



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2019/38225

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

DATE: 28 May 2021

In the matter between:

HLELA: DUMISANI JEFFERY

MDLALOSE: GODFRY VUSUMUZI

ZIKAKALALA: MDUBANE ROBERT

MAPHUMULO: SIPHIWE GABRIEL

and

SITHOLE: MANDLAKHE SITWELL

SITHOLE: MADIKANAKIE LEAH

THE MODERATOR: INDEPENDENT

PRESBYTERIAN CHURCH

THE REGISTRAR OF DEEDS: JOHANNESBURG

THE DIRECTOR-GENERAL: GAUTENG

First Applicant

Second Applicant

Third Applicant

Fourth Applicant

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

JUDGMENT

ALLY AJ**INTRODUCTION**

1. This is an exception launched by the Applicants against the First and Second Respondents' special plea and plea over. The parties, however, will be referred to as in the pleadings.
2. The Plaintiffs maintain that the special plea(s) raised by the First and Second Defendants are bad in law and without merit and furthermore that the plea does not disclose a defence.
3. The Plaintiffs submissions in the above regard are:
 - 3.1. The First and Second Defendants aver that the Plaintiffs have no *locus standi* to bring the action;
 - 3.2. The First and Second Defendants aver that the Plaintiffs have not complied with the internal dispute resolution mechanism before launching the action proceedings and are therefore barred;
 - 3.3. The First and Second Defendants repeat the *locus standi* allegations in the plea over, which plea over, Plaintiffs submit is bad in law and without merit.

EVALUATION AND ANALYSIS

4. In respect to the *locus standi* allegation, Plaintiffs submit that they are entitled to launch action proceedings against the Defendants because they are members of the Church and as such are on that basis alone, entitled to launch the proceedings. Furthermore, they submit that the First and Second Defendants do not deny that the Plaintiffs are members of the Church.
5. It is apposite at this point to set out First and Second Defendants averments in this regard:

- “1. *The Plaintiffs’ claim arises from the written Constitution of the Independent Presbyterian Church, which is attached as POC1.*
2. *Section D, article 6(c) and (d) on page 17 of the Constitution of the Independent Presbyterian Church, states that: the duties of the Moderator is to represent the church in all legal actions brought for or against the Church; and represent the church in all matters of whatsoever kind or nature.*
3. *The Plaintiffs, individually or collectively, are not the Moderator and therefore lack the authority and locus standi to bring such action on behalf of the Independent Presbyterian Church, as this is the exclusive duty of the Moderator.*
4. *Section B, article 8(g) on page 11 of the Constitution Independent Presbyterian Church, states that no Minister or member of the Independent Presbyterian Church may bring any action in connection with church matters in any court of law*

against the Moderator without first obtaining the express[ed] authorisation of the Synod to bring such action.

5. *The Plaintiffs did not obtain express[ed] authorisation of the Synod of the Independent Presbyterian Church to bring such action against the Moderator.”*

6. The above exposition, however, relates to First and Second Defendants' special plea and not the plea over.

7. The Court must in adjudicating the exception raised by the Plaintiffs, have regard to the plea and special pleas in their totality and determine whether on an interpretation of the said plea and plea over, a defence has not been raised.

8. First and Second Defendants deny in paragraph 11 of the plea over, Plaintiffs membership of the Church. This in my view is a triable issue which if proven that they are not members of the Church, Plaintiffs' right to launch these proceedings. It is apt to quote the paragraph in full at this time:

“11. The Defendants deny that the Plaintiffs are members and Elders at the Zondi Circuit of the Independent Presbyterian Church and are hereby put the proof thereof.”

9. Plaintiffs' Counsel has placed reliance on the matter of *Louvis v Oiconomos*¹ for the submission that they have *locus standi* to launch the action proceedings. In this regard De Villiers JP stated:

"To my mind this argument is based upon the fallacy that here there is a proceeding in contract and not in tort. But the complaint here is not breach of contract. The rights which the applicants claim were not granted to them by the other side under a contract. What they complain of is a wrong, a delict which has been committed by the members of the Committee. Each individual member of the community, therefore, who complains of the delict is entitled to proceed against those persons who are directly responsible for the delict."

10. Whilst it is clear that members of the Church would be entitled to launch proceedings as outlined in the abovementioned case, the precursor to launching such proceedings would be proof of membership of such an organisation or institution. *Locus standi*, in terms of membership, in my view, needs still to be proven by the Plaintiffs. Accordingly, the First and Second Defendant have raised a defence which is triable and on this ground alone, the exception falls to be dismissed.

11. The next issue raised by the Defendants is that the Plaintiffs have no authorisation from the Synod to represent the Church. In my view, the same

¹ 1917 TPD 465

argument raised in the Louvis case² holds true, namely that in an action of this nature wherein a wrong has been committed against the Church no authorisation is necessary to launch proceedings against the wrongdoers.

12. I am in agreement with the submission by Counsel for the Plaintiffs that the second special plea relates to proceedings related to Church matters and do not affect proceedings of the nature launched by Plaintiffs. As a result this special plea is of no moment and therefore excipiable and must be struck out.

13. The final special plea relates to the arbitration clause, which I understood during argument has been abandoned but to the extent that it was not abandoned, this special plea holds no merit. The arbitration clause relates to matters internal to the Church and not to wrongful acts committed against the Church. In other words, where membership of the Church is proven, such members may launch proceedings against persons who have committed wrongful acts as against the Church.

14. The question that arises is whether a striking out of the special pleas mentioned above, leaves the pleadings with triable issues on the face of it. I am satisfied that First and Second Defendants in disputing the membership of the Plaintiffs, raises a defence that is triable in a Court of law.

15. Accordingly, on the basis of the above, the exception raised by Plaintiffs against Defendants special pleas are hereby upheld and fall to be struck out. The exception, however, raised against the plea over, is dismissed.

² supra

COSTS

16. The Plaintiffs and First and Second Defendant have been successful in that whilst the special pleas have been struck out, the plea over remains for adjudication at trial.

17. It is trite that the determination of costs rests within the discretion of the Court and such discretion must be exercised judicially. It is my view that the costs of this application, for the reason that both parties are successful, should be borne by both parties and as such each party should pay their own costs.

18. In the result, the following Order shall issue:

- 1) The exception to the First and Second Defendants' special pleas in paragraphs 1 to 8, is upheld and the said paragraphs are struck out;
- 2) The exception to the First and Second Defendants' plea over is hereby dismissed;
- 3) Each party to pay their own costs of this application.



ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 28 May 2021.

Date of hearing: 12 August 2020

Date of judgment: 28 October 2021

Appearances:

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