

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **KING WILLIAM'S TOWN**

CASE NUMBER : 21/97

In the matter between :

**LOCAL TRUSTEES OF THE BROWNLEE
CONGREGATIONAL CHURCH**

First Claimant

**THE OFFICIAL TRUSTEES OF THE UNITED
CONGREGATIONAL CHURCH OF SOUTHERN
AFRICA**

Second Claimant

and

MR A C B GOLDACRE

First Respondent

DEPARTMENT OF LAND AFFAIRS

Second Respondent

JUDGMENT

MEER J :

Introduction

- [1] The first and second claimants, the Local Trustees of the Brownlee Congregational Church and the official trustees of the United Congregational Church of Southern Africa (the ~~A~~parent body of the first claimant, hereinafter referred to as UCCSA), lodged a claim for restitution of a right in land in terms of section 2 of the Restitution of Land Rights Act No 22 of 1994 (hereinafter referred to as ~~A~~the Act). The claim was for a piece of land described as erf 4121 measuring 4,7514 ha situated at 66 Reserve Road, King William's Town (hereinafter referred to as ~~A~~the property). The property is adjacent to the Brownlee Congregational Church situated on erf 4099, owned by the claimants. What used to be the Minister's residence or manse is situated on the property.
- [2] The claimants claim to have been dispossessed of the property when the area was declared

white in terms of Proclamation 212 of 1968¹ promulgated under the Group Areas Act² and they were forced by the Group Areas Act to sell it to the first respondent, which they did in 1977. The congregants of the Brownlee Congregational Church are Black. The first respondent is White. The first respondent, on purchasing the property renovated and moved into the church manse and uses it as his residence to this day.

- [3] Whilst being of the view that they could not own the property because the area had been declared white, the claimants continued to own the adjacent Brownlee Congregational Church despite the Group Areas Act, a church which they had owned since 1925. Of note is that the Certificate of Registered Title in respect of the church T 1212/79 described them as white. Strangely, they considered themselves forced by the Group Areas Act to sell the manse but not the church.
- [4] And so a church with black congregants came to own a church building but not a manse in a white area. Later, these black congregants went on to build a church (but not a manse), in the black area of Bisho. The end result of this strange turn of events is that the claimants today own two churches and no manse. It is the return of erf 4121 on which the manse stands, presently the first respondent's home, which this claim sought to achieve.
- [5] The claim was referred to the Court by the Regional Land Claims Commissioner for the Eastern Cape and Free State (hereinafter referred to as the Regional Land Claims Commissioner) under section 14(1)(d) of the Act together with a report and recommendations supporting the claim for restitution. First and second respondents, Mr ACB Goldacre and the Department of Land Affairs filed written responses in opposition to the claim and the Registrar of Deeds filed a report. At the hearing the claimants presented their case and thereafter the first respondent applied for absolution from the instance with costs. The second respondent supported the application. The application for absolution from the instance was granted. The effect thereof was that the property was not restored to the claimants. My reasons for granting the application appear from the background and synopsis of the case as set out below.
- [6] The property originally formed part of erf 481, King William's Town. Erf 481 was owned by the London Missionary Society until 1925. On 23 November 1925 erf 481 was transferred from the London Missionary Society to the official trustees of the Congregational Union, Church Aid and Missionary Society of South Africa (as the second claimant was then called) and the local trustees of the Brownlee Mission Congregational Church (the first claimant), in trust for the said church. The transfer was subject to the terms of a trust deed annexed to the deed of transfer. Erf 481 was therefore owned by the aforementioned official and local trustees, (the claimants) in trust for the church. Both the Brownlee Church and the manse were situated on erf 481.

¹ Government Gazette No 2140 of 1968.

² No 36 of 1966.

- [7] On 25 February 1977 a portion of erf 481 was sold by the claimants for an amount of R10 000 to the first respondent who owned the adjacent erf 482 on which he ran a nursery business. He bought the portion of erf 481 because he wanted to expand his nursery interests thereon.
- [8] The trustees wished to retain ownership of that part of erf 481 on which the Brownlee Church was situated and transfer only the remainder of erf 481 to the first respondent. It was, therefore, agreed that the property would be subdivided to give effect to this, and that the first respondent would take transfer after the subdivision. Erf 481 was accordingly subdivided into erf 4099, on which the Brownlee church stands, (owned by the claimants under Certificate of Registered Title T1212/1979), and the remaining extent of erf 481, on which the former manse stood, transferred to the first respondent under deed of transfer T1213/1979.
- [9] The remaining extent of erf 481 was thereafter resurveyed and further subdivided into erf 4121 and a remainder of erf 481. It is on erf 4121 (the subject property of this claim) that the original manse improved upon by the first respondent now stands. Erf 4121 is held by the first respondent under Certificate of Registered Title T 2411/80.
- [10] On 22 September 1980 erf 4121 was consolidated by the first respondent together with other properties owned by him, erven 4117, 4119, 4120 and 482 to form erf 4122..
- [11] Erf 4121 is zoned single residential. It is adjacent on one side to former erf 482 on which the first respondent runs a nursery and on the other side to erf 4099, on which the Brownlee Church stands.

Claimant's case

- [12] The claimants case was that Proclamation 212 of 1968 promulgated under the Group Areas Act No 36 of 1966 declared the area in which the property was situated to be for whites only. They were given 30 days notice by the Government to leave. It was the threat of the implementation of the Group Areas Act that forced them into a decision to sell. The notice of eviction has since been lost, in the move from the property. They are of the view that even though there is no notice of eviction or record thereof, there was a forced sale occasioned by the Group Areas Proclamation, sufficient to satisfy the dispossession requirement of section 2 of the Act. They claim that the purchase price of R10 000 for the property was not just and equitable compensation.
- [13] The basis of the claimants claim appears from the claim form dated 15/5/95 and a letter annexed thereto lodged with the Regional Land Claims Commissioner and signed by Mr C Mxenge.
- [14] The claim was two pronged, in that it asked for the restitution of the property as well as monetary compensation for interest paid on the bond for the construction of the new church built at Bisho.

[15] Relevant extracts from the letter by Mr Mxenge, annexed to the claim state:

ADuring the course of 1982 we were advised by the South African government that the area of King William's Town in which our church and church property was situated has been declared a white spot, in terms of the Group Areas Act and we were to leave the property within 30 days of receipt of the notice otherwise we could be prosecuted as our further stay there would be in violation of the said Act@.

15.1 The evidence at the hearing did not bear this out. Mr Tshotyana, the first witness for the claimants testified that the sale of the property came about after Reverend Wing, the then secretary of the Congregational Union Church of South Africa, informed a meeting of the Brownlee Church that the property had to be sold because it was in an area proclaimed for whites only. Mr Tshotyana also stated that the eviction notice was received after the property had been sold for the sum of R10 000. There being no trace of the notice, it was not produced in evidence at the trial.

AWe took immediate steps to sell the property as we had to produce proof that we were not defying the notice. We moved our minister to a four-roomed rented house in Zwelitsha township. As we had no knowledge how to negotiate a price that could enable us to re-establish ourselves comfortably elsewhere and also because of a threat of deadline hanging over our heads we had to make a speedy deal that resulted in us selling our property comprising the minister's house, and several hectares of land, a small farm, to a right wing, anti-black private buyer for a lousy R10 000.

We had a problem selling the church building because it was, without our permission, declared a National Monument and one of the conditions of its new status was that if we decide to sell it the buyer should not alter it in anyway.@

15.2 At the hearing Mr Mxenge admitted under cross-examination that he had made several mistakes in this letter and that the letter was written by him without investigating the facts. He conceded on the basis of documents that had since been discovered that the church had requested the building to be made a national monument. He admitted that at the time he signed the letter annexed to the claim form, he was aware that the first respondent had been approached by the Church and asked if he was willing to buy the property for R10 000. He was also aware that the church had given a valuation of the property in the region of R7 500. He was moreover aware that the Church had instructed its attorneys to negotiate the sale of the property.

AIn the meantime the church was being vandalised and we had no alternative but to go cap in hand to this right wing buyer to keep an eye on the church. He was prepared to do this on condition we allow him to keep his feed and other farming implements inside the church. We entered in a two year contract with him.

At the end of the two year period we had no choice but to ask him to vacate our church because we had a special dispensation, since the church had been declared a monument to now and then hold services while we are still looking for a buyer and also because we felt our church was being desecrated by the right wing white man.

When we terminated the contract and to our surprise he became hostile and decided to fence in the whole property as a result we could not move in and use our church. We sent somebody to ask why he was doing that. He told this man that he has been told by the local council that all

the land surrounding the church is his and we will have to fly if we want to make use of the church and not walk across his land . . .

While all this was happening we decided to build a new church in Bisho for the congregation and it had to be of the same standard . . . The quotation we received for the new church amounted to R493 000. The Ciskei government recommended approval of our loan application as our situation was not of our making.

It is our feeling that since this new church was built as a result of the apartheid laws we should be compensated for that as well because it was not our choice.®

Unfortunate though these submissions may be, they were not supported in evidence, nor do they take the case any further.

- [16] The claimants expressed the view that the description of their race as Awhite® on the Certificate of Registered Title T1212/79 for the church owned by them, was a mistake. It was, they claimed, unbelievable that the official trustees of the United Congregational Church and Missionary Society of SA and the local trustees of the Brownlee Congregational Church could be defined as belonging to the Awhite group® for the purposes of the Group Areas Act.

Respondents' Case

The first respondent made the following submissions in opposition to the claim :

- [17] He opposed the claim on the basis that the property was voluntarily sold to him for the sum of R10 000 as a result of an arms length negotiation entered into between himself and Reverend Joseph Wing, representing the claimants. The sale was initiated by a letter from first respondent's attorneys, approaching the Church to sell the property to him. He wanted to expand his nursery from the next door plot, onto the property. He submitted also that he paid fair market value for the property. This, he stated, was supported by the declaration of sale (filed with the Receiver of Revenue), in which the claimants declared the purchase price (R10 000), to be the fair market value of the property at the time.
- [18] There was an agreement between the first respondent and the Brownlee Church that the minister could stay on in the manse on the property until the first respondent took possession upon transfer in 1979. The only pressure brought to vacate the property was upon the minister to vacate the premises in 1979 so that the first respondent could take occupation. The fact that the minister lived on in the manse for some time after the sale was concluded indicated that no pressure was brought on the claimants to sell the property.
- [19] Approximately six months after the sale, the first respondent received a letter from the church indicating that another offer for R13 000 had been received, which they wanted to accept. As the sale agreement had already been concluded, he informed them he was unable to assist. The congregation hardly ever used the church building on erf 4099 and at his own cost he fenced off the one acre around the church building for the claimant.

- [20] The physical restoration of the property would not be feasible because it would render the remaining portion uneconomical and so carve up the consolidated erf 4122 that its value would bear little or no resemblance to its present value as an economic unit.
- [21] Finally the first respondent disputed that the representatives of the claimants had either the necessary authority to prosecute the claim or the requisite locus standi.

The second respondent submitted as follows in opposition to the claim :

- [22] The claim did not fall within the ambit of Section 2 of the Act, the claimant had not been dispossessed of the property nor had a forced sale occurred. Furthermore the relief claimed in respect of the interest on the bond of the new church building in Bisho, fell outside the scope of the Act and the claimant was accordingly not entitled to this relief. The claimants locus standi was moreover in dispute.
- [23] The following documents obtained by second respondent in its investigation of the matter (not referred to by the Regional Land Claims Commissioner for claimants), contradict almost all the claimants allegations:
- (i) A letter from claimant's attorney written in 1966 supporting a request by the church that the church building be declared a national monument, from which it is apparent that the sale of the property was being contemplated as far back as then.
 - (ii) Various minutes of Meetings of the Investment Committee of the second claimant, (minutes of which the parties had agreed at a pre-trial conference could be accepted without further proof), from which it emerged:
 - (a) that as of March 1976 it had been agreed to sell the property and retain the historic church, and that instructions had already been given to attorneys to obtain a subdivision and valuation of the property;
 - (b) that as of 28 June 1976 a valuation of the property, excluding the portion forming erf 4099, had been obtained for R7 589, that a decision was taken to subdivide the property, retain erf 4099 and to inform the attorneys for the buyer that the Church was willing to sell the remaining extent including the manse, for R10 000.
- [24] The second respondent submitted also, that the description of claimants as white on Certificate of registered Title T1212/79 contradicted their argument that this was a forced sale in terms of the Group Areas Act.
- [25] An expert valuation report submitted by the second respondent estimated the market value for the property in 1977, at R15 000.
- [26] As stated at paragraph 5 above, at the close of plaintiff's case the first respondent applied

for absolution from the instance with costs. In considering the application for absolution, I examined, in the light of the evidence before me and the arguments presented, whether the claimants had *made out a prima facie case in respect of* the following disputed issues, crucial to the success of their claim: dispossession; just and equitable compensation; the claim for monetary compensation for interest on the bond and locus standi. I shall deal with each of these in turn.

Dispossession

- [27] Mr Patterson, for the first respondent, argued that the claimants had failed to lead evidence that the area in which the property was located had been zoned for the white group by Proclamation 212/1968 in terms of the Group Areas Act. This they should have done as a basic requirement for the claim. In the absence of such evidence they had not shown that the property had been zoned white. I agree. The Proclamation³ filed by the Commission, declares that the areas defined in paragraphs (a), (b) and (c) of the Schedule thereto are areas for occupation and ownership of the white group. The Commission's report alleged that the property fell under para b of the Schedule. The property is however not mentioned by erf name at such paragraph. In my view evidence, should have been led in explanation of the allegation that the property fell within the ambit of para b to the Schedule. Short of such evidence I cannot simply accept as a matter of fact that the property was included in the erven mentioned at para b to the Schedule of the said Proclamation.
- [28] The next ground argued in support of the application for absolution was that the claimants had led no evidence attacking the accuracy of the Certificate of Registered Title No T1212/79 in respect of erf 4099, and their description as white appearing thereon.
- [29] Mr Patterson expressed the view that the description of the claimants as being of the white group on the Certificate of Registered Title T1212/79 for erf 4099, would have come about as a result of an affidavit which an officer of the trust/church would have been required to make in terms of Group Areas Regulation 3(b) read with Group Areas Regulation 2(b).⁴ Mr Patterson explained that even though Regulation 2 referred to a

³ Supra n 2.

⁴ Promulgated under sections 43 and 29 of the Group Areas Act 36 of 1966 contained in Government Notice 819 dated 7 June 1963.

Regulation 2(b) states:

- A2. Save as provided in Regulation 4, there shall in every deed lodged for registration in the deeds registry by which immovable property is sought to be acquired, expressly be set out and in terms of regulation 3 be proved -
- (b) if the party is a company, the group of which every person who holds or is deemed to hold a controlling interest in the company, is a member.

group areas affidavit in respect of a deed and not a Certificate of Registered Title it was nonetheless applicable to that document too. A Certificate of Registered Title he explained was a deed by which ownership is registered, and one which supersedes a previous deed. It too would have had to reflect the race of the owner, and indeed it would have been impossible for a deed to have been registered without such information.

- [30] He said the claimants were the only persons who could explain the Certificate and they had led no evidence on the issue. They had therefore failed to make out a prima facie case supporting the submission that the racial classification on the Certificate of Registered Title arose as a result of a mistake on the part of the person who drew up the Certificate.
- [31] Mr Patterson's explanation certainly is plausible, and one which I am, in the absence of any evidence or explanation to the contrary, prepared to accept. I note also that the Registrar of Deeds, King William's Town, in a report submitted for this case refers to Certificate of Registered Title T1212/1979 as the **title deed** (my emphasis) for erf 4099.
- [32] Accordingly I accept the contents of the Certificate of Registered Title including the classification of the trustees as white, without commenting on the accuracy of such classification, which I believe does not detract from the validity of the Certificate of Registered Title. The effect thereof is that I find that the claimants were classified as

Regulation 3(b) states:

- A3. If a party to a deed mentioned in regulation 2 -
- (b) is a company, the group of which every person who holds or is deemed to hold a controlling interest in the company is a member, shall be proved by an affidavit made by an officer of the company.@

Section 1(v) of the Group Areas Act defines a company as follows:

A(v) 'company' includes any private company, any company referred to in section 37, any foreign company as defined in section 229 of the Companies Act 1926 (Act No.46 of 1926), **any corporate or unincorporate association of persons**, (my emphasis) and any registered or unregistered corporate body other than a statutory body.@

Regulation 3(b) requires an officer of a company which lodges a deed for registration, by which immovable property is sought to be acquired, to make an affidavit proving the group of which every person who holds a controlling interest in the company, is a member.

The claimant trust in which the church property vested, would fall under the definition of a company as set out at section 1 of the Group Areas Act. An official of the trust would have made a Group Areas affidavit declaring the race group of its members in compliance with Regulations 2(b) and 3(b) before Certificate of Registered Title T1212/1979 would have been issued.

belonging to the white group for purposes of the Group Areas Act and were not forced by law to sell the property. Why they came to the mistaken belief that they were forced to do so, is a mystery which continues to elude me. I am puzzled also by the fact that the claimants did not even attempt to explain how it has been possible for them to own erf 4099 to date, irrespective of whether they are white or not. Nor did they explain how it was possible for the Group Areas Act to dispossess them only of one property, erf 4121, and not erf 4099, adjacent thereto.

- [33] On the question of a forced sale, Mr Patterson argued that the claimants had failed to make out a prima facie case that there was indeed such a sale. He pointed to the fact that Mr Tshotyana, the first witness for the claimants, had conceded that the document which he thought was a notice from the state to vacate the property, arrived after the sale, from which fact it must be deduced that the notice had nothing to do with the sale. There was no evidence of an active dispossession by the state. In the circumstances the court must hold, he argued, on the evidence of the claimants that the sale was a free and voluntary act subject to no duress.
- [34] I agree. The submissions in the claim form and Mr Mxenge's letter annexed thereto were not borne out in oral evidence. On the contrary the evidence of Messrs Mxenge and Tshotyana referred to at paragraphs 17.1 and 17.2 above, contradicted the crucial submissions set out in those documents. I am accordingly unable to attach any weight to those sections of the letter, the very sections upon which the basis of the claim rests.
- [35] In the circumstances I arrived at the view that the claimants did not present sufficient evidence to substantiate the claim as presented in the claim form and written submissions. Nor were they able to refute the allegations by the Respondents in opposition to the claim. I therefore find that there was no forced sale which resulted in the claimants being dispossessed of the property. The sale arose out of a transaction between a willing seller and willing buyer devoid of any duress. I accordingly find that the claimants were not dispossessed of the property.

Just and equitable compensation and compensation for interest on the bond of the New Church

- [36] Evidence adduced by the claimants did not bear out their submission that the purchase price of R10 000 was not just and equitable compensation. A valuator called by them testified to the 1977 market value of the property being R13 500, (in fact R1 500 less than that of the first respondent's expert valuation). The valuator testified that she had also valued the property in 1976 on the instruction of the church's attorneys, and conceded that the valuation of R7 589 at that time could have been set by her in 1976.
- [37] These facts notwithstanding, I am of the view that I do not have to decide on the question of just and equitable compensation, as I have found there was not a dispossession but a sale between a willing buyer and willing seller. For that reason also I do not have to decide on the claim for monetary compensation for interest on the bond of the new church.

Locus standi

- [38] Documents purporting to be resolutions by the claimants authorising their representatives to bring the claim, were not accepted as such by the respondents. Mr Patterson asserted these were not proper resolutions by the trustees; accordingly the case was not properly before court and locus standi had not been established.
- [39] In substantiation thereof he stated that the Act includes in the definition of Aa right in land@the interest of a beneficiary under a trust arrangement.⁵ The property, he said, was transferred to the trustees in trust for the church, the beneficiary, subject to the terms of a trust deed.
- [40] The property, he pointed out, was therefore owned by a trust in which there was perpetual succession of two different types of trustees - the official and local trustees. The trustees, so his argument went, as owners of the property should have passed a resolution in concert authorising its representatives to bring a claim for its restitution.⁶ The purported resolutions handed in by the claimants as Exhibits A, B and C fell far short of a proper resolution by the trustees authorising the claim and acting in concert.
- [41] *Honore's South African Law of Trusts* says the following in this regard:

ANormally a trust does not possess juristic personality. In that case, subject to the trust constitution, the trustee in his capacity as such (*nomine officii*) is the proper person to bring and defend actions in relation to a trust and to make applications in court in connection with it.⁷

In principle all the trustees should join in bringing the action. But in *Twentyman v Hewitt*⁸ it was held that two of the three trustees appointed by an informal antenuptial contract could maintain an action claiming the execution of a proper deed and could thereafter sue on the deed. But the majority decision was referred to with some contempt by Menzies, J, who remarked that 'the absence of one of the trustees is in the replication expressly brought to the notice of the defendant and the court, who must be presumed to have read the pleadings'.⁹ Later cases have rightly held that all the trustees in office at the time of suit must join in bringing an action.¹⁰ Hence if one of two trustees signs a power of attorney for himself and on behalf of co-trustees there must be

⁵ Section 1 of the Act.

⁶ *Goolam Ally Family Trust v Textile, Curtaining & Trimming (Pty) Ltd* 1989 (4) SA 985.

⁷ Honore and Cameron *Honore's South African Law of Trusts* 4ed (Juta, Cape Town, 1992) at 340.

⁸ (1833) 1 Menz 156.

⁹ (1833) 1 Menz 156 at 161.

¹⁰ *Walker v Beeton's Trustees* 1868 Buch 225; *Ethiopian Church Trustees v Sonjica* 1926 EDL 107; *Muller v Lombard, Van Aardt* (1904) 21 SC 657.

proper evidence of his authority to do so.¹¹

- [42] I am of the view that this action should have been brought either by all the Trustees (both national and local) or by less than their complete number on behalf of all of them. In the latter event there would have had to have been proper evidence of authority.
- [43] Mr Patterson disputed also the assertion by Mr Ndzondo, for the claimants, that the first Claimant derived locus standi from Section 13 of its amended constitution, which authorises it to sue or be sued in its own name without joining the mother body. Section 13, in my opinion, does not give the local Brownlee Church the power to sue, litigate or pass resolutions to do so, in respect of the property. That power resides only with the owners of the property in whom the property vests by virtue of the trust deed. Legal action pertaining to the property can only be authorised by resolution of the trustees acting in concert.
- [44] I therefore find that there was no proper resolution authorising the lodgment of this claim by the claimants and that locus standi had not been properly established.

In view of the above I found that the claimants failed to make out a prima facie case that they were dispossessed of a right in land in terms of section 2 of the Act and I granted the application for absolution from the instance.

Costs

- [45] On the question of costs, whilst I agree with the sentiment that the Land Claims Court is not bound to follow the general rule in the practice of the High Court and Supreme Court of Appeal that costs follow the result¹², I could not find reason not to follow the general rule in this case.
- [46] The claimants were made aware of the problems with their claim in the written responses by the respondents well before the hearing and these were also alluded to at pre-trial conferences, yet they persisted with their claim. I cannot find that the pursuit of their claim, whilst mistaken was not unreasonable.¹³
- [47] I arrived at the view that my discretion to make such order for costs as I deem just, accorded to me at section 35(2)(g) of the Act, would be properly exercised if the application was granted with costs. The application was accordingly granted with costs.

Conclusion

¹¹ *Trustees of Dodds King v Watson* (1848) 1 Menz 140 as explained in *Muller v Lombard, Van Aardt* (1904) 21 SC 657.

¹² *Hlatswayo and others v Hein* [1997] 4 All SA 630 LCC at 640b.

¹³ *Ibid* at 644a.

- [48] It is unfortunate and indeed bordering on the tragic that erf 4121 was sold in the mistaken belief that the claimants could no longer own the premises - and so a congregation that had worshipped in a church and whose minister had occupied its manse for years was put in a situation where it became difficult for them to continue worshipping and they were in effect deprived of their place of worship.
- [49] It is tragic that this poor community went on to incur the expense of building a new church, an expense that they will bear for a long time to come.
- [50] Perhaps the greatest tragedy in this case is that the anomaly of being able to own erf 4099, the old church, in terms of the Group Areas Act and yet not being able to own the adjacent erf 4121 was never brought to their attention.
- [51] Whilst this claim is not in respect of the church and erf 4099, it is so closely aligned thereto that I take the liberty of making the following comments in relation to that property: We heard in evidence that the congregation desires to worship in the old church if a mutually satisfactory arrangement can be made between themselves and the first respondent. We urge the parties assisted by their legal representatives to pursue such an arrangement. It is disturbing to the court that at the inspection in loco, physical access to the church was not easily gained, because the area is so overgrown, a situation which could be dangerous, especially to elderly members of the congregation.
- [52] I am sorry that the church was locked and we were not able to inspect its condition. The South African reality abounds with examples of people of colour being separated from their places of worship in white areas. The continuation of this especially in a church steeped in the kind of values as the Brownlee Church is, should not be permitted.

JUDGE Y S MEER

I agree

I agree

JUDGE J MOLOTO

ASSESSOR ADV M MASIPA

Heard on: 27-29 May 1998

Handed down on: 24 June 1998

For the claimants:

Adv Ndzondo and Ms Kahla instructed by *Kahla & Co*

For the respondents:

For first respondent *Adv T Patterson* and *Mr J Clarke* instructed by *Smith, Tabata, Barnes & Ross Inc*

For second respondent *Adv H Havenga* and *Mr R De Vos* instructed by the *Department of Land Affairs*