



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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 689/2017

In the matter between:

**MARTIN CALAKE XUMA**  
**MARTIN CALAKE XUMA N.O.**  
**BENJAMIN RALEIE**  
**DYKMAN KOVU**  
**JOSEPH MOTLALE**  
**JEREMIA MERABE**  
**SAKIA TSOEUTSE**  
**JOSEPH TSOEUTSE**

1<sup>st</sup> Applicant  
2<sup>nd</sup> Applicant  
3<sup>rd</sup> Applicant  
4<sup>th</sup> Applicant  
5<sup>th</sup> Applicant  
6<sup>th</sup> Applicant  
7<sup>th</sup> Applicant  
8<sup>th</sup> Applicant

and

**TSHEOLE TLALE**  
**SIBONGILE NYANGWA**  
**MOTOPENG LOVERS SENYATLE**  
**MADITABA NDORO**  
**SILLO DANIEL TLALE**  
**TSIETSI MOTLAPELA-MPATSHENG**  
**SOPHIE MOSHODI**  
**APPE MATSOSO**  
**EVODIA MAKOANE**  
**PULANE STOFFEL**  
**JEMINA NAHA**

1<sup>st</sup> Respondent  
2<sup>nd</sup> Respondent  
3<sup>rd</sup> Respondent  
4<sup>th</sup> Respondent  
5<sup>th</sup> Respondent  
6<sup>th</sup> Respondent  
7<sup>th</sup> Respondent  
8<sup>th</sup> Respondent  
9<sup>th</sup> Respondent  
10<sup>th</sup> Respondent  
11<sup>th</sup> Respondent

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**HEARD ON:** 5 MAY 2017

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**JUDGMENT BY:** MBHELE, J

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**DELIVERED ON:** 03 AUGUST 2017

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- [1] The applicants seeks the confirmation of the *rule nisi* issued in this court on 23 February 2017 interdicting the respondents from indirectly, directly or by use of third parties; interfering with the activities of the St Engenas Zion Christian Church, Odendaalsrus (the St Engenas ZCC) , committing any acts of assault and intimidation or swearing at any individual applicants or members of St Engenas ZCC, inciting and/or influencing any other person to commit any of the aforesaid acts.
- [2] The respondents are members of the St Engenas Church.
- [3] First applicant has attested to the founding affidavit on behalf of all the applicants. He states that he is a Priest of the St Engenas ZCC and serves as head of administration of the Odendaalsrus branch of the St Engenas ZCC.
- [4] The St Engenas ZCC, Odendaalsrus branch has been plagued by strife and discord within its members for some time. This is evident from previous court battles between the members.
- [5] The first applicant has previously approached this court seeking relief against some of the respondents for similar conduct.

- [6] The respondents dispute the authority of the first applicant to bring this application and further take issue with the Applicants' failure to join the St Engenas ZCC as a party to these proceedings.
- [7] It is necessary to address the points in *limine* before I consider the merits of the application.

**LOCUS STANDI:**

- [8] Mr. Phalatsi, on behalf of the respondents, contended that the constitution of the church does not have a provision for a title of a priest and failure by the applicants to file supporting documents entitling them to bring this application makes it difficult to fathom where the first applicant drew his authority and title. He, further, submitted that at the time the first applicant brought the current application he did not have the necessary authority as he was only designated a deacon on 1 April 2017 long after this application was launched. In his view, the certificate issued failed to ratify the first applicant's authority.
- [9] Mr. Louw, on behalf of the applicants, submitted that although the first applicant's certificate is dated 1 April 2017, he has at all material times served as the administrative head of the St. Engenas ZCC Odendaalsrus branch. He, further, argued that the impugned acts affected the applicants personally and in their capacities as the members of the council of the St. Engenas ZCC Odendaalsrus branch. He contended, further, that the

respondents have a right to seek interdict where their bodily integrity is threatened.

[10] In **ANC UMVOTI COUNCIL v UMVOTI MUNICIPALITY 2010 (3) SA 31 at 36** the court held as follows:

“It is clear that, where authority is challenged in the answering affidavit, it is permissible to make out a case in reply. It is further clear that, even if the authority was not in place when the litigation commenced, actions taken can be ratified subsequently”.

[11] I am in agreement with the view expressed in the above dictum. It is clear that even if the authority was not in place when the application was launched that defect was cured in the replying affidavit.

### **NON JOINDER:**

[12] The respondents take issue with the applicants’ failure to join the St Engenas ZCC as it has a direct and substantial interest in the proceedings. Mr Phalatsi, contended that the applicants have no business regulating the conduct of the respondents at Church without joining the Church as a party.

[13] Rule 10(3) of the uniform rules of court provides that:

“(3) Several defendants may be sued in one action either jointly, jointly and severally, separately or in the alternative, whenever the question arising between them or any of them and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of

law or fact which, if such defendants were sued separately, would arise in each separate action.”

[14] In **Judicial Service Commission v Cape Bar Council and Other** 2013 (1) SA 170 at par 12 the following was said:

“[12] It has by now become settled law that the joinder of a party is only required as a matter of necessity — as opposed to a matter of convenience — if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned (see eg ***Bowring NO v Vrededorp Properties CC and Another 2007 (5) SA 391 (SCA)*** para 21). The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one.”

[15] It is clear from above that a plea of non-joinder can only be sustained if a person who is not a party to the action, has a direct and substantial interest which may be prejudicially affected by the outcome of the matter.

[16] In the current matter, the relief sought does not upset the values espoused in the constitution of the St. Engenas ZCC. The constitution of the St. Engenas ZCC gives autonomy to the congregations to deal with the day to day running of the local branches of the Church.

[17] The constitution of the St Engenas ZCC encourages discipline amongst its members. The relief sought is centred around a desire to run church services in an orderly and peaceful manner.

The first applicant has a right to bring this application in the spirit of maintaining order in the Church.

- [18] I am of the view that there is no merit in the points in *limine* raised by the respondents.

### **SUBMISSION BY PARTIES:**

- [19] It is the applicants' case that the respondents are a splinter group that has intentions to dethrone the current council of the Odendaalsrus branch of St Engenas ZCC. In his affidavit, the first applicant states that the respondents disrupted church services on 06, 09 and 11 December 2016. The disruptions turned violent with members of the congregation being violently attacked by the respondents. The first applicant further sets out the history of litigation involving the applicant and some of the respondents.
- [20] Mr Louw, on behalf of the applicants, made a submission that where the disciplinary code makes provision for internal processes, it does not preclude the council from seeking alternative relief.
- [21] The respondents put a blatant denial that the applicants have been authorised to call themselves a duly appointed council of the St Engenas ZCC Odendaalsrus Branch. Mr Phalatsi contended that the relief sought by the applicants is not supported by facts. He submitted, further, that the applicants failed to show in detail who of the respondents attacked the congregants and applicants. He contended, further, that the fact that the applicants ignored

internal processes, provided for in the constitution, is an indication that the conduct complained of did not occur.

[22] In **Plascon-Evans Paints v Van Riebeeck Paints** 1984 (3) SA 623 (A) at 634H-635A – Corbett JA stated:

“It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or *bona fide* dispute of fact.”

[23] I am not persuaded that any real genuine or *bona fide* dispute of fact exists as to the validity of the applicants' position within the structure of the Church.

[24] It is not desirable for voluntary associations to bring all their problems to courts when there are internal mechanisms to deal with disputes between members.

[25] The court can only interfere with the internal affairs of the church where there is a civil rights or interest involved justifying interference by a civil court. (See **Mankatshu v Old Apostolic Church of South Africa and Others** 1994 (2) SA 458 at 460).

- [26] The applicants abandoned prayer 2.1.3 of the notice of motion as, if granted, it has a potential of infringing on the respondents' right to freedom of association.
- [27] It is clear from the papers that the parties have had their fair share of strife and disagreements. If the impugned conduct is not arrested, the rights of the general body of worshippers will be threatened.
- [28] The right to freedom of association is guaranteed in the constitution. While appreciating that the above right is not absolute the respondents must not be denied their right to choose the organisation with which they wish to associate. Such right comes with responsibility and understanding that the constitution of such voluntary association must be respected.
- [29] I am of the view that the application must succeed.

**COSTS:**

- [30] It is trite that the issue of costs falls within the discretion of the court. Such discretion must be exercised judicially having regard to the facts of each matter. The constitution of the church made provision for the matter to be resolved internally. This process could have eliminated the issue of costs. The above does not take away the right of the applicants to seek alternative relief from court.
- [31] In the circumstances, I make the following order:



**ORDER:**

1. The respondents are interdicted from:
  - 1.1 Interfering with church activities of St Engenas Zion Christian Church, Odendaalsrus, including but not limited to any church services or gatherings of the members of the church.
  - 1.2 Intimidating and committing acts of assault on any individual applicant or member of the St. Engenas Zion Christian Church, Odendaalsrus.
  
2. Each party to pay their own costs.

**NM MBHELE, J**

On behalf of applicants: Advocate Louw  
Instructed by: KRUGER VENTER ATTORNEYS  
c/o LOVIUS BLOCK  
BLOEMFONTEIN

On behalf of respondents: MR. PHALATSI  
Instructed by: NW. PHALATSI AND PARTNERS  
BLOEMFONTEIN