

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

CASE NO: 8810/2020

REPORTABLE: ~~YES~~ / NO
OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
REVISED.
01.10.2021

In the matter between:

REFORMED METHODIST CHURCH IN SOUTH AFRICA

(Registration No: 214-058)

Applicant

and

YENDE MPHIKELELI WILLIAM

First Respondent

ABSA BANK LIMITED

Second Respondent

JUDGMENT

CRUTCHFIELD AJ:

[1] The applicant, the Reformed Methodist Church in South Africa, claimed a declarator that R230 000.00 invested in Absa Bank account number [...] on or about 2 July 2019 ('the R230 000.00'), belonged to the applicant, an order that the second respondent, Absa Bank Limited ('Absa'), pay the R230 000.00 together with the

interest thereon to the applicant, to one Reverend Malamba Zibonele Richard ('Reverend Malamba'), and costs in the event of opposition to the application.

[2] Reverend Malamba deposed to the applicant's founding affidavit.

[3] The first respondent is Mr Yende Mphikeleli William. The second respondent opposed the application.

[4] Service of the application on the second respondent, Absa, did not take place and I made the parties aware at the commencement of the hearing that in the light of the failure to serve the application on Absa I would not incline towards granting any order in respect of Absa.

[5] The parties did not file a joint practice note as required by the extant practice directive of this Court. Whilst I heard the application, I required the parties do so after the hearing.

[6] The relevant common cause facts appear from the the joint practice note, duly filed, and include the facts set out hereunder.

[7] The applicant resolved through its members to purchase property to the price of R230 000.00. Subsequently, a dispute occurred between the applicant's members that resulted in the emergence of two opposing factions within the applicant.

[8] Reverend Malamba, into whose account the applicant sought payment of the R230 000.00, led one faction, whilst the first respondent led the second.

[9] The birth of the two factions gave rise to disputes in respect of the identities of the applicant's legitimate members and whether the applicant's legitimate membership excluded members of the opposing faction, and, which faction retained ownership of the R230 000.00.

[10] Thus, the applicant resolved to bring this application for the relief referred to afore.

[11] The first respondent contended that the applicant's constitution prohibited the applicant's claim for payment of the R230 000.00 into Reverend Malamba's account. This resulted in the applicant abandoning the claim and seeking 'alternate relief'.

[12] The alternate relief comprised of a transfer of the R230 000.00 into the applicant's 'original' bank account, notwithstanding that the applicant did not make out a case for the alternate relief in the founding affidavit and a prayer in those terms did not appear in the notice of motion.

[13] The first respondent agreed during the course of the hearing before me that the R230 000.00 belonged to the applicant

[14] The parties' joint practice note reflected the resolution of prayer 1 in terms that the parties 'agree that the current account held with the second respondent belongs to the applicant and the money in contention should remain as such within the applicant.'

[15] Only the issue of costs remained for determination by me.

[16] Both parties claimed costs, the first respondent on a punitive scale. This matter arose out of a disagreement amongst members of the applicant's congregation, resulting in the division of the congregation into two factions.

[17] The applicant contended that the deponent to the applicant's affidavits litigated in a representative capacity and should be immune from an adverse costs award as a result. The first respondent argued that he was required to incur costs in opposing the application that was unnecessary and without merit. Further, that the costs should follow the outcome accordingly on a punitive scale.

[18] Whilst I am sympathetic towards the first respondent's argument in regard to the costs, I am of the view that making an order in respect of costs would serve to aggravate the tensions between the applicant's two factions. Any action that would inflame the issues between the two factions would be inimical to the applicant itself and not assist the litigants or either of the applicant's factions or members in the long term.

[19] In the circumstances, I decline to make an order in respect of costs against either party.

[20] By reason of the abovementioned, I grant the following order:

1. Each party is to pay its own costs incurred in this application.

**A A CRUTCHFIELD SC
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG**

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Acting 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 of the judgment is deemed to be 1 October 2021.

COUNSEL FOR THE APPLICANT: Mr Kabinde.

INSTRUCTED BY: Hlatshway-Mhayise Inc

COUNSEL FOR FIRST RESPONDENT: Mr Mabuli.

INSTRUCTED BY: Khorommmbi Mabuli Inc Attorneys.

DATE OF THE HEARING: 28 July 2021

DATE OF JUDGMENT: 1 October 2021