



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Not Reportable

Case No: 11837/2016

In the matter between:

CHRISTIAN FAITH GOSPEL CHURCH IN AFRICA APPLICANT

and

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| SANDILE NORMAN DLAMINI | 1st RESPONDENT |
| NONHLANHLA DLAMINI | 2nd RESPONDENT |
| NGONYAMA TRUST | 3rd RESPONDENT |
| NKOSI ZWELITHINI DOMINIQUE MKHIZE | 4th RESPONDENT |
| KHABAZELA TRADITIONAL COUNCIL | 5th RESPONDENT |
| INDUNA THULANI SHOZI | 6th RESPONDENT |
| INDUNA THULANI MALINGA | 7th RESPONDENT |

JUDGMENT

Delivered on: 7 December 2017

GORVEN J

[1] This matter concerns a dispute over the right to occupy a church building (the building). The crisp issue in the matter is whether the applicant has that

right or the first respondent in his personal capacity has that right. The applicant seeks relief by way of a spoliation order and an interdict to prevent any of the respondents from acting in any way adverse to the applicant's right to occupy the building. Other than the third respondent, all of the respondents opposed the application and were represented by the same counsel.

[2] The matter was referred for oral evidence. At the beginning of the hearing, it was agreed that the following were the issues for decision:

1. Whether the first respondent was acting as the agent of the applicant or not at the time the land was allocated.
2. Whether the applicant's representatives handed the keys to the building to the sixth and seventh respondents as a result of a threat by those respondents that unless this was done, the building would be destroyed.
3. Whether, during July 2015, the first respondent was occupying and operating the church at Embo in his personal capacity or as a pastor employed by the applicant.

[3] The background to the matter is largely common cause. In 2004, the first and second respondents were members of the Christian Fellowship Church. It functioned at Embo. At least the first respondent was a pastor in that church. They became dissatisfied with Archbishop Ncube, the leader of the church. They and approximately 40 to 45 others left that church and began worshipping in the garage of the first and second respondents' home. Soon thereafter they met Pastor Shelembe. At the time, he was chair of the Southern Region of the applicant. The applicant had a national structure, three regions and a number of branches in each region. The two respondents and those who had left with them attended a service at the Botha's Hill branch of the applicant. They introduced themselves and were welcomed. They also attended a service at Ezakeni soon after the arrangement began.

[4] It became clear that, in essence, there were three issues which required decision. The first was the nature of the relationship between the first and second respondents and the applicant. The applicant claimed that the first and second respondents became members. They claimed that they were simply fellowshiping with Pastor Shelembe and, thus, the applicant. An interrelated issue is on whose behalf the first respondent and one Philani Sithole (Sithole) obtained the right to use land owned by the Ingonyama trust and administered by the traditional authorities on which to construct and use a church building. In the papers, the first respondent contends that this right was given to him personally. In his oral evidence, he conceded that the right was given to him on behalf of the congregation worshipping at Embo. The applicant contends that the right was given to the Embo branch of the applicant. The third issue is whether or not the applicant is entitled to spoliatory relief. It is common cause that it was in occupation of the building and surrendered the keys to the building to the traditional authorities. The applicant contends that it did so under threat by the traditional authorities and, accordingly, this amounted to an unlawful deprivation of its occupation. The tribal authorities, in the form of the fourth to seventh respondents, deny any form of coercion.

[5] It should be mentioned that the respondents conceded in argument that, if the first respondent became a member of the applicant, all of his actions thereafter were taken on behalf of the applicant. This was a correct concession. It is the probabilities, taken as a whole, which will demonstrate whether the first two respondents became members of the applicant.

[6] The first respondent became part-time pastor to the congregation at Embo. This was because he was a builder with his own business. He also became a member of the Regional Executive Committee of the applicant, virtually from the beginning, holding down the building portfolio. At some

stage after meeting Pastor Shelembe, the congregation at Embo moved to worship in a clinic. This proved inadequate and property previously occupied by one Richard Langa was found to be available in 2006. The property is owned by the Ingonyama Trust and administered by the traditional authorities. The first respondent and Sithole met with the traditional leaders and negotiated the use of the property for the congregation at Embo. A handing over ceremony was held at the homestead of Langa in the presence of the traditional authorities, members of the congregation and Pastor Shelembe.

[7] A church building (the building) was constructed and the congregation at Embo began to worship there. It is clear that over the years the first respondent participated fully in the structures of the applicant. He attended conferences, served on the Regional Executive Committee, hosted meetings of the applicant and went to special Passover services at Hluhluwe, Ezakheni and other places. Despite this, he and the second respondent claim that they were never aware of the name of the applicant until a dispute arose in 2015. It arose in the following way.

[8] During 2015, the wife of Pastor Shelembe arranged for transport of women from the Embo congregation to a convention of the applicant. This was done without the knowledge of the first or second respondent. The two respondents were upset by this. On a Saturday afternoon, Pastor Shelembe visited them and apologised on behalf of his wife. They accepted his apology. A meeting had been scheduled for the following day to discuss the dispute and he requested that they did not mention what his wife had done in that meeting. After that meeting, the two respondents became convinced that, not only had Pastor Shelembe's wife been involved in the arrangements, but Pastor Shelembe himself had been involved. In addition, they were requested by Pastor Shelembe to keep this a secret. This shattered the trust of the first and second respondent

in Pastor Shelembe. Their evidence was that they realised that his vision and theirs differed to the extent that they could no longer retain their fellowship with him.

[9] With the knowledge of the first respondent, the second respondent accordingly wrote a letter. In it, Pastor Shelembe and his wife are addressed as ‘our leaders’. This contained the following two paragraphs:

‘Our leaders we are writing this letter to inform you that we are experiencing difficult times in our lives. We have reached a decision as a Dlamini Family to leave the church, Christian Faith Gospel Church in Africa.

...

Our leaders, we have a request that you arrange with the church members from Embo because we can no longer be able to see them again as from when we are writing this letter.’

It is common cause that, after this letter was written, the first respondent told the congregation at Embo that he would no longer be pastoring the church or attending the building. It is further common cause that, between July 2015, when they wrote the letter, and March 2016 neither he nor the second respondent were at all involved with the church at Embo, apart from praying for them.

[10] On a Sunday in March 2016, Pastor Dladla, a full-time employee of the applicant, was officiating at the service held in the building. The two respondents and some others arrived at the building. After he finished preaching, they went forward and said that they wished to make use of the building. The applicant says that they also requested keys to the building. There is a dispute as to whether this was done and also whether it was a request or a demand. Pastor Dladla refused to give them the keys. However, he indicated that he would speak to the leadership and would give those two respondents a response before they went to bed. There is a dispute as to whether the second respondent became annoyed and angry and said that they refused to leave until

they had the keys and that, if the keys were not given to them, they would see what type of person she was. They eventually left without the keys. Pastor Dladla and Sithole then spoke to Pastor Shelembe who told them that they should not give the two respondents the keys. The two respondents later approached first Mrs Mkhize and then Mrs Gasa and requested the keys. These requests were also refused. Once again, there is a dispute as to whether these were demands or requests.

[11] As a result of these actions, Pastor Dladla applied at the police station for a protection order against the first and second respondents. When the two respondents received this, they approached the Izinduna, the sixth and seventh respondents. These two persons then went to the building during a Sunday service and demanded the keys to the building from Pastor Dladla. He telephoned Pastor Shelembe who told him not to give them the keys. The applicant's witnesses said that the sixth and seventh respondents then told the persons present that the Inkosi for the area, the fourth respondent, had said that if they did not surrender the keys, the building would be demolished. This was reported to Pastor Shelembe by Pastor Dladla. Eventually Pastor Dladla and Pastor Shelembe went to the home of the seventh respondent. They appealed to the sixth and seventh respondents not to take the keys and to allow the applicant to continue to use the building. This request was refused. The respondents in question say that Pastor Shelembe was told that, if he did not surrender the keys, the services at the building would stop. The keys were surrendered soon after. A meeting of the fifth respondent was convened and, according to the respondents, resolved that both parties be allowed to use the building. However, the keys were given only to the first respondent. He, and persons adhering to him, are the only ones worshipping in the building.

[12] As I indicated, there is a dispute as to the basis on which the first two respondents and their fellow leavers from the Christian Fellowship Church related to the applicant. The witnesses of the applicant all said that the first two respondents and those who came with them joined the applicant as members and were welcomed as such. The first two respondents testified that they arranged that they would simply fellowship with Pastor Shelembe and his church. They did not join the applicant and did not, in fact, know that the applicant was called the Christian Faith Gospel Church in Africa until Pastor Shelembe met with them on the Saturday afternoon to apologise. At the meeting, he mentioned that the applicant had a constitution which they had also not known hitherto. In fact, they were unaware that the applicant was also simply known as the Christian Faith Gospel Church. This happens to have been the name that the first respondent says that he gave to his church at Embo. As I indicated initially, the heart of the dispute in this application is whether the applicant was given permission to occupy the land or whether the first respondent, as an individual, was given this permission. In essence, the version of the first respondent was that the congregation at Embo belonged to him and not to the applicant. It is not necessary to traverse all the evidence which was led. An evaluation of the evidence referred to below will suffice.

[13] The first respondent was a very poor witness. On numerous occasions and, in particular, when confronted with difficulties and improbabilities in his version, he was evasive and simply did not answer the question asked of him. There are numerous examples of this. He could not, for example, explain how it was possible that he did not know the name of the applicant church when he was a member of the Regional Executive Committee. The minutes of the Regional Executive Committee of the applicant dated 25 February 2012 were put up. These are headed with the full name of the applicant. It is recorded that the minutes of the previous meeting were 'confirmed with amendments'. As a

member of the Regional Executive Committee, the first respondent was at the meeting which confirmed the previous minutes as was the second respondent. It is overwhelmingly probable that all the minutes of that body were headed in the same way, viz. with the full name of the applicant. The minutes record the scheduled dates of six further meetings to be held in 2012. It is almost inconceivable that the first respondent did not read any of those sets of minutes when they would have been confirmed at each successive meeting.

[14] As indicated, he said that he was not even aware that the applicant was also known as the Christian Faith Gospel Church. He was also in fellowship with this church and attended national and provincial meetings, including the Regional Executive Committee meetings. It is utterly improbable, given those facts, that his church was named with the exact name as the one by which the applicant was known, the Christian Faith Gospel Church.

[15] His explanation of what he meant by the two paragraphs set out above in the letter arising from the dispute was simply untenable. He claimed that this simply meant that he was no longer going to be fellowshiping with Pastor Shelembe. He was only withdrawing for a time of prayer. Despite this, the letter said that he and his family had decided to 'leave the church, Christian Faith Gospel Church in Africa.' He also could not explain why, if the Embo congregation was his and not that of the applicant, he no longer met with them after leaving off fellowship with the applicant. He attempted to say that he was only temporarily leaving the congregation in charge of Pastor Shelembe while he went to pray. No hint of this is contained in the letter. He could not explain why, if the congregation at Embo was his and he no longer wanted to be associated with the applicant or Pastor Shelembe, he did not in the letter forbid the applicant from making use of the building and dealing with members of his congregation. He claimed that this was because he held Pastor Shelembe in high

esteem. This also makes no sense because he gave as a reason for leaving the behaviour of Pastor Shelembe and his wife. He said that his vision was at loggerheads with theirs. If this was so, it begs the question why he entrusted his congregation to the care of Pastor Shelembe. All of this is improbable in the extreme.

[16] In addition, when he arrived at the service on 13 March 2016, he did not indicate that, after his sojourn away, he was now coming to take up the pastorate of his congregation. He requested that, along with the congregation left behind, he would be entitled to make use of the building. This is inconsistent with his claim that he had left it in the temporary care of Pastor Shelembe whilst he prayed. It is clear that he intended to use the building for a different congregation to that which was left behind. In his appeal to Pastor Shelembe to care for those he was leaving, there is a clear indication that he regarded the congregation as belonging to the applicant and simply notified the applicant that he would no longer be functioning as a Pastor in that congregation.

[17] He had to concede that the permission had been given to the community for the church to be built and that this was not his private right to occupy. As indicated, this was a departure from his affidavit. He also had to concede that he had been a member of the Regional Executive Committee of the applicant for more than one year. He could not explain how this was the case when he was not a member of the applicant. He simply said that because he was a builder, they wanted him on the committee. When Pastor Dladla testified, he stated that between 2008 at 2012, he was a full-time pastor at Embo. This was not challenged until the first respondent denied it in his evidence. Pastor Dladla also stated that he conducted cell group meetings and Bible studies during the week and took funerals. This was also not challenged until the first respondent denied

that in his evidence. He went further to say that Bible studies were not conducted at all during that period and had only begun after the split.

[18] He could not explain how Sithole, who left the Christian Fellowship Church with him, came to know the name of the applicant and he did not when he was a pastor and Sithole was only a member. He stated in his answering affidavit of the Saturday afternoon meeting that ‘I learned that I had been dealing with members of the CHRISTIAN FAITH GOSPEL CHURCH IN AFRICA, I had never known of the IN AFRICA part until then.’ He could not explain why he said this when he claimed that he had not known even that the applicant was known as the Christian Faith Gospel Church.

[19] He claimed that Langa was entitled to agree to his use of the land when even the fourth respondent, called to support his version, confirmed that Langa, who no longer occupied the land, could not do so. Langa’s rights in the land were limited to ensuring that burial sites on the land were respected.

[20] His evidence concerning the demand for the keys of the church is also improbable. When taxed as to whether he had been underhand in requesting keys from the ladies after he was aware that Pastor Shelembe had refused the keys, he claimed that he had approached them prior to arriving at the building on 13 March 2016. It was clearly demonstrated that this was an attempt to avoid the conclusion that he had in fact been underhand. He conceded that he had not approach them before that date.

[21] I could multiply examples of the extreme improbability of his version. In summary, his evidence, and that of the second respondent, on the issues where there were disputes was utterly improbable. It is clear from the foregoing that the evidence of the applicant’s witnesses, which was by and large consistent and

entirely probable, must be accepted over that of the first and second respondents. This means that the applicant proved that the first and second respondents joined the applicant. The second respondent was appointed as a pastor to the Embo congregation of the applicant. That congregation remained a congregation of the applicant. The first respondent obtained permission to construct and use a building on the designated land on behalf of the applicant. The first and second respondents resigned their membership of the applicant in July 2015. After the resignation, the applicant remained the entity entitled to use the building constructed on the land in question. Questions 1 and 3 must thus be answered in favour of the applicant.

[22] The next issue is that of spoliation. In particular, whether the keys were surrendered as a consequence of an unlawful threat issued by the sixth and seventh respondents. Pastor Dladla testified that the sixth and seventh respondents arrived during a Sunday service. They indicated that the Inkosi had sent them to fetch the keys. Pastor Dladla indicated that he would need to consult Pastor Shelembe. After this call, pastor Dladla indicated that he had been told not to hand the keys to them. The response was that if he did not hand them the keys, the Inkosi had said that he would demolish the church. He stood fast and they left. After reporting this to Pastor Shelembe, he told him that he should nevertheless not give them the keys in response to any future demand. They returned on another Sunday and again demanded the keys. Pastor Dladla again phoned Pastor Shelembe, who repeated his instruction and said that he would come to speak to them. They made the same threat but went away empty-handed. Pastor Dladla and Pastor Shelembe then went to the home of the seventh respondent. The keys were once again demanded. Pastor Shelembe requested the seventh respondent to allow him to phone the sixth respondent. Pastor Shelembe requested that they do not close the church and allow the

applicant to continue to use it. They refused this request and Pastor Shelembe was constrained to leave the keys with the seventh respondent.

[23] What is common cause concerning the keys is that, as mentioned, the first and second respondents arrived at a service and requested the keys. These were refused at the instance of Pastor Shelembe. They were then, as they put it, chased away from the house of Pastor Shelembe later that day. The first respondent attempted to obtain the keys from the two ladies and was again refused. The Izinduna went to the church to demand the keys and returned empty-handed. The keys were finally handed over to them after Pastor Shelembe went to the home of the seventh respondent.

[24] Against that backdrop, the sixth and seventh respondents testified on affidavit that Pastor Shelembe surrendered the keys to them without their having uttered any threats. In oral evidence they conceded that they had indicated that, if the keys were not handed over, the applicant would be prevented from using the building. Their version of why they requested the keys was that, having attempted to secure the attendance of Pastor Shelembe at the Traditional Council in vain, they required leverage to ensure his attendance. This was the only reason advanced by them for requesting the keys. It is clear that, in the face of opposition, they had no power to order anyone to hand over the keys or to prevent the applicant from using the building. In argument it was accepted that, if the request were refused, they would have to apply to COGTA or to the court. Neither of these steps was taken. It is clear that, even on this version, the applicant was coerced to hand over the keys. In the matter of *Vorster v Barge Import Export Investments (Pty) Ltd & others*,¹ a similar situation arose. One of the respondents held a liquor licence and another leased the property to the applicant. While ejectment proceedings were pending, the

¹ *Vorster v Barge Import Export Investments (Pty) Ltd & others* 1996 (1) SA 43 (D).

respondents were told that the applicant was trading contrary to the terms of the licence and that, if this continued, the licence of the second respondent would be jeopardised. They removed the applicant. The court held that this amounted to a spoliation. In the present matter, the coercion to obtain the applicant's keys was unlawful and amounted to a spoliation, even on their own version.

[25] In any event, it is probable that they uttered threats to destroy the building. Otherwise there is no probable reason that Pastor Shelembe would hand them the keys. He had nothing to gain by doing so. If he handed over the keys, the applicant could not hold services in any event. If the only threat was that, if the keys were not surrendered, the applicant would be prevented from using the building, handing the keys over would therefore not eliminate the threat but fulfil it. In the light of the history of refusals to do so, that threat would simply have held no water. However, a threat that the building would be demolished, would most certainly have induced Pastor Shelembe to hand over the keys. In my view, accordingly, that is probably the threat that was made to the applicant in the person of Pastor Dladla.

[26] In addition, the fourth respondent testified that, at the Traditional Council, the ruling was that the applicant and the first and second respondents should each be entitled to use the building. When he was asked why he had handed the keys to the first respondent and allowed him to make use of the building, but not to Pastor Shelembe, his response was that, since Pastor Shelembe did not come from his area, he was not entitled to the keys. In the first place, this indicates his attitude to the rights of the applicant to the use of the building. This, despite the fact that virtually the entire congregation lived at Embo in his area. Secondly, it begs the question why the keys were not given to a person such as Sithole who does come from the area or, for that matter, virtually any member of the congregation at Embo. This accords with the

probability that the threat of destruction was made. The case for spoliation is made out. The second question must be answered in favour of the applicant.

[27] In summary, therefore, it is established on the evidence that, when obtaining the right of occupation and to build on the property in question, the first respondent was acting on behalf of the applicant. In addition, as of July 2015, the first respondent was operating the church at Embo as a pastor appointed by the applicant and the congregation there was that of the applicant and not the first respondent personally. Finally, that the keys were surrendered to the seventh respondent as the result of a threat that, if they were not handed over, the building would be destroyed. All three questions, accordingly, are answered in favour of the applicant.

[28] This means that the applicant is entitled to an order that the respondents restore to it possession of the building. The respondents agreed to the relief set out in prayer 3.1 of the Notice of Motion.

[29] In the result, the following order issues:

1. The respondents are ordered to restore to the applicant's possession the church building situated in the Embo Reserve, Hillcrest.
2. In the event that the respondents fail, within five days of the service of this order on the first respondent, to comply with paragraph 1 hereof, the sheriff for the area is authorised and directed to do all that is necessary to place the applicant in possession of the said church building and may, if necessary, employ the services of a locksmith to break and change any lock to the building.
3. By consent, the first and second and fourth to seventh respondents:
 - a. Are ordered to allow the applicant to access and use the church building; and

- b. Are interdicted and restrained from:
 - i. Interfering unlawfully with the applicant's use of the church building; and
 - ii. Harassing or threatening the applicants and its employees and congregants.
- 4. The first and second and fourth to seventh respondents are ordered to pay the costs to date of the application jointly and severally, the one paying, the others to be absolved.
- 5. The balance of the relief in the application is adjourned *sine die*.

GORVEN J

Dates of hearing: 13, 14, 15, 16, 27 and 28 November 2017 and
7 December 2017.

Date of judgment: 7 December 2017.

Appearances

For the Applicant:

D Crampton

Instructed by: MH Mathonsi &
Associates.

For the 1st, 2nd & 4th to 7th Respondents:

B Dlamini (attorney)
of Dlamini & Associates