



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 84959/2018

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHERS JUDGES: YES /NO
(3)	REVISED
12/12/19	<i>[Signature]</i>
DATE	SIGNATURE

In the matter between:

**BOTSHABELO CHURCH COUNCIL EXECUTIVE
COMMITTEE OF THE UNITING REFORMED CHURCH IN
SOUTHERN AFRICA (URCSA – BOTSHABELO
CONGREGATION**

Applicant

and

REVEREND MOKGOEBO

Respondent

JUDGMENT

MOTHLE J

Introduction

- [1] This application came before me for confirmation or discharge of a *rule nisi* Court order granted on 23 November 2018 by this Court. In terms of that Court order, the Respondent was ordered and interdicted from proceedings with the calling and/or appointment of Reverend Bosman to the Botshabelo Congregation of the Uniting Reformed Church of Southern Africa (URCSA), pending the finalisation and final determination of the objections raised by the Applicant in terms of the stipulations of the Church Order, and all aspects ancillary thereto.
- [2] The objections raised by the Applicant in accordance with stipulation 13 of the Church Order to the Presbytery, is still pending for final determination within the structures of the church. The Respondent, having initially withdrawn its opposition to the application for the interim relief, has now engaged a new set of attorneys and opposes the confirmation of the *rule nisi*.
- [3] According to the founding affidavit deposed to by Mr Khotso Chabeli, who states that he is a duly appointed Elder in the Botshabelo Congregation of the Church and a member of the Church Council Executive Committee, the purpose of the interdict which gave rise to the interim order granted by way of a

rule nisi by this Court, was to prohibit the Respondent from proceeding with the calling and appointment of a certain Reverend Bosman as the minister to the Botshabelo Congregation of the church. The calling of ministers for congregations is done through the Church Council under the chairpersonship of a core minister or an interim minister, in this instance the Respondent.

Background

- [4] On 9 September 2018, the Church Council convened for the purposes of calling a new minister for the Botshabele Congregation of the Church. The Respondent chaired the proceedings. In essence, Mr Tshabede as an elder of the church, objected to the procedure followed by the Respondent in the proceedings, including the objection that there was no transparency in the nomination process as well as the counting of votes. Mr Tshabede further alleges that the Respondent dismissed the objections he raised in the meeting and proceeded with the irregularity. The Respondent called for nominations by way of secret ballot and a list of 9 nominations was made in a meeting attended by 14 peoples. The Respondent refused to disclose the list of names that made the

nomination, except to read them out from his lap where he was sitting. Mr Tshabede again objected to this procedure. The Respondent then ordered that a ballot vote should be conducted. He announced that 3 nominees got 3 votes, 4 got one vote each and 2 got no votes at all. The Respondent further announced that there was one spoilt paper and that Reverend Bosman has received the calling.

[5] Mr Tshabede directed his objection to the Witwatersrand Presbytery of the Church in writing, and send a copy to the Executive Committee of the Church Council. The Presbytery is the next senior governance structure in the church hierarchy, after the Church Council. The Executive Committee of the Church Council considered Mr Tshabede's letter and resolved to support the letter by making additional objections to the procedure that was followed.

[6] On receipt of these letters, the Presbytery initially requested copies of the Minutes of the Church Council Meeting where the proceedings were conducted. It thereafter considered the objection and issued a directive that the calling determined by the Respondent should not proceed pending adjudication of the objections. The Respondent was unfazed and was bent on

implementing the calling. The Executive Committee of the Church Council, acting through their attorneys, called on the Respondent to make an undertaking that he will not proceed with the calling pending the hearing convened by Witwatersrand Presbytery. The Respondent refused to give the undertaking and an urgent application was launched on Friday 23 November 2018 in this Court.

- [7] On the day before the hearing on the 22d November 2018, the Respondent through his erstwhile attorneys, Schüler Heerschop Pienaar Attorneys, filed a notice of intention to oppose. On the day of the hearing 23 November 2018, the parties reached an agreement wherein the Respondent filed a notice of withdrawal of the opposition and consented to the granting of the *rule nisi* which was issued by the Court, calling upon the Respondent to show cause on or before 12 March 2019 why an order in the following terms should not be made a final order of the Court:

"1.1 The Respondent is interdicted from proceeding with the calling and/or appointment of Reverend Bosman to the Botshabelo Congregation of the Church, pending the finalization of the objections raised by the

Applicant in terms of the stipulations of the Church Order and all aspects ancillary thereto;

2. *That the aforementioned order as set out in paragraph 1.1 above, should serve as an interim interdict against the Respondent until the return date."*

[8] Prior to the return date of March 2019, the Respondent, with the assistance of new attorneys Seokane Lesomo Inc., filed a notice to oppose as well as an opposing affidavit. In the opposing affidavit, the Respondent raises 4 points *in limine* namely:

[8.1] That the Applicant does not have *locus standi*;

[8.2] That the proceedings were instituted against the Respondent personally and not in his official capacity as interim Minister of the congregation;

[8.3] That the Church as a whole should have been cited as a Respondent in that all the actions performed therein were actions of the Church; and

[8.4] The Respondent alleges that since according to him, the Applicant does not have *locus standi*, therefore it could not have had any clear right that would entitle it to the relief sought for a final interdict.

[9] The Respondent also pleaded over on the merits by conceding that he was reading results from a document placed on his lap and not on the table. The *rule nisi* was extended to 3 June 2019 in the Unopposed Motion Roll. On 28 May 2019, the Respondent filed its replying affidavit. The parties had joined issue and the matter was referred to the Opposed Roll of 7 October 2019 where judgment was reserved. I now turn to deal with each of the points *in limine* raised by the Respondent.

Locus standi

[10] It seems to me on a reading of the powers and duties of the governance structures established in terms of the Church Order and founding documents, in particular Stipulation 71 of the Church Order, each congregation of the Church is a legal entity, acting as such through the Church Council. Respondent refers to Stipulation 71.8.8 of the Church Order which reads:

"The Church Council has authority...

To act in law suits and legal actions in representative capacity as Claimant or as person summoned, on behalf of the congregation as legal entity. All legal documents are being served on the chairperson of the Church Council. In all instances."

- [11] The Church Council in turn operates through elected officials such as the chairperson. They jointly constitute the Executive Committee. of the Council. The Applicant is cited as "THE BOTSHABELO CHURCH COUNCIL EXECUTIVE COMMITTEE OF THE UNITING REFORMED CHURCH IN SOUTHERN AFRICA (URCSA – BOTSHABELO CONGREGATION"
- [12] There is no doubt in my mind that the Applicant in this case is the Church Council, acting through its Executive Committee, and not the other way round as the Respondent wants to interpret it. The Church Council derives its locus standi and capacity to litigate from Stipulation 71.8 of the Church.
- [13] The Respondent referred me to two court cases as authorities to support his contention that the Applicant does not have *locus standi*. The one case is the judgment of the Supreme Court of

Appeal in the matter of Polokwane Taxi Association v Limpopo Permissions Board and others¹. The other is an unreported decision of the South Gauteng, Johannesburg High Court, in the matter of United Apostolic Faith Church v Boksburg Christian Academy, case no. 08/18662 dated 2 June 2011. Both decisions do not support the Respondent's contention on *locus standi*, in fact, they found to the contrary. The Respondent's counsel misread these cases. There is thus no merit in the Respondent's point in *limine on locus standi* and is dismissed.

- [14] It is clear from the notice of motion that the orders sought here are of an interim relief pending the finalisation of the internal remedies that the Respondent can avail himself to within the church. The Presbytery has already convened an enquiry into the objections against the Respondent's decision to effect a calling or appointment of Reverend Bosman for the Botshabelo Congregation. It is a matter of record that the Respondent has repeatedly refused to provide the requested documents as well as avail himself to account for his decision before the Presbytery. The orders sought from this Court therefore has absolutely nothing to do with the merits of the enquiry by rather to ensure that no further steps are taken to appoint Reverend

¹ (490/2016) ZASCA 44 (30 March 2017).

Bosman to the congregation of Botshabelo pending the enquiry envisaged by the Presbytery, which is a higher decision-making structure, with more authority than the Church Council of Botshabelo Congregation. In regard the above, I am of the view that the Respondent's point of *limine* must fail.

The respondent is cited in his personal capacity

- [15] In these proceedings, the Respondent is cited as "*Reverend Mogoeba*" in his capacity as a minister. "*Reverend*", as I understand it, is not one of his names but rather his official title. The question whether the Respondent was acting as an interim minister or on a frolic of his own in effecting the calling is a matter that has to be decided by the enquiry convened by the Presbytery. It seems to me that he has been appropriately cited and it is up to him to plead the capacity in which he was acting during the enquiry. This point *in limine* has no merit and is accordingly dismissed.

Applicant should have cited the Church Council and the congregation

- [16] There is simply no merit in this contention as the Applicant is the Church Council which in turn represents the congregation of

Botshabelo. The applicant is seeking no relief from either of these structures. If the Respondent has any evidence that the Church Council was not representing the congregation of Botshabelo, or that it was being misrepresented, it was open to him to apply to court for the joinder of any of the church structures, if he was of the view that these structures were opposed to the orders sought by the Church Council. The relief sought is directed to him as Respondent and to no one else. This point in *limine* is also unmeritorious and must fail.

Absence of a clear right

[17] The Respondent confuses the interdict sought as interim relief in this application as opposed to a permanent interdict. For purposes of interim relief, the Applicant has to establish a *prima facie* right.² A *rule nisi* as provided by this Court as well as its confirmation as required by the Applicant, does not bring this matter to finality. It merely seeks to stop the Respondent from implementing his decision to effect the calling pending the enquiry established by the Presbytery. As soon as the proceedings before the Presbytery are conducted, the interim

² See the seminal case of *Setlogelo v Setlogelo* 1914 AD 221 at 227, and a line of recent cases.

relief will lapse. The relief is therefore not final but of an interim nature, pending the proceedings before the Presbytery. This point *in limine* is equally unmeritorious and is dismissed.

[18] The nature of the application is such that there is no need to deal with the merits of what transpired during the meeting of the Church Council. That is for the Presbytery to determine. I am of the view therefore that the *rule nisi* should be confirmed.

[19] Insofar as the costs are concerned, these should follow the result. The Respondent cannot be obstructive to efforts aimed at holding him to account for his actions by engaging in what is clearly a frivolous attempt to defy the structures of the church. He has to pay the costs of these proceedings.

[20] In the premises I make the following order:

(1) The *rule nisi* is confirmed;

(2) The Respondent is interdicted from proceeding with the calling and/or appointment of Reverend Bosman to the Botshabelo Congregation of the Uniting Reformed Church of Southern Africa (URCSA), pending the finalisation of the

objections raised by the Applicant in terms of the stipulations of the church order and all aspects ancillary thereto.

- (3) That the Respondent is ordered to pay the costs of this application on a party and party scale.



**JUDGE S P MOTHLE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION,
PRETORIA**