Board's decision to suspend members of the EOC has been challenged in interdict and review proceedings before this court under case number 15254/2023, where an interim order was granted that effectively maintains the status quo with respect to the position of the members of the EOC.

[32] The interim order was granted in Part A of the review application, with Part B of the same application to be addressed later in this judgment. As articulated above, the suspension of the EOC was never implemented. An interim court order is in place that effectively maintains the status quo regarding the positions of the members of the EOC. The interim order also established a timetable for by-elections to fill the remaining seven vacancies on the EOC. Additionally, the respondents have not referred this Court to any clause in the Mission Station Ordinance or Church Order supporting the proposition that any decision by the EOC required a quorum of seven members of the EOC to take the decision and/or adopt a resolution.

[33] It is therefore evident that the respondents' preliminary points are misplaced and lack substance. In summary, the application is not filed by the members of the EOC in their official capacity. Instead, it is initiated by the applicants in their personal capacity as former members of the EOC. Moreover, the suspension of the EOC members has been stayed by a court order. Accordingly, the respondents' preliminary

point must be dismissed. I now turn to consider whether the respondents are in contempt of the court order issued by Slingers J.

Are the respondents in contempt of court?

[34] The applicants' application rests on the claim that the respondents deliberately failed to comply with the court order issued by Slingers J. The respondents, on the other hand, refuted this assertion and contended that performance under the court order was reciprocal. The respondents further contended that the applicants failed to provide them with a spreadsheet of maintenance and upkeep expenses with sufficient specificity to enable them to make payments under the court order.

[35] In considering this disputed issue, it is important to note that s 1 of the Constitution declares the supremacy of the Constitution and that this supremacy pervades all law.¹ Section 165 of the Constitution vests judicial authority in the courts. The authority of our courts is to be respected and upheld. To ensure that the courts' authority is effective, s 165(5) makes an order of court binding on 'all persons to whom and organs of state to which it applies'. These obligations must be fulfilled.² Obedience to court orders is central to the rule of law. It is a crime to unlawfully and intentionally disobey a court order.³ Wilful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence.⁴ The rule of law, a founding value of the Constitution, requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained. Contempt of court violates this constitutional injunction.

[36] Contempt of court is understood as the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official

¹ *Pheko And Others v Ekurhuleni City* 2015 (5) SA 600 (CC) para 26.

² *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others* 2018 (1) SA 1 (CC) para 36.

³ *Fakie No V CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) Para 6.

⁴ *Pheko And Others v Ekurhuleni City* 2015 (5) SA 600 (CC) para 28 and 30.

capacity.⁵ This includes acts of contumacy in both senses: wilful disobedience and resistance to lawful court orders. This case deals with the former, namely alleged wilful disobedience of the order of court. The purpose of a finding of contempt is to protect the fount of justice by preventing unlawful disdain for judicial authority.⁶ Recognition of this form of contempt is aimed at protecting public confidence in the administration of justice, without which the standard of conduct of all those who may have business before the courts is likely to be weakened, if not destroyed.⁷

[37] The purpose of contempt proceedings is to impose a penalty that will vindicate the court's honour and integrity, consequent upon the disregard of its previous order, and to compel performance in accordance with that order. It is trite that an applicant who alleges contempt of court must establish that:

- (a) an order was granted against the alleged contemnor;
- (b) the alleged contemnor was served with the order or had knowledge of it; and
- (c) the alleged contemnor failed to comply with it.

[38] In the present matter, it is common cause that the court order was duly served upon all parties, and that both parties are fully aware of its contents. The sole issue for determination pertains to whether the respondents deliberately disobeyed the court order. Ms Daniels, representing the applicants alongside Mr Appoles and Ms Golden SC, contended that since the issuance of the Slingers J order, the EOC has consistently furnished the Church, represented by the Provincial Board, and all respondents with a monthly statement of expenses. Counsel further argued that, despite this compliance, the respondents have failed to adhere to the court order and have instead issued demands not stipulated therein, such as the request for a budget. Ms Daniels directed the Court's attention to various correspondence submitted by the EOC to the Provincial Board each month in compliance with the order, asserting that notwithstanding such submissions, the Provincial Board failed to make payments as directed by the court

⁵ *Pheko and Others v Ekurhuleni City* 2015 (5) SA 600 (CC) para 28.

⁶ *S v Mamabolo* 2001 (3) SA 409 (CC) para 24.

⁷ *S v Mamabolo* 2001 (3) SA 409 (CC) para 23.

order.

[39] Mr Cooke, on the other hand, counsel for the respondents, submitted that the Provincial Board must authorise the EOC's expenses in consultation with the Department of Finance. Thus, the EOC's expenses are subject to authorisation by the Provincial Board. Mr Cooke argued that the Provincial Board oversees the budget because it has a duty to supervise the EOC's activities. As part of good governance, it is essential that the Provincial Board, as a supervisory body, know how this money is being spent. According to counsel, the Provincial Board can't simply pay out money without knowing how it is being spent and whether it is being spent reasonably and in accordance with the budget.

[40] On the interpretation of the order of Slingers J, Mr Cooke submitted that the duty between the parties was reciprocal. According to counsel, the applicants must first provide a statement setting out the amount payable for property rates and taxes. Secondly, they must provide a statement showing the amount to be used for the upkeep and maintenance of the Mission Station. Thirdly, the statement must specify what upkeep and maintenance are required.

[41] To this end, Mr. Cooke submitted that the applicants had to explain what upkeep and maintenance were required and the cost of that upkeep and maintenance. It was counsel's argument that before the applicants could get a sniff of the 50% of the rental, they had to comply with the four requirements set out in the order, and they had failed to do so. As such, it cannot be said that the respondents are in contempt of the court order.

[42] Based on the arguments raised above by opposing counsel, it appears that the dispute between the parties centers on the interpretation of the court order. The applicants maintain that their interpretation is correct, whereas the respondents contend that the applicants failed to comply with the order, thereby preventing the respondents from paying the 50% due to the EOC. While courts do not countenance

disobedience to judicial authority, it must be emphasised that contempt of court does not consist merely in non-compliance with a court order, but in conduct evincing continuous disrespect for judicial authority. In determining whether this Court should make a contempt order against the respondents and commit them to imprisonment with an option of a fine, it is necessary to consider whether, beyond a reasonable doubt, the respondents' non-compliance was born of wilfulness and *mala fides*.

[43] Based on the objective facts, I do not agree that the disobedience was *mala fide*. The respondents contend that the applicants failed to comply with the court order by not providing the specific expenses for the maintenance and upkeep of the Mission Station, thereby enabling the Church to make payment in accordance with the order. The non-payment of the 50% was based on the respondents' interpretation of the court order. The parties differ in their interpretation of the order. In particular, the respondents assert that the applicants' monthly spreadsheet lacked the requisite particularity and thus fell short of what the order required.

[44] In my view, the payment of 50% of the rental collected by the respondents to the applicants, in accordance with paragraph 12(d) of the Slingers J order, is conditional upon the EOC providing the Provincial Board with a statement setting out the amount to be paid in respect of property rates and taxes and the amount to be used for the upkeep and maintenance of the Mission Station. As correctly pointed out by Mr Cooke, this statement must specify the required upkeep and maintenance and the cost thereof. The applicants provided monthly spreadsheets listing expenses necessary for the upkeep of the property. The respondents argue that they did not pay because the spreadsheets lacked specificity.

[45] The difficulty I have with the respondents' version is that they did not specifically ask the applicants what the problem was with the spreadsheet. This could have been easily clarified by email rather than making incessant demands instead of assisting the EOC with what they needed to effect payment. Furthermore, during the hearing of this matter, the court was informed that at least 30 to 40 percent of the Elim community is of

pensionable age and is markedly indigent. The spreadsheet provided should, in my view, be assessed considering this context. The funds requested from the Provincial Board are vital for ensuring the sustainability and prospective economic viability of the community.

[46] I must, however, point out that, based on the monthly spreadsheets, some items are clearly for maintenance and upkeep, while others are not. Mr Cooke conceded during argument that some items in the spreadsheet provided are clearly for maintenance and upkeep. I agree that the spreadsheets could have been more detailed. However, this Court cannot lose sight of the fact that it is dealing with an indigent, elderly, and unsophisticated community. In such circumstances, precision, in my view, must yield to practicality. The funds sought from the Provincial Board are essential to ensure the community's survival, sustainability, and potential economic viability as a tourist destination.

[47] Incontestably, rates and taxes must be paid monthly. Schools, clinics, and other essential institutions require ongoing maintenance. Roads and other public facilities serving the community at the Mission Station must likewise be maintained. The Eskom account must be settled. Public buildings under the care of the EOC must be kept in a proper state of repair. The community's accounts due to the Cape Agulhas Municipality must also be paid. All these expenses are reflected in the spreadsheet that the applicants submitted to the Provincial Board.

[48] The EOC, though situated at the lower level of the Church's organisational structure, functions in practice as a quasi-municipality to further the proper administration of Elim. It plays a critical role in day-to-day service delivery essential to the functioning of the town. In carrying out its responsibilities, it is assisted by various portfolio committees, including finance, safety and security, tourism, social development, town matters, and land and economic development. These committees report to and are accountable to the EOC. Without the leadership and oversight provided by the EOC, these portfolios could not function effectively. Members of the

EOC and the portfolio committees meet regularly with various stakeholders, including the municipality. To run the Mission Station optimally, the EOC must ensure that all necessary expenses are covered. It must raise and pay taxes and settle all obligations essential to the community's functioning. In my view, the Provincial Board must pay the 50% due to the EOC for the benefit of the community, and not the individual members of the EOC.

[49] The court has already determined that 50% of the rental collected by the Provincial Board must be paid to the EOC for the maintenance of the Mission Station. I accept that the EOC must account to the Provincial Board. However, I am of the view that the Provincial Board must pay what is due to the EOC to enable the EOC to fulfill its mandate of serving the inhabitants of the Mission Station. The EOC has not received any of the monies owed to it, resulting in significant financial constraints on the village's budget and making it increasingly difficult for the EOC to perform its duties effectively.

[50] At the risk of repetition, the EOC must pay rates and taxes on the buildings and land leased to government institutions. The EOC must pay staff responsible for the upkeep and maintenance of the Mission Station. Thus, it must pay their salaries, UIF, and pension benefits in compliance with labour laws and the Basic Conditions of Employment. These costs are included in the spreadsheets the EOC provided to the Provincial Board. Despite the less specific manner in which the spreadsheets have been prepared, a purposive reading in the context of maintenance and upkeep demonstrates that they satisfy the court order issued by Slingers J. Simply put, while the spreadsheets the applicant sent monthly to the respondents lack the kind of precision one might expect in a more administratively sophisticated setting, a purposive reading of these spreadsheets, in the context of maintenance and upkeep of the Mission Station, demonstrates that they do comply with the requirements of Slingers J's order.

[51] In summary, the dispute between the applicants and the respondents turns on

the interpretation of the court order issued by Slingers J. While it may be that few items, such as “*diesel aankope*,” the *pastel program* in the spreadsheets (CM4), and others submitted, lack sufficient particularity, a purposive reading in the context of maintenance and upkeep demonstrates compliance with the court order. In my view, the spreadsheets must not be read in isolation. They must be read together with the covering letter addressed to the respondents, which states: ‘*Taxes paid and expenses incurred for the upkeep and maintenance of Elim Mission Station. As per High Court Order 1091/2020.*’ In that context, it is easy to understand that the petrol referred to in the spreadsheets was incurred to maintain the Mission Station. I have noted that the conflict between the parties is deep-seated. The applicants note that many of the items which the respondents have queried in the budget have constituted the normal monthly expenses of the village for some time, and that they were neither new expenses nor unreasonable or unexpected.

[52] I accept that the Provincial Board functions as the Church’s governing body. However, the EOC’s role and function should not be discounted, as it addresses matters of immediate importance to the inhabitants of Elim. It serves as a Local Government for the community of Elim. As noted above, while the Provincial Board retains supervisory authority, the EOC’s role in addressing the immediate needs of the Elim community cannot be discounted. I appreciate that the tension between governance and local functionality lies at the heart of this dispute. However, in my view, this court must weigh compliance with Slingers J’s order against the practical necessity of sustaining the Elim community. Simply put, the EOC’s activities are integral to the maintenance and sustainability of the Mission Station and the welfare of the Elim community.

[53] In my opinion, pending the determination of the action between the parties and to avoid future confusion, it would be apposite for the applicants’ legal representatives to assist the applicants in preparing a detailed template. Such a template should include a column for each expense and a corresponding column indicating the purpose of that expense. When read together with the covering letter addressed to the

respondents, this will make it clear that the expenses reflected in the spreadsheet were incurred for the maintenance and upkeep of the Mission Station. This measure will prevent misunderstandings in the future when applicants submit their expense lists for upkeep and maintenance in compliance with Slingers J's order.

[54] In conclusion, I am of the view that the Provincial Board's nonpayment resulted from a misunderstanding between the parties about the interpretation of the court order. I am unable to attribute any *mala fides* to the Provincial Board. As discussed above, some expenses were clearly specified, while others were not. In these circumstances, I cannot find that the Provincial Board acted improperly or was in wilful disobedience of the court order. In the interim, it cannot be disputed that the nonpayment of monies due to the EOC and the Elim community has caused untold financial hardship to this community, which could have been readily avoided by the Provincial Board. The 50% collected by the respondents, as directed in the order of Slingers J, is rightfully due to the Elim community and is required for the maintenance and upkeep of the town, as well as to meet the needs of this community.

[55] Accordingly, the respondents must forthwith pay all amounts (50%) due to the applicants (EOC) and the inhabitants of Elim since the granting of the order on 21 February 2022. The respondents are ordered to contemporaneously provide a spreadsheet of the amounts collected since February 2022 and to continue submitting such spreadsheets monthly, as ordered by the court. To the extent that there were items in the spreadsheet that were specific to maintenance and upkeep, and notwithstanding that the Provincial Board neglected to pay the EOC at least in respect of those amounts, thus causing the EOC to institute these proceedings, I am of the view that the Provincial Board (the respondents) should bear the costs hereof. I now turn to consider the review application.

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

Case No: 15254/2023

In the matter between:

CARLO MAREE

LORENDADAMS

BERESFORD PEARCE

WARNICK OCTOBER

ARON VAN BREDA.

First Applicant

Second Applicant

Third Applicant

Fourth Applicant

Fifth Applicant

And

THE MORAVIAN CHURCH OF SOUTH AFRICA
THE PROVINCIAL BOARD OF
THE MORAVIAN CHURCH IN SOUTH AFRICA
REVEREND SANDRA ABRAHAMS
ADV NYATI

First Respondent

Second Respondent
Third Respondent
Fourth Respondent

JUDGMENT – REVIEW APPLICATION

LEKHULENI J:

Introduction

[1] As discussed in the judgment above, applicants also sought an order to review and set aside the Provincial Board's decision suspending the applicants (members of the EOC) with immediate effect, as set out in the Church's letters dated 6 April 2023. For clarity, in the amended notice of motion, the applicants sought the following order:

'7. That the following decisions of the first and/or second respondents and/or fourth respondents are reviewed and set aside:

7.1 The decision to suspend the applicants with immediate effect as set out in the letters of the MCSA dated 6 April 2023.

7.2 The decision to place the office of the EOC under administration and appoint interim administrators as set out in the letters of the MCSA dated 6 April 2023 and 29 August 2023;

7.3 The decision taken by the church in and during March 2023 to hold a disciplinary inquiry and/or an inquiry hearing for allegedly breaching the terms of the Church Order and interim court order of Slingers J handed down on 21 February 2022, as communicated to the members of the EOC in the letter of the MCSA dated 6 April 2023;

7.4 The findings of the fourth respondent as chairperson of the internal inquiry dated 30 July 2023;

7.5 The decision to remove the applicants from the Elim Overseas Council as set out in the letter of the MCSA dated 18 August 2023. This letter refers to a decision that was taken by the Provincial Board on 15 August 2023 where it was decided to accept the decision of the chairperson of the inquiry and where the decision was made to remove the applicants as members of the Elim Overseers Council with immediate effect; and

7.6 The decision taken on 15 August 2023 by the Provincial Board of the MCSA that the applicants are not eligible for re-election to the office of the EOC, which sanction is set out in the letter of the MCSA dated 18 August 2023.

8. The applicants contended that the aforementioned decisions fall to be reviewed and set aside as unlawful in terms of the principles of legality on the basis that the decisions were:

8.1 procedurally irrational, arbitrary, unfair and unreasonable;

8.2 substantively unreasonable, irrational and arbitrary;

8.3 arbitrary and capricious;

8.4 *ultra vires* the powers of the first and the Second Respondent;

8.5 made in bad faith, for an ulterior purpose and motivated by malice.'

[2] In the alternative to the above, the applicants sought an order that the aforementioned decisions are declared unlawful in that they violated the principles of natural justice on the same grounds set out in paragraphs 8.1 to 8.5 above, including that the applicants were not afforded due process and were denied the right to *audi alteram partem*. The applicant also sought an order declaring that the internal appeal procedure of the first respondent set out in Article A. 7.1(p) of the Moravian Church Order is unconstitutional in that it violates the applicant's rights in section 34 of the Constitution.

The Provincial Board suspends the EOC

[3] It is common cause that there was extensive correspondence between the EOC and the Provincial Board. As discussed in the contempt application, the EOC submitted its compliance letter and annexures each month, consisting of a list of expenses incurred for the maintenance and upkeep of the Mission Station. In response, the Provincial Board raised concerns that the EOC's list of expenses lacked specificity. The correspondence is on record, and I will refer to it where necessary.

[4] It is common cause that on 8 February 2023, the EOC circulated a notice to the community stating that the budget for the 2023-2024 financial year would be presented on Saturday, 18 February 2023, in the community hall. On 17 March 2023, the EOC received an email from the Church inviting the EOC to attend a meeting on 22 March 2023 at the Church's offices in Lansdowne, Cape Town, to discuss the budget, the EOC's position, and the administrative office. The Church also impugned the EOC's authority to be legally represented before it, holding that the EOC was not independent of the Church.

[5] The EOC responded to this correspondence in a letter dated 22 March 2023, in which it addressed the venue of the meeting; the EOC's financial constraints regarding travel to Cape Town; the fact that most members of the EOC are employed full time; the non-negotiable presence of the EOC's legal representative; and the EOC members' availability for a meeting with the Church only from Sunday 16 April 2023, given the upcoming religious weekend, which was Good Friday. The EOC's intended meeting with the community did not take place as planned. However, on 13 March 2023, a copy of the revised budget was sent to the Provincial Board for its consideration, and the new date for the community meeting, at which the budget would be presented for approval, as was the custom and long-standing practice in Elim, was communicated. On 31 March 2023, the EOC received a letter from the Church, specifically from Reverend Martin Abrahams, stating that the revised budget contained numerous matters requiring clarification and that the Church was still awaiting information and financial statements. The letter further recorded that no meeting with the community would be held until the EOC had complied with the request contained in the letter.

[6] Subsequent thereto, on Thursday, 6 April 2023, the day before Good Friday, Reverend Martin Abrahams informed the EOC that it was suspended with immediate effect to investigate allegations and to launch an inquiry into whether members of the EOC have breached their obligations under the Church Order and the Mission Station Ordinance. The correspondence further stated that the local administration of the Mission Station falls under the Moravian Church of South Africa and is run locally at the behest of the Church by the local Overseers Council (the EOC), elected by the inhabitants and formally invested in their roles by the Provincial Board.

[7] In addition, the Church noted that the purpose of the EOC suspension was twofold. First, as noted by the Church Council in its letter of 2 March 2023, the EOC had only five members, which was insufficient to constitute a quorum, and its capacity to manage the town was compromised. Second, given the serious allegations against the members of the EOC, it was appropriate to suspend the EOC while the inquiry ran its course. The correspondence from the Church leadership underscored the hierarchical structure within which the EOC operates. The letter also stated that the EOC was directed not to advertise the position of administrative officer, as the Church appoints an administrative officer to the Overseer's Council. Despite this directive, the EOC advertised the position, shortlisted candidates, and made an appointment.

[8] The correspondence further stated that the court order of Slingers J found that the EOC is subordinate to the Church and bound by the decisions of the Church's leadership. In addition, the letter noted that, due to numerous resignations from the EOC, it is not quorate. The EOC was also directed not to hold meetings with the congregants regarding the 2023/2024 budget, and the questions posed by the Church regarding the budget remain unanswered. The letter indicated that the Church had appointed two administrators in the interim, with immediate effect, and requested that the EOC hand over all keys by close of business.

[9] On the same day, the members of the EOC received a notice of inquiry informing each member that a hearing would be held on Thursday, April 20, 2023, at the church

offices in Lansdowne to investigate allegations, hear their responses, and determine whether the members of the EOC have breached their obligations under the church order and the Mission Station Ordinance. Members of the EOC were also informed that the disciplinary inquiry would be chaired by the church's legal representative, Mr. Shaun Hangone.

[10] On 6 April 2023, the EOC's legal representatives sent a letter to the Church stating, among other things, that the EOC, representing the Elim community, strongly objected to the timing of the delivery of the letter of suspension and the notices, noting that the Provincial Board, as the church's leadership, was well aware that it was a religious period observed by the Moravian Community and the Elim Moravian community. The letter also denied the Provincial Board's allegations and stated that there were no grounds whatsoever for suspending the EOC. The EOC's attorney challenged the lawfulness of the decision to suspend the EOC and the inquiry process initiated by the Provincial Board and asserted that the EOC would not hand over any keys to the board and that the current EOC would continue performing its mandate duties.

[11] In a letter dated 11 April 2023, the Church stated that it would proceed with the disciplinary hearing against the EOC members and that it was acting under Article A.7 of the Church Order. On 18 April 2023, the applicants' legal representative wrote to the Church, insisting that there were no grounds to suspend the EOC, place the office under administration, or appoint the Provincial Board's chosen administrators, and that the Board lacked the power to do so. Moreover, the applicants' attorneys informed the Provincial Board that, regarding the suspension and notice to attend a disciplinary inquiry, the EOC was elected by the community to serve the community, represent its interests, and make decisions on its behalf. It was also stated that the EOC can be dissolved only when the term of the individual members comes to an end, when a new council is elected, or if removed by a court order. It was expressly recorded that paragraph 7 of the Church Order, on which the Church relied, contained no provision granting the Provincial Board the power and authority to call members in their individual

capacity to a disciplinary inquiry, nor did it grant the Board the power to place the EOC under administration or to appoint its own administrators to take control of the management of the EOC office and Elim. The applicant's attorney formally demanded that the Church retract its decision.

[12] Notwithstanding this, the inquiry proceeded on 20 April 2023 in the absence of the applicants. However, one member of the EOC did attend. The chairperson of the inquiry, the fourth respondent, permitted the Provincial Board to present and lead evidence against the applicants. On 25 April 2023, the applicants' attorney received a directive from the chairperson of the inquiry. In that correspondence, the chairperson noted that one member of the EOC, Mr Quenton van der Reede, attended the hearing and that no other EOC member was present. The directive further stated that the inquiry proceeded in the absence of the remaining members of the EOC and that evidence was led in support of the allegations made by the Moravian Church against the EOC. It also recorded an agreement with the Moravian Church that the bundle of evidence presented at the hearing would be furnished to all parties, including those EOC members who were absent, to ensure fair and transparent proceedings.

[13] Importantly, the directive noted that to ensure fair and transparent proceedings, all members of the EOC were given an opportunity to inform the office of the chairperson by 16 May 2023 if they wished to provide written submissions and/or cross-examine the evidence presented. Failing this, the chairperson would make a finding in the absence of any written submissions and/or cross-examination. In response to the chairperson's directive on 25 April 2023, the applicants' legal representative addressed a letter to the chairperson, informing the chairperson that members of the EOC intended to take an in limine point that the Church does not have the power and authority to convene such an inquiry and to discipline members of the EOC. The letter further requested that a written ruling be handed down on the in limine points before the hearing on the merits of the allegations could proceed, should this become necessary. The Church's representative, Mr Hangone, addressed a letter to the applicants' attorneys impugning their authority to act on behalf of the EOC. The letter also seems to

have resulted in the directive issued by the chairperson, Adv Nyathi, requiring personal service of the directive on each member of the EOC.

[14] On 15 May 2023, the chairperson issued a second directive. In that directive, the chairperson referred to her previous directive of 25 April 2023, in which she stated that the date of 16 May 2023 was merely for allowing the members of the EOC to indicate whether they wished to have a further opportunity to make written representations and/or to cross-examine the evidence presented by the Moravian Church. The chairperson noted that attendance by the parties was not necessary. The applicants' written submissions on the point in limine were filed and sent to the chairperson and the Church's legal representative on 16 May 2023, in accordance with the chairperson's directive of 25 April 2023. The written submissions made it clear that the members of the EOC reserve the right to lead evidence in rebuttal of the charges and to cross-examine the Church's witnesses. In addition, members of the EOC, through their legal representative, requested the opportunity to address any further issues at the hearing on the in limine points or at any other hearing convened for this purpose. The Church's legal representative filed a reply on behalf of the Church.

[15] On 30 July 2023, the chairperson issued a finding in which the applicants were found guilty of all allegations brought against them, except one. The chairperson concluded that the applicants had breached the provisions of the Church Order. The chairperson further deferred any sanction to be imposed to the Church. In a letter dated 18 August 2023, addressed to the individual applicants, the Church informed them that it had approved and accepted the chairperson's findings. The Church further stated that the Provincial Board decided to remove the applicants as members of the EOC with immediate effect and that they are no longer eligible for re-election to this office. The letter further stated that the applicants may appeal the decision in terms of Article A.7.1(p) of the Church Order and that the decision shall be binding until the Provincial Synod renders a final decision.

[16] On 19 August 2023, the executive of the Provincial Board, represented by Rev Martin Abrahams and Mr Lizwe Mtumtum, attended the community meeting in Elim, called by the Church Council. At that meeting, the church effectively communicated to the community the sanction it had decided to impose on the applicants as members of the EOC, namely that the applicants were dismissed from office as members of the EOC and that the EOC, and thereby Elim, was to be placed under administration by administrators. In response to the church's decision to disband the EOC, community members held peaceful demonstrations to protest the church's decision. They were concerned about the potential consequences the community would face if the church's findings and decisions were implemented. The applicants brought the review application to impugn the decision of the Provincial Board.

[17] The respondents refuted the applicants' application. The Church relies on the authority of the Provincial Board, which is at the top of the Moravian Church's hierarchical structure, to have made the decisions it did. It alleges that the applicants, as members of the Church, and the EOC, as a subordinate structure within the Church, are bound by decisions made by the Church's leadership structures. According to the Church, the applicants refused to provide information regarding *various matters*, an act of insubordination that led to the inquiry. The Church contends that every organisation has the right to enforce its rules and to expect ethical conduct from its members. It alleges that the Church is no different and that the Provincial Board requested members of the EOC to explain their failure to comply with A.7.1(h) and (i) of the Church Order. The respondents contend that most organisations have discipline, and if the problem is not corrected when it arises, it can escalate into something serious, requiring the Church's censure and/or removal from office or loss of membership.

[18] The Church alleges that, despite numerous requests to account for and explain their conduct, the applicants wilfully refused to acknowledge the Provincial Board's authority and/or its requests for information. The Church also relies on the Mission Station Ordinance, which provides that members could lose their rights at the Mission

Station if they breached the Church Order. According to the Church, “logic dictates that these rights include the right to serve on the EOC.”

[19] It alleges that if a member breaches the Church Order, short of having his membership terminated, certain rights can be suspended, i.e. the right to serve on the EOC. The Church relies on an “*agreement*” concluded between the Church and all members of the Church who had been granted the right to reside at Mission Stations. According to the Church, this “*agreement*” provides that the applicants’ right to serve, *inter alia*, on the Overseers Council can be revoked if they fail to fulfil their duties, behave improperly, or do not submit to the local authority.

[20] In particular, the respondents contended that the applicants have refused and/or failed to use the forum afforded to them, firstly through an engagement with the second respondent’s executive, who extended numerous invitations for such engagements, and as a last resort, in the form of the inquiry to address the allegations against them. In the respondents’ view, the applicants have attempted to conflate the congregational issues at Elim as part of their defence. The respondents contended that the removal of the applicants was made at the request of the local Elim Church Council; the elected officials of the congregation raised the call for the removal. The Church noted that the genesis of the complaint is that the Elim Church Council (ECC), which is a substructure within the Moravian Church structure, had lost faith in the EOC. Furthermore, the ECC in the correspondence questioned the five members’ ability to manage the town.

[21] According to the respondents, this contradicts the applicants’ false narrative that the second respondent has taken issue with the EOC to gain a tactical advantage in the current litigation. The respondents stated that congregants at Elim have raised serious concerns about the applicants’ legitimacy and competence. The EOC’s quorum issue underpins the EOC’s complaint. According to the respondents, the ECC’s request for an interim committee was neither novel nor without precedent, as it had been established in the past. The proposed interim committee also undermines the applicants’ contention

that their removal from the EOC office would be detrimental to the congregation of Elim.

[22] The respondents contended that the Provincial Board of the first respondent decided it would be inappropriate to disband the entire Elim overseas counsel and instead to suspend them pending the outcome of an inquiry. The Provincial Board sought to afford the applicants an opportunity to engage with and respond to the allegations leveled against them. The respondents noted that the EOC has repeatedly failed to comply with the Church Order and the Ordinances for the Mission Station. The first respondent believed that, because cooperation from the EOC could not be obtained, inviting the individual members of the EOC to an inquiry would allow for open, transparent, and frank disclosure by members. This approach had partial success, as one of the EOC members attended the inquiry and made the necessary disclosures regarding his conduct and participation in the EOC's decision-making.

[23] The respondents noted that on 6 April 2023, a notice was sent to the EOC stating that the EOC had been suspended with immediate effect, pending an investigation into the allegations contained in the notice. The notice set out charges relating to failure to comply with the Church Order, Mission Station Ordinances, and the court order of Slingers J of February 2022. The EOC was also informed in that communication that the Church had appointed interim administrators. In addition, the decision to appoint the interim administrators was for the specific period during which the inquiry was to be conducted. The respondents also explained the exchange of correspondence discussed above, which is common cause between the parties and which eventually led to the suspension of the EOC.

[24] Pursuant to the suspension and sanction imposed on the members of the EOC, the respondents contended that the applicants could have invoked the appeal procedure set forth in Article A.7.1(p) of the Church Order and Ordinances. The EOC, as the structure within the Moravian Church, has the right to appeal the second respondent's decision. The respondents noted that although the Church considered that a fair opportunity had been provided to the applicants regarding the possible sanction of

removal, the Church was willing to have the entire decision of the Provincial Board, taken on 15 August 2023, remitted for reconsideration. To this end, the Provincial Board undertook to provide the applicants with an opportunity to make representations regarding an appropriate sanction before making a further decision.

Grounds of Review

[25] The applicants' grounds of review, as discernible from their notice of motion, can be succinctly summarised as follows:

1. The applicants contend that the decision to suspend the EOC, to convene a hearing and to place the EOC under administration was unlawful as there is no statutory authority that authorised the Provincial Board with the power to suspend or discipline members of the EOC or call for a hearing or inquiry.
2. The applicants impugn the hearing before the fourth respondent and contend that it was fraught with procedural irregularities. Importantly, the applicants aver that the third respondent denied them the right to be heard.
3. The applicants impugned the sanction imposed by the respondents. According to the applicants, the church imposed a sanction on the applicants without affording them an opportunity to be heard or to address the Board. Moreover, the applicants contend that the Church Order and the Mission Station Ordinance do not grant the Provincial Board the power and authority to impose any sanction on members of the EOC, let alone such a severe and permanent sanction.
4. The applicants assert that when the Provincial Board took the decision to suspend the applicants, it was not properly constituted.
5. Lastly, the applicants challenged the constitutionality of the internal appeal procedure. They argued that the procedure is unconstitutional and violates their right to access the courts guaranteed in section 34 of the Constitution.

Discussion

[26] The applicants' grounds of review are so interwoven that, for convenience, I will address them in sequence. However, I must mention that at the second sitting of this matter on 27 November 2025, Mr Cooke advised this Court that his clients no longer ask the Court to order a remittal to the Provincial Board of the decisions described in paragraphs 7.5 and 7.6 of the amended notice of motion. These relate to the decisions made by the Provincial Board after the inquiry: first, to remove the applicants from the EOC (7.5), and second, to determine that they are not eligible for re-election (7.6). Mr Cooke conceded that those decisions should be set aside. In the heads of argument and in the affidavits, the respondents had asked the Court to remit those decisions to the Provincial Board.

[27] Mr Cooke informed the Court that the respondents no longer seek remittal, given the lapse of time. Counsel noted that his clients have no desire to seek any sanction in relation to the offenses in question. This concession puts to rest the issue of the sanctions imposed by the Provincial Board and, as such, will not be addressed in the discussion that follows. Mr Cooke also advised the Court that, from his heads of argument, there is no argument that this Court lacks the power to review the respondents' decision because of a failure to exhaust internal remedies. Mr Cooke noted that this was a point taken in the affidavits, but it is not a point he raised in the heads of argument. Simply, Mr Cooke conceded that the respondents' internal appeal remedy does not provide a proper procedure, and to this end, he argued that a right in terms of section 34 of the Constitution cannot be considered violated even if it has been invoked.

[28] With this weighty concession, it seems to me that all other issues relating to the review have been conceded, except for the applicants' first two major grounds of review, namely, whether the decision to hold the inquiry was lawful and, if so, whether the inquiry conducted by the fourth respondent was procedurally fair. In my view, pursuant to Mr. Cooke's concession, these are the two main issues this court must decide in this review application. I turn to the first question. However, I will consider the constitutionality of the respondents' internal procedure, as the applicants insisted that

this Court must do so.

Was the decision to hold the inquiry lawful?

[29] The applicants contend that the decision to suspend the EOC, to convene a hearing, and to place the EOC under administration was unlawful because no statutory authority authorises the Provincial Board to suspend or discipline members of the EOC, to call for a hearing or inquiry, or to take such action. On the other hand, the church relies on clauses A.7.1 (h) and (i) of the Church Order, as well as clause 2.1 of the Mission Station Ordinance, as the provisions authorising it to suspend the EOC, to call the members of the EOC to an inquiry, to place the EOC under administration, and to appoint its own administrators. For completeness, Article A.7.1(h) of the Church Order provides as follows:

‘Every Council of Overseers presents, annually, not later than 31 October a budget to the Provincial Board for the following year.’

[30] Article A.7.1(i) provides as follows:

‘Levies may only be raised, and expenses authorised by the Provincial Board in consultation with the Department of Finance.’

[31] Evidently, these clauses do not grant the Provincial Board the authority to suspend or discipline members of the EOC, nor do they empower it to convene a hearing or inquiry for that purpose. Accordingly, the Provincial Board’s decisions were *ultra vires* the Church Order and were clearly made in bad faith. I accept that the Provincial Board has a supervisory role, and that part of that role is financial in nature. It must oversee the management of the Church’s finances. I also accept that, in the interests of good governance, when there is evidence, a complaint, or even a suggestion of financial irregularities in Elim, it is appropriate for the Provincial Board to

investigate. If it undertakes an investigation into alleged financial irregularities, it is equally appropriate that it hear from the person alleged to have committed them.

[32] However, I do not understand the Church Order to confer upon the Provincial Board the power to conduct a disciplinary hearing. The Church Order, the primary regulatory framework governing the Church, does not grant such authority in relation to the EOC. There is nothing in the Church Order that empowers the Provincial Board to discipline members of the EOC. Clearly, the Provincial Board acted *ultra vires* in disciplining the applicants.

[33] At the hearing in this matter, Mr. Cooke contended that the proceedings before the chairperson, which ultimately resulted in the applicant's sanction, were not a disciplinary hearing but rather an inquiry into the applicants' fitness. I do not agree with this assertion. On page 246 of the record, the President of the Moravian Church in South Africa, Mr Martin Abrahams, in a letter dated 6 April 2023, unequivocally informed the members of the EOC that the disciplinary inquiry would be presided over by Mr Shaun Hangone and/or any individual designated by the chairperson. The applicants' legal representatives objected to the appointment of Mr Hangone as the chairperson of the hearing on the ground that he represented the Church. In response to this objection, Mr Hangone declined the appointment.

[34] What compounds the difficulty in the respondents' case is that the Church was represented throughout these proceedings, during which email and other correspondence were exchanged between the parties. Notably, the applicants' attorneys objected to the timing of the inquiry, contending that it subjected the applicants to immense pressure during the holy week of Passover. In correspondence addressed to the Church's attorneys, the applicants' attorneys referred to the inquiry as a disciplinary hearing, ostensibly based on the letter from the President of the Moravian Church in South Africa, Mr Martin Abrahams, dated 6 April 2023, which informed the members of the EOC that the disciplinary inquiry would be chaired by Mr Hangone. Notwithstanding, the applicants' counsel was not informed that this was not a

disciplinary hearing. I am firmly of the view that the proceedings before the fourth respondent constituted a disciplinary hearing, which was subsequently followed by sanctions against the members of the EOC. The Provincial Board, in my view, acted outside its governing Church Order and rules by instituting a disciplinary inquiry against the applicants.

[35] It must be stressed that the Moravian Church is a voluntary association. Its Constitution, embodied in the Church Order, binds the church and its members. To this end, I find the decision in *Yiba and another v African Gospel Church*,⁸ very instructive. That matter had striking similarities to the present matter. In that matter, the appellants were pastors who convened a meeting that purported to be the Cape District Conference, at which a resolution was adopted declaring the District Conference autonomous. The appellants' conduct, particularly the purported holding of the Cape District Conference at which the resolution declaring autonomy was adopted, warranted disciplinary proceedings against them. The appellants were subsequently excommunicated and expelled from the church by the executive committee of the church after a disciplinary hearing was held against them in their absence, following their failure to attend.

[36] Thereafter, the church filed an urgent application in this court, claiming, in substance, an order evicting the appellants from the church buildings and manse they occupied, and an interdict restraining them from conducting services on the church's property and from administering the church funds. The interim order was granted and subsequently confirmed. On appeal, Schippers AJ, as he then was, writing for the full court, restated the principles relevant to the nature of the relationship between a voluntary association and its members, and to the interpretation of its constitution, with specific reference to disciplinary inquiries. Those principles are pertinent in this matter, and I deem it appropriate to reproduce them, as they are relevant to the determination of this application. The court observed that:

⁸ 1999 (2) SA 949 (CPD).

- (a) A voluntary association is founded on mutual agreement, which entails an intention to associate and a *consensus* on the association's essential characteristics and objectives.⁹
- (b) The constitution of a voluntary association together with all rules or regulations (if such exists) collectively constitute the agreement entered into by its members. The constitution not only determines the nature and scope of the association's existence and activities but also prescribes and demarcates the powers of the association and its office bearers.¹⁰
- (c) Importantly, the court observed that an association has no inherent power to conduct disciplinary proceedings and to punish a member.¹¹ The constitution of the association and its rules or regulations determine what violations of the rules by members warrant disciplinary action being taken against them, how the domestic tribunal entrusted with the investigation of such violations is to be constituted, the procedure to be followed by the tribunal in the exercise of its functions, and the penalties to be imposed for a violation of the rules.
- (d) A voluntary association's power to punish offending members must be exercised in conformity with the terms of its constitution. A court will not normally intervene in the internal domestic affairs of a voluntary association duly constituted and operating in terms of its rules.¹² However, a court will intervene where the domestic tribunal is properly constituted but fails to follow the prescribed procedural rules. Where a properly constituted domestic tribunal adheres to the applicable procedural rules, a court will still intervene if it acts *ultra vires*. Expulsion is the most drastic form of punishment which a domestic tribunal can impose on its members. This power must therefore appear expressly or by necessary implication from the provisions of the constitution.

[37] From the foregoing, it is abundantly clear that the Church, in the present matter, lacked the authority to discipline the members of the EOC, as no such authority is

⁹ At 949E.

¹⁰ At 949E. See also *Turner v Jockey Club of SA* 1974 (3) SA 633 (A) at 645B-C.

¹¹ At 961B. See also *Durr en Ander v University van Stellenbosch en Ander* 1990 (3) SA 598 (A) at 608B-609A.

¹² *Balomenos v Jockey Club South Africa* 1959 (4) SA 381 (W) at 386C-D.

conferred in either the Church Ordinance or the Church Order. The Church's founding documents do not provide for the procedure followed by the respondents. There is likewise no procedure set out for any tribunal appointed by the Church to follow when exercising disciplinary functions, nor is there any indication of the penalties to be imposed for violations of the rules allegedly breached by the applicants.

[38] As foreshadowed above, the Church exercises oversight over the EOC. This oversight extends to the provision of information, including financial information. As Ms Golden SC correctly argued, if the Church or the Provincial Board, which is the regulatory body of the broader Church, was dissatisfied with the way the EOC was doing its work, it had a remedy to exercise oversight rights over the EOC. If the EOC did not cooperate, the Church could have called for elections of a new EOC in consultation with the community that elected the EOC members. Alternatively, the Church could have raised a vote of no confidence.

[39] Significantly, the EOC is a democratically elected body chosen by the community. In my view, the fact of its democratic election immediately constrains the Church's ability to charge and treat EOC members as it would an ordinary employee. The procedure followed by the Church was fundamentally flawed and cannot be countenanced. In my view, it was impermissible for the Church to institute disciplinary proceedings against members of the EOC. The Church did not possess such authority, and the Church Order did not authorise or empower it to act in that manner.

[40] Finally, on this point, it is my firm view that the Church acted beyond its powers in disciplining the EOC members. The disciplinary hearing, as well as the subsequent suspension of the EOC, was premised on an alleged non-compliance with the order of Slingers J. Clearly, the Provincial Board took it upon itself to discipline and punish the applicants and the EOC for what it perceived to be a failure to abide by the terms of that order, rather than approaching the Court for relief in a contempt application, where the Court could objectively and impartially determine whether the EOC had indeed acted in contempt of the Slingers J order. If the steps the Church wished to

take stemmed from the alleged non-compliance with the interim court order, it could not take it upon itself to discipline or sanction the applicants, particularly since the applicants, as the EOC, have denied all wrongdoing alleged by the Provincial Board. It is the court and only the Court that can determine whether contempt has been committed, not the respondents. The respondents cannot be the judge in their own cause.

[41] Ordinarily, this finding should have led to the end of the matter. However, for the sake of completeness, I deem it proper to consider the fairness of the procedure followed at the hearing.

Was the procedure of the hearing procedurally fair?

[42] The applicants impugned the proceedings before the third respondent, contending that they were fraught with procedural irregularities. Importantly, they aver that the fourth respondent denied them the right to be heard. It is common cause that the notice dated 6 April 2023, issued by the Provincial Board, stated that the hearing would be held on Thursday, 20 April 2023, at the Provincial Board's offices in Lansdowne, Cape Town. The applicants were expected to travel from the Overberg to Lansdowne for the hearing. I find this arrangement deeply problematic and troubling. It is indisputable that the venue selected for the disciplinary hearing was situated almost 200 kilometres from Elim, where the EOC members reside.

[43] The applicants' attorney pleaded with the Church to reschedule the hearing for the weekend, noting that it would be problematic for the EOC members to travel to Lansdowne because they are working. Notwithstanding this, the Church completely disregarded this fact, particularly the fact that members of the applicants are employed full-time and had to approach their respective employers for permission to travel from the Overberg to Cape Town. Despite correspondence from the applicants' attorneys to the Church's legal team dated 20 April 2023, in which it was expressly stated that the timing of the notices subjected the applicants to extreme pressure, the Church refused

to postpone the hearing and proceeded with the hearing in the applicants' absence. The Church adopted a rigid and inflexible approach.

[44] In my view, this approach was contrary to the values and ethos of a Church that ought to uphold the Christian values on which its foundation rests. The Bible, central to the Church's mission, instructs Moravian Church members, including the Church's leadership (the respondents), in Galatians 6:2 to carry each other's troubles to fulfill the law of Christ. Significantly, the Bible tells the Church and its members to clothe themselves with compassion, kindness, and forgiveness, just as God forgave them (Colossians 3:12-13; Ephesians 4:32). Regrettably, the Church leadership failed to live up to these principles.

[45] As Ms Golden correctly pointed out, the timing of the applicants' suspension is itself demonstrative of malice and bad faith on the part of the Church. The notice of suspension and the notification of the inquiry were served on the applicants on the day before Good Friday and the Easter weekend, a holy period for the Elim community and the Moravian Church. There was no conceivable basis or justification for the Provincial Board's failure to wait until after the Easter weekend, particularly given that most of the charges in the notice related to alleged transgressions that had occurred almost two years earlier.

[46] Furthermore, the demand for the immediate handover of all keys, property, and equipment belonging to the EOC and its offices by close of business on the same day was grossly unreasonable. In my view, the decision to discipline and punish the applicants for allegedly failing to abide by the terms of a court order was simply malicious. As stated above, instead of seeking relief from the court through a contempt application, in which the court would impartially determine whether the EOC had acted in contempt of the Slingers J order, the Provincial Board unlawfully assumed the power it did not have to discipline the applicants.

[47] The proceedings before the fourth respondent were also not beyond reproach. Notably, the chairperson of the inquiry, in her ruling, refers to the Articles of the Church Order that the applicants are alleged to have violated but does not indicate what authority authorized the institution of the proceedings she presided over. The inquiry proceeded in the applicants' absence, despite the difficulties and prejudice conveyed to the church's legal representative. In her finding, the chairperson found that the EOC members were given sufficient notice of the inquiry, as no request for an extension was made and no reasonable explanation was given for the failure to attend the inquiry. This finding was not entirely correct. In a letter dated 20 April 2023 addressed to the Church and the Church's legal representative, the applicant's attorney stated the following:

'Despite the recent correspondence, the Provincial Board has nonetheless placed our clients under extreme pressure during the Holy week leading up to Easter and the days thereafter, with the notices to attend the disciplinary inquiry on 20 April 2023 having been served on our clients on Maundy Thursday. With the exclusion of the Holy week, weekends, and all public holidays, this was merely seven days before the inquiry. This is unreasonable given that our clients reside in Elim, approximately 200km from Cape Town.

Our clients hereby request more time to consider their position, given that, despite the correspondence on 18 April 2023 and the Board declining the reasonable request to consider meeting with our clients, it appears that the Board has proceeded with the disciplinary inquiry today. In the circumstances, we request that you do not proceed with the inquiry.'

[48] The request to reschedule the matter has been the applicants' persistent plea since they were served with the notice to attend the hearing. The Church and its legal representative, who appeared before the chairperson, were aware of this request. However, this information does not appear at all in the chairperson's findings. Compounding the difficulty, the applicants were denied the right to be heard. The chairperson invited the applicants to indicate whether they intended to make written submissions and/or to cross-examine the witnesses presented by the Moravian Church. After that, the applicants, through their legal representative, informed the chairperson that they would file written submissions to address certain points in limine.

[49] Accordingly, the applicants filed their written submissions on 16 May 2023 in accordance with the chairperson's directive of 25 April 2023. In those submissions, specifically in paragraph 93, the applicants informed the chairperson that they reserved the right to lead evidence in rebuttal and to cross-examine the Church's witnesses. The written submissions make it clear that the applicants did not abandon or waive their right to lead evidence or to cross-examine the Church's witnesses. They indicated that they would avail themselves of this right after the ruling on their point in limine was delivered and after they had considered their position in relation to that ruling, depending on how it was decided.

[50] Surprisingly, the chairperson ruled on the points in limine and, at the same time, decided the merits of the main application against the applicants without giving the applicants an opportunity to present evidence or cross-examine the Church's witnesses. I have noted Mr Cooke's argument that the applicants never timely indicated whether they wanted to cross-examine the witnesses, as directed by the chairperson. I do not agree with this argument. In my view, the chairperson had a duty to ensure that the proceedings before her were procedurally and substantively fair, consistent with the rules of natural justice.

[51] It must be stressed that, whilst on the face of it a voluntary association is a private body that exercises private power under its constitution, which is a contract with its members, under the common law, punitive or coercive decisions of voluntary associations such as churches and sports clubs had to be not only consistent with their constitutions but also unbiased and fair to be valid. Even with the introduction of the Constitution, these exercises of private power remain subject to review under the common law rules of natural justice, rather than under section 33 of the Constitution or PAJA.¹³

¹³ See Quinot G, Anthony A and Bleazard J *Administrative Justice in South Africa; An Introduction* 2ed (2020) at 196.

[52] In this matter, the chairperson was aware that the applicants had raised points in limine. The applicants' attorney, in a letter addressed to the chairperson, requested that a written ruling be issued on the points in limine before the hearing on the merits of the allegations could proceed, should that become necessary. In these circumstances, it was incumbent upon the chairperson to decide the points in limine first and thereafter to ask the applicants whether they intended to cross-examine or present evidence once those points had been determined.

[53] At the very least, and in the interests of fairness and justice, the chairperson should have informed the applicants that she would not accede to their request before making a ruling on the merits. The applicants made it clear that they were not waiving their rights to present evidence or to cross-examine the witnesses. Notwithstanding this, the chairperson proceeded to decide the matter without hearing the applicants, despite their express request to be heard.

[54] In my view, this violated the applicants' right to be heard. In *Psychological Society of South Africa v Qwelane & Others*,¹⁴ the Constitutional Court highlighted the considerations of legal policy that underpin the *audi alteram partem* rule, which is the cornerstone of procedural fairness, as follows:

'It is trite that at common law and in terms of the tenets of natural justice, hearing the other party - audi alteram partem - is an indispensable condition of fair proceedings.

...

The principle is underpinned by two important considerations of legal policy. The first is recognising the subject's dignity and sense of worth. Second, there is a more pragmatic consideration. This is that audi alteram partem inherently conduces to better justice.'

[55] Evidently, the applicants were not afforded an opportunity to state their case regarding the main allegations leveled against them, nor were they afforded the opportunity to cross-examine the Church's witnesses. The process adopted during the hearing was grossly irregular and unfair. The applicants were, in effect, denied their

¹⁴ 2017 (8) BCLR 1039 (CC) paras 33 and 34.

right to be heard. Additionally, the chairperson's finding that the applicants had contravened the interim order of Slingers J was beyond the remit of his powers. As already articulated, it is the court, and only the court, that may hold a party in contempt for disobeying its order. In conclusion, the chairperson's findings, and the Provincial Board's decision to accept and act upon those findings, are unlawful and must be reviewed and set aside.

The Constitutionality of the church's internal remedy

[56] The applicants seek an order declaring that the Church's internal appeal procedure, set out in Article A.7.1(p) of the Church Order, is unconstitutional because it violates their rights under section 34 of the Constitution. Section 34 of the Constitution provides that: *"Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."* It is trite that any law or conduct inconsistent with the Constitution is invalid.

[57] Mr Cooke submitted that the Church's internal appeal procedure does not infringe the rights in section 34 of the Constitution. According to counsel, the impugned provisions do not undermine the right of access to the courts or interfere with the fairness of judicial proceedings. Most pertinently, counsel argued that the Church Order does not oust the courts' jurisdiction. This case, according to counsel, and several other cases brought against the Church demonstrate that the Church has not limited the applicants' right to seek redress from the courts. Moreover, if the internal appeal procedure is conducted in a manner that violates constitutional rights, the applicants will be entitled to seek relief from the courts. Counsel submitted that the respondents, however, showed that the appeal procedure has been applied fairly. I do not agree with this proposition.

[58] It should be borne in mind that the respondents raised exhaustion of internal remedies in their answering affidavit as a preliminary point. They contended that the

applicants ought to have followed the appeal process provided for in the Church Order before instituting these proceedings. Although Mr Cooke abandoned this argument during oral argument, it was not formally withdrawn. It seems to me that, if this appeal process is left intact, it may serve as a stumbling block for residents in a similar position to the applicants who seek to institute proceedings in the courts, only to be met with a preliminary defense that they have failed to exhaust internal remedies under a process that infringes the principles of natural justice. As will be demonstrated below, the appeal process is unconstitutional and violates the right of access to courts.

[59] Moreover, given the profound discord among the Elim community, the EOC, and the Provincial Board, as well as the pending litigation, the applicants explained that they have a legitimate fear of being treated unfairly in any internal appeal process, which is entirely controlled by the Provincial Board. The entire process is circuitous and cumbersome and may take several years before the appeal reaches the Synod and/or is determined by it. For completeness, Article A.7.1(p) of the Church Order, which regulates the appeal process, provides as follows:

“The highest and final Court of Appeal for the council of overseers is the Provincial Synod of the MCSA. Such an appeal must be supported by at least one third of the members. During the inter-Synodical period the council of overseers shall appeal via the District Council to the Provincial Board. The decision of the Provincial Board shall be binding until the Provincial Synod gives a final decision.’

[60] In terms of the process, the appeal must first be referred to the District Council of the Church. From the hierarchical structure of the Church, the District Council falls under the authority of the Provincial Board. As Ms Golden correctly argued, it is highly unlikely that the District Council would overturn the Provincial Board’s decision. From the District Council, the appeal is then referred to the Provincial Board, which took the initial decision to suspend and sanction the applicants. Put simply, the Provincial Board is required to decide an appeal in respect of a decision that it itself has taken. What is highly troubling is that the decision of the Provincial Board shall be binding until the Provincial Synod gives a final decision.

[61] This arrangement, in my view, conflicts with the principle of natural justice, particularly the *nemo iudex in causa sua* principle, which provides that no one may be a judge in his own cause. Furthermore, the appeal procedure is circuitous, in that the decision on appeal will again be served on the Provincial Board, the very body that made the initial decision. It can safely be assumed that the Provincial Board will not deviate from its own decision. The Provincial Board will then refer the appeal to the Synod when it next convenes.

[62] The Provincial Board is responsible for placing the item on the Synod agenda and will ordinarily address the Synod on the appeal, whilst the applicant will not be afforded the same opportunity. The Provincial Board will then refer the appeal to the Synod when it convenes. What is also concerning in the said appeal procedure, as prescribed by the Church Order, is that it makes no provision for the time periods in the entire appeal process. It seems to me that it will be up to the District Council to decide when it will consider the appeal. It is also up to the Provincial Board to decide when it will consider the appeal after it is referred to it by the District Council. It is also entirely within the power of the Provincial Board to refer the appeal to the Synod. This power is within the exclusive control of the Provincial Board.

[63] To this end, I agree with Ms Golden's view that the appeal process and the time it takes to resolve appeals breach the applicant's rights to due process, impartiality, and a fair and transparent procedure. I am therefore of the view that this provision contravenes the rules of natural justice and is unconstitutional. The Provincial Board and the highest church structure must accordingly revisit this provision in light of the constitutional principles and the sentiments expressed in this judgment.

Usage of the Church Hall

[64] Regarding the use of the Community Hall, the EOC has a clear right to use it in the discharge of its functions to serve the community and the Mission Station. At the hearing of this matter, the Court was informed that no other suitable venue is available in Elim for this purpose. The Court was further informed that if the relief is not granted, the EOC, the Elim inhabitants, and the Litigation Steering Committee (elected by the inhabitants) will, in practice, have to make very costly arrangements to hold EOC and community meetings in Bredasdorp, a town approximately 30 km away from Elim. Clearly, the prejudice to the EOC and the inhabitants is manifest.

[65] I have noted that Salie-Da Silva J granted an Order on 20 September 2023, which provides that respondents, and/or the local Elim Church Council, which falls under the first and second respondents, shall not refuse the EOC and/or the Elim residents the use of the Elim Community Hall for community meetings and events. The order dated 20 September 2023 regarding the use of the community hall was extended by the further Order granted by Salie-Da Silva J on 28 November 2023. The Court was informed that there have been no issues locally at the Mission Station regarding the use of the hall since the Order was granted. In my view, pending the finalisation of the main action between the parties, Salie-Da Silva J's Order dated 20 September 2023 should remain.

Conclusion

[66] In conclusion, it is my firm view that the Provincial Board's decision to suspend and sanction the members of the EOC, and the proceedings convened before the chairperson (the fourth respondent), were procedurally and substantively unfair, unreasonable, and irrational. The decisions of the Provincial Board and the fourth respondent were *ultra vires* their powers and unlawful, as they violated the principles of natural justice by failing to afford the applicants, in particular the members of the

EOC, due process, and by denying them their right to *audi alteram partem* during the hearing before the chairperson and when the sanction was imposed by the Provincial Board. Importantly, the Church has conceded that the decision to impose a sanction was unlawful and that it should be reviewed and set aside. The purported internal appeal remedies provided for in Article A.7.1(p) and Article A.4.1 of the Church Order are unconstitutional because they violate the applicants' rights under Section 34 of the Constitution.

Costs

[67] It is trite that the question of costs is a matter in the court's discretion. It is equally trite that, as a general rule, costs follow the result, and successful parties should be awarded their costs. One of the fundamental costs principles is to indemnify a successful litigant for the expense incurred in unjustly having to initiate or defend litigation. The successful party should be awarded costs.¹⁵ It is so that when awarding costs, a court has a discretion, which it must exercise judiciously and after due consideration of the salient facts of each case at that moment. The decision a court takes is a matter of fairness to both sides.¹⁶ The court is expected to take into consideration the peculiar circumstances of each case, carefully weighing the issues in each case, the conduct of the parties as well as any other circumstances which may have a bearing on the issue of costs and then make such an order as to costs as would be fair in the discretion of the court.

[68] In this case, the applicants have been successful in their application. During the hearing, the Court was informed that the applicants are indigent and that the majority of them are elderly. The Court was also informed that their legal representatives had generously offered to act for them on a *pro bono* basis. This is admirable and deserving of commendation. From the correspondence, affidavits, and heads of argument filed, it is apparent that both the applicants' attorney, in particular Ms B

¹⁵ *Union Government v Gass* 1959 4 SA 401 (A) at 413.

¹⁶ *Intercontinental Exports (Pty) Ltd v Fowles* 1999 (2) SA 1045 (SCA) at 1055F- G.

Mangale, and their three counsels devoted many hours to drafting the papers, preparing the heads of argument, and preparing for the hearing of this matter.¹⁷ They ensured that the impecunious people of Elim who cannot afford legal costs are afforded access to justice.

[69] Moreover, in formulating the reasons for this judgment, this Court derived considerable benefit from both the heads of argument and the oral submissions advanced by Ms Golden SC, Ms Daniels, Mr Appoles, and Mr Cooke. To them, this Court owes a significant debt of gratitude. In my view, given that the applicants achieved substantial success on the principal relief sought, largely as a result of their efforts, it would be an injustice not to order that the respondents be liable for the reasonable costs of those efforts, as taxed or agreed.

Order

[70] Consequently, given all these considerations, the following order is granted:

Ad Contempt Application

[71] The respondents (the Church) are ordered to fully comply with the order of Slingers J, particularly to fully account to the EOC pursuant to paragraph 12(d) of the Order; and

[72] The first and second respondents are ordered to pay to the EOC 50% of the rental collected in respect of the land rented to government institutions, which the respondents are required to hold in a trust account, with interest calculated at the prevailing interest rate, and that payment is made within seven (07) days of the grant of the Order.

¹⁷ *Kuhudzai v The Minister of Home Affairs* 2018 JDR 1398 (WCC) para 30.

[74] The respondents are ordered to pay the costs of this application, on a party and party scale, including the costs of two counsels where so employed on Scale C.

Ad Review Application

[75] The following decisions made by the Church are hereby reviewed and set aside:

75.1 The decision to suspend the applicants as set out in the letters of the Church dated 6 April 2023.

75.2 The decision to place the office of the EOC “*under administration*” and to appoint an interim administrator as set out in the letter of the Church dated 6 April 2023.

75.3 The decision by the Church in March 2023 to hold a disciplinary inquiry and/or an inquiry hearing for allegedly breaching the terms of the Church Order and the interim Court Order of Slingers J, handed down on 21 February 2022, as communicated to the members of the EOC in the Church's letter dated 6 April 2023.

75.4 The Findings of the fourth respondent dated 30 July 2023, who was appointed as chairperson of the internal inquiry.

75.5 The decision to remove the applicants from the Elim Overseers Council as set out in the letter of the Church dated 18 August 2023.; and

[76] The decision taken on 15 August 2023 by the Provincial Board of the Church that the applicants are not eligible for re-election to the office of the EOC, which sanction is set out in the letter of the Church dated 18 August 2023.

[77] The respondents are ordered to pay the costs of this application, on a party and party scale, including the costs of two counsels where so employed on Scale C.

Ad Internal Appeal Procedure

[78] It is also ordered that the Church's internal appeal procedure, set out in Articles A.7.1(p) and A.4.1 of the Moravian Church in South Africa Church Order ('the Church Order'), is unconstitutional because it violates the applicants' rights under section 34 of the Constitution. In terms of section 172(1)(b) of the Constitution, the Provincial Board is directed to remedy the appeal process and address the shortcoming observed above within six months of the date of this judgment.

LEKHULENI JD
JUDGE OF THE HIGH
COURT

APPEARANCES

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Adv Appoles

Adv Daniels

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