



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 009335/2022

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED.

DATE: 6 OCTOBER 2022

SIGNATURE

In the matter between:

BETHESDA CHRISTIAN CENTER NPC

Applicant

and

THE DEPARTMENT OF SOCIAL DEVELOPMENT

First Respondent

PAUL VERRYIN

Second Respondent

ZAKHELE MKHIZE

Third Respondent

LLOYD DLAMINI

Fourth Respondent

TIYANI HLABANGWANE

Fifth Respondent

NTOBIKHONA MLAMBO

Sixth Respondent

MICHAEL TSHIYOYO

Seventh Respondent

BONGANI MBOKAZI

Eighth Respondent

SAMMY MASHABA

Ninth Respondent

Summary: Nonprofit Organisation Act 71 of 1997 (NPO Act) – objects and functioning of Act explained – Church as a registered Nonprofit Organisation – functioning thereof in accordance with the requirements of the NPO Act and with directives issued in terms thereof – leadership and control of church – general meeting – election of board – role of intermediary/administrator – interim relief leaving church without legitimate leadership refused – declaratory order granted.

ORDER

1. The main application is refused.
2. The counter-application is granted and it is declared that, until otherwise elected at a subsequent valid general meeting or otherwise ordered by a court, the Board of the Bethesda Christian Centre NPC consists of the following persons: Zakhele Mkhize, Molefe Tselepedi, Tiyani Hlabangwane, Ntombikhona Mlambo, Michael Tshiyoyo, Bongani Mbokazi, Sammy Mashaba and Obakeng Magagula.
3. The respondents' costs of the main application and of the counter-application shall be paid by the applicant in the main application.

JUDGMENT

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

DAVIS, J

Introduction

[1] Not heeding the prescripts of the New Testament of the Bible, which the Church secretary described as the Church's "code of conduct", members of the Bethesda Christian Centre NPC (the Church), being a faith based nonprofit organisation, failed to resolve its leadership disputes amongst its members and resorted to this court, being a secular court of law.

[2] The principal dispute is that the Church has for many years not held an annual general meeting, in conflict with its own constitution and its memorandum of incorporation. When urged to do so, a general meeting was facilitated by a bishop from outside the church. Notwithstanding this, an election was successfully held and a new leadership was elected.

[3] The "old leadership", including founding members of the church, now wants to prevent the newly elected leadership from running the Church. In the interim, accusations of financial impropriety amounting to millions of Rands of Church funds and assets abound in respect of how the Church had been governed to date.

[4] The applicant in the main application is purportedly the Church itself, at the instance of the Church secretary and the applicants in a counter-application for a declaratory order, are mostly the newly elected leadership.

[5] The Department of Social Development (the Department), cited as the first respondent, did not oppose either the main application or the counter-application, but a notice issued by the Director of Nonprofit Organisations, acting in terms of the Nonprofit Organisations Act 71 of 1997, (the NPO Act) was what had set the events leading up to the main application in motion. An “explanatory affidavit” had been delivered on the part of the Department and counsel appeared on the Department’s behalf on a watching brief at the hearing of the urgent application.

Relevant chronology

[6] The Church was established in 1996 and subsequently incorporated as a nonprofit company (under the “old” Companies Act 61 of 1973) in 1999.

[7] The Church was also subsequently registered as a nonprofit organisation with the Department in terms of the NPO Act.

[8] The initial leadership of the Church consisted of its founding elders, notably Pastor Clement Ibe, “co-pastor” Prophetess Fortune Ibe and three other family members. According to the founding affidavit by the Church secretary, Pastor Ibe is “*currently and temporarily in the United States of America to further expand the works of the Church*”.

[9] In terms of the oldest of the Church constitutions which form part of the papers, referring in printed letters to the Bethesda Community Church, but in manuscript amendments referring to the Bethesda Christian Centre, the church is supposed to be governed by nine management committee members as office bearers, elected annually at a general meeting. This constitution was, on the face of it, accepted as the Church constitution at a special general meeting held on 05 April 2000.

[10] A later version of the Church constitution, (being one dated 30 November 2009 when the Church adopted its current name), also provided that the Church is supposed to be run by a management committee of not less than nine members, serving for a period of one year, but who may be re-elected. The management committee was obliged to meet twice a month and would, inter alia, be in control of the Church finances and its assets. These office bearers would be elected annually at an Annual General Meeting of members of the Church.

[11] Since the aforesaid date, the Church has apparently not held any annual general meetings. There is also some doubt about its compliance with its annual financial reporting obligations with the last available audited statements those of the financial year ending 28 February 2018. These statements were signed by Pastor Ibe, Ms Ibe, Mr and Mrs Koka, Mr J Dehinbo, Ms S Hanslo and Mr S Maseko. These statements indicate an asset in the form of a building of some R72 million, an outstanding loan made to World Outreach (Pty) Ltd of some R8 million, funds in bank accounts of just under R1 million and a “comprehensive” income of some R6 million for the year.

[12] During the latter part of 2021 a number of long-standing members of the Church became concerned about the manner in which the Church was run, including its assets and funds. These members, styling themselves the “Bethesda Concerned Group” submitted a “detailed complaint” to the Department on 1 December 2021.

[13] The “complaint” is a 10-page document. The salient points of complaint are that despite having raised their concerns to Pastor Ibe in the past, their complaints have not been attended to, leading to an exodus of members. The complaints were directed at an autocratic, non-transparent running of the Church, the co-opting of a Nigerian citizen, Dr Nwafor, on the Church board, the fact that the Church property is registered in the name of World Outreach (Pty) Ltd and

not in the name of the Church itself, despite the Church having paid for the largest part of the initial purchase price and having spent R60 million since in building a church building, the lack of proper financial accounting, the lack of annual general meetings for extensive numbers of years and allegations that Pastor Ibe had funded his current residence in Houston, Texas by utilizing Church funds. In particular, the loan in excess of R8 million to World Outreach (Pty) Ltd and the acquisition of a property in the affluent suburb of Silver Lakes were also questioned.

[14] Apparently after some investigation, the Director of Nonprofit Organisations on 16 March 2022 directed a formal notice to the Church in terms of section 20 of the NPO Act. In the notice, contraventions of the NPO Act are listed as failures to submit annual reports “for multiple years”, failures to hold annual general meetings and to elect board members in terms of the Church constitution, failure to submit names of office bearers and generally a failure to run the Church as a registered nonprofit organisation with due regard to transparency and good governance principles.

[15] In conclusion and “*given the seriousness of non-compliance*” the said Director concluded and directed as follows:

- (a) *The current elected board consisting of Mr Clement Ibe, Ms Fortune Ibe, Ms Mamuyonwi Koka, Mr Mpora Koka, Ms Sadia Hanslo, Mr Khanye, Mr Okey Nwafor, Mr Freddy Mosweu, Ms Alicia Kitheka and Mr Johnson Dehinbo is annulled as it was not elected in a manner prescribed by the constitution.*
- (b) *An interim board/structure or Administrator must be appointed by members of the Church to take over the administration of the Church*

for a period not exceeding 3 months. The name/names must be submitted to the Directorate within seven days after appointment.

- (c) An action plan to organise an Annual General Meeting should be submitted to the Directorate within seven days. The GM will be attended by Church members as stipulated in your constitution and will afford members the opportunity to elect new board members and the financial and report on church activities to be presented.*
- (d) The assets of the Church should be protected, preserved (not sold) and not used for any purpose rather than to fulfill the intention of the Church and an asset register should be submitted to the NPO directorate within seven days of receipt of this notice.*
- (e) All the former board members and leaders of the Church are expected to co-operate with the NPO Directorate forensic investigations.*
- (f) The Directorate will monitor the implementation of the contents of this notice and may send a delegate to observe all the proceedings.*
- (g) You are further required to submit a progress report within seven days ...”.*

Compliance with the notice by the “old” leadership of the Church

[16] Werksmans attorneys, ostensibly on instructions from Pastor Ibe and Ms Koka, responded to the Department’s notice, inter alia stating the following:

“... BCC acknowledges and appreciates the gravity and seriousness of the non-compliance alleged in the Purported Notice. For this reason, we have been instructed to address this correspondence to the Directorate ... to

notify your offices of the BCC's intention to address any alleged non-compliance with the NPO Act and/or its constitution.

To this end, the BCC instructs us to advise your esteemed offices that the incumbent Chairperson and Secretary of the BCC shall call an urgent special meeting of the leadership and/or management committee of the BCC with a view to addressing the issues raised in the Purported Notice ...". The reference to BCC is a reference to the Church, the Chairperson is a reference to Pastor Ibe and the reference to the Secretary is a reference to Ms Koka, who is, as already mentioned, also the deponent to the Founding Affidavit.

[17] Despite the above undertakings, none of the steps referred to, nor any other compliance with the Department's notice, such as the furnishing of records or the arranging of a general meeting have taken place in the more than six months since the date of the letter. Werksmans attorneys also seems to have fallen out of the picture.

Compliance with the Notice by other members of the Church

[18] Other members of the Church, principally led by the "Bethesda Concerned Group", through their attorneys, responded to Werksman's letter and to the notice from the Department. The Group has also consulted with various senior members of the Church and senior pastors of the South African Council of Churches. These consultations culminated in Bishop Paul Verryn being suggested as an "administrator".

[19] A notice was circulated, inviting members to participate in member's meeting, which took place on 22 March 2022. At this meeting, Bishop Verryn was appointed as administrator by an "overwhelming majority". By this time animosity in the Church had grown to the extent that the "old leadership" had

discouraged members to attend the meeting, causing those who had called the meeting to ensure members of the presence of a member from the Department and the South African Police Service to ensure attendees' safety and security. Church services has also even been cancelled.

[20] The holding of the abovementioned meeting and the appointment of Bishop Verryn were reported to the Department in writing.

[21] Pastor Ibe then wrote to Bishop Verryn, claiming that there was no "leadership vacuum" in the Church and that he had, in November 2021, "*expanded the cohort of Ministers*", including a "Lead Minister". This was done, so he claimed, "*utilizing the structures in place*". Various allegations amounting to an attempted coup was levelled against unnamed "individuals"

[22] On 13 April 2022 the Department acknowledged the appointment of Bishop Verryn. On 24 April 2022 Bishop Verryn convened a meeting of members of the Church. At the meeting he indicated that he wished not to be part of any management of finances and only wanted to focus on arranging an annual general meeting. The members elected an interim treasurer to run the Church's finances up to the annual general meeting and appointed a task team and head of communications for this purpose.

[23] On 23 May 2022 Bishop Verryn gave Notice of a Special General Meeting, which took place on 11 June 2022 at which meeting a new Memorandum of Incorporation (MOI) for the Church, complying with the provisions of the Companies Act 71 of 2008, was adopted. At the meeting, the invitation for which had been widely publicized, a date and time for an Annual General Meeting was agreed on, being 9 July 2022 at 14h00.

[24] The notice for the Annual General Meeting was even more widely advertised. It was done by notice, e-mail, social media, advertisements in the local newspaper and by way of a “digital banner” on the Church website, attracting 56 220 “views”.

[25] At the Annual General Meeting of 9 July 2022, which was attended virtually and in person, eight directors were elected. Two of these subsequently resigned for personal reasons and were replaced in terms of the MOI by two others. The current directors are Zakhele Mkhize, Molefe Tselepedi, Tiyani Hlabangwane, Ntombikhona Mlambo, Michael Tshiyoyo, Bongani Mbokazi, Sammy Mashaba and Obakeng Magagula.

[26] After having arranged the Annual General Meeting, Bishop Verryn had discharged his obligations and no longer acted as an “administrator” and neither does he feature in any Church structure. The outcome of the election, which took place under the auspices of a different member than Bishop Verryn, as electoral officer, had been reported to the Department.

[27] At the end of July 2022, the Church, purportedly represented by Ms Koka, launched the main application. The interim relief claimed therein is for an order restraining the respondents (who are most but not all of the current board members) from “purportedly” acting as “a board or executive committee” of the Church, pending a review application. The review sought in part B of the Notice of Motion is for “... *the appointment of the First Respondent [Bishop Verryn] as an administrator of the Bethesda Church*” to be set aside and declared invalid.

[28] Pastor Ibe did not file an affidavit in support of the application but Ms Koka relies on a bad copy of an undated resolution, ostensibly signed by those persons listed in paragraph (a) quoted in paragraph 15 above, as directors of the Church, authorising her to launch the application.

The counter application

[29] The counter application by the respondents (excluding the Department and Bishop Verryn) is for a declaratory order that those elected at the Annual General Meeting of the Church held on 9 July 2022 (and subsequently co-opted) constitute the current Board of the Church.

The NPO Act

[30] The objects of the NPO Act are to create an environment in which nonprofit organisations can flourish¹. This is done by ensuring that nonprofit organisations are run properly and efficiently and in accordance with codes of good practice².

[31] Nonprofit organizations are not obliged to register as such with the Director of Nonprofit Organisations, but once registered, they have the benefit of “allowances” prescribed by the Minister for Welfare and Population Development³ (now the Minister of the Department).

[32] Once registered, a nonprofit organization must, according to the standards of generally accepted accounting practice keep its books of account, draw up its annual financial statements and report thereon to the organization itself⁴. It must also provide the Director with such reports and with a “*narrative report of its activities*”⁵.

[33] The NPO Act obliges nonprofit organisations to comply with their own constitutions and regulatory documents and keep the Director abreast of such compliance or changes thereto⁶.

¹ Section 2(a) of the NPO Act.

² Section 6 of the NPO Act.

³ Section 11 of the NPO Act.

⁴ Section 17 of the NPO Act.

⁵ Section 18 of the NPO Act.

⁶ Section 19 of the NPO Act.

[34] Upon noncompliance by a nonprofit organisation with either the provisions of the NPO Act, or any conditions imposed on receiving a benefit or with its own constitution, the Director “*must*” send a compliance notice⁷. Such a notice must “*(a) be in writing; (b) notify the organization of the noncompliance and the steps it is required to take in order to comply and (c) inform the organisation that it has one month from the date of the notice to comply*”⁸.

[35] The consequence of not remedying any noncompliance with its constitution or of not complying with a notice such as aforementioned (or of furnishing false narratives or reports), is a cancellation of registration (and a possible referral to the South African Police Service if an offence has been committed)⁹. The result of cancellation of registration is the loss and termination of all benefits enjoyed in terms of the NPO Act¹⁰.

The validity of the notice

[36] There can be no doubt that the Director of Nonprofit Organisations had not only been entitled, but indeed obliged to send the notice referred to in paragraphs 15 and 16 above. The Church had clearly been in breach of many of its obligations in terms of the NPO Act and its own constitution.

[37] The question is whether the Director could have “annulled” the “old” leadership of the Church in the fashion that he did in paragraph (a) of his notice. The simple answer is that, although he was entitled to have expressed an opinion as to whether the election or retention of that leadership had been in terms of the Church’s constitution, he may only further validity have concluded that the Church has not complied with its own constitution and/or with its duty to report

⁷ Section 20(1) of the NPO Act.

⁸ Section 20(2) of the NPO Act.

⁹ Sections 20(1)(b) and 21 of the NPO Act.

¹⁰ Section 21(2) of the NPO Act.

to the Director in respect of its leadership election or changes thereto¹¹. Upon failure to remedy either of such noncompliances following upon his notice to comply, the sole remedy of the Director is to cancel the organisation's registration.

[38] The Director is not empowered by his enabling legislation to "annul" any appointment of board members of an organisation, either by way of a compliance notice or thereafter. To do so and, in this case, to have done so, is *ultra vires* and beyond his powers. Such a declaration is invalid. Such invalidity (of "annulment") does not otherwise validate the actual appointment or election it was aimed at. That will in the normal course depend on compliance or not with an organisation's own constitution.

[39] In similar fashion, the Director cannot, other than insisting on compliance by an organisation with its own constitution, dictate, for example, that an administrator be appointed. To do so, unless expressly provided for in an organisation's constitution, would also amount to *ultra vires* conduct.

[40] In the present instance however, the Director did not prescribe that Bishop Verryn be appointed as an administrator. The Director merely insisted that mechanisms be put in place to ensure that the Church's own constitution be complied with. The most important and burning issue in this regard, apart from that of finances and control of assets, was clearly the holding of an annual general meeting as soon as possible. These suggestions by the Director are in accordance with the objectives of the NPO Act in that it serves "... *to encourage and support nonprofit organisations ... by encouraging nonprofit organisations to maintain adequate standards of governance, transparency and accountability ...*"¹².

¹¹ As specifically required by section 18(1)(b) of the NPO Act.

¹² Section 2(c) of the NPO Act.

Section 20(2)(b) also requires the Director, in his¹³ notice to inform the organisation of what steps to take to comply with its obligations, in this case, the fact that an annual general meeting should be held and that board members should be elected. This clearly also encompasses the giving of prior notice of such a meeting and the Director's suggestions were, upon a proper reading thereof, aimed at facilitation of this objective.

To what relief are the parties entitled?

[41] There is serious doubt as to whether Ms Koka had been entitled to approach this Court on behalf of the Church, but even if she had represented the Church, the principal relief claimed, is a review of the appointment of Bishop Verryn. I have grave reservations as to the prospects of success of such a review. Bishop Verryn did not administer the affairs, finances or assets of the Church, even though he may have been labelled an administrator. His sole function, which has since been discharged, was to arrange for a process whereby the Church complied with its own constitution. Since that review might notionally still be pending, depending on whether the Church wishes to pursue part B of the notice of motion in the main application, I shall say no more about the merits thereof.

[42] What this Court has to determine is whether a clear right, even if open to some doubt¹⁴ has been demonstrated for prevention of the subsequently elected board from running the Church¹⁵. Neither the validity of the Special General Meeting at which the date for the Annual General Meeting had been determined, nor the validity of lastmentioned meeting itself, have directly been attacked and neither has an allegation been made that the necessary quorum had not been reached. Pastor Ibe's objections are apparently only that neither he nor any other member of the "old" leadership have called for those meetings and that the

¹³ I used the male reference in relation to the gender of the current incumbent of the position (only).

¹⁴ *National Treasury v Outa* 2012 (6) SA 223 (CC).

¹⁵ *Johannesburg Municipality Pension Fund v City of Johannesburg* 2005 (6) SA 273 (W) at [8].

meetings had not been held in the Church building. He expressed these views in correspondence and through Ms Koka and not on oath and neither he nor Ms Koka had explained why, if his intention had in any event been to call for such an annual general meeting (as expressly promised to the Director for Nonprofit Organisations via Werksman's letter referred to in paragraph 16 above), that has not happened. Clearly the Church needed to comply with its own constitution and clearly an election needed to take place, even on Pastor Ibe's own version. The place of such a meeting is not prescribed in the constitution or the MOI and nothing turns on this.

[43] Now that a widely advertised annual general meeting had taken place and in circumstances where the only remaining objection is against the person who arranged for the communications team to send out the notices and arrange the meeting without in any other manner indicating that the meeting itself or the election held thereat were in conflict with the constitution (or the later MOI), I find that no "clear right" had been established.

[44] Assuming for the moment that such a right may have been established on the tenuous argument that a possible success of the review of Bishop Verryn's appointment might lead to an invalidation of the annual general meeting and the election of the current board, there are other requirements for the granting of an interim interdict which have not been satisfied and which militate against the granting of the relief. These are the absence of irreparable harm and the balance of convenience¹⁶.

[45] Neither Ms Koka nor the Church (or for that matter Pastor Ibe) have indicated that the Church would suffer irreparable harm if the newly elected board is left in control of the Church. There is simply no evidence that this would be

¹⁶ *Setlogelo v Setlogelo* 1914 AD 22.

the case. The allegations of “uncertainty” about the validity of their governance is the high-water mark of the allegations.

[46] On the issue of a balance of convenience, I find that it is surely more “convenient” for a nonprofit organisation to be run by a board elected by its members at an annual general meeting, as provided for in its constitution, than by a number of officers who have either never been elected or may only have been elected more than a decade ago. In circumstances where financial reporting, transparency and accountability have been lacking for a number of years, “convenience” also dictates that this be done by a board willing to do so rather than a board which had failed for a number of years to do so.

[47] With reference to the NPO Act and the issues of compliance with its provisions and the notice issued by the Director of Nonprofit Organisations, it is surely also more to the benefit of the Church that it is run in compliance with its obligations in terms of the NPO Act by a board seeking to ensure its continued registration, than by an (unelected) board who had placed that registration in jeopardy and who had promised, but failed to remedy the Church’s noncompliance with the Act.

[48] For all these reasons, I find that the main application should fail. The corollary is that the counter-application should succeed. Insofar as it may not already appear from the above, I find that those respondents moving the counter-application have, on a balance of probabilities, satisfied this Court that a declaratory order as claimed in the counter-application, should be granted. This would confirm that, in terms of the Church constitution and its MOI, the elected board shall govern the Church until the next general meeting. In the counter-application further, the said respondents seek extensive orders against the erstwhile leadership whom the new board has replaced, regarding the ceasing of management of the Church and the handing over of a books of account and the

like. In the absence of formal citation or joinder of these individuals against whom this relief is sought, this Court cannot grant an order or interdict against them personally, but, pursuant to the granting of the declaratory order sought in the counter-application, prudence and proper conduct of responsible members of a faith based organization such as the Church would dictate that those steps contemplated in paragraphs 4.1 to 4.3 of the counter-application should in any event take place to ensure a smooth transition of governance and control.


Costs

[49] As to the issue of costs: ordinarily, costs should follow the event. This means that the unsuccessful party (or parties) should pay the costs of the successful party/ies. While the actual “unsuccessful parties” are the “old” leadership of the Church, costs *de boniis propriis*, that is orders to pay the costs in personal capacities, have been claimed against them in the notice of counter-application. They have, however not been formally cited nor joined as respondents in respect of such a claim and they have consequently not been obliged to deliver answering affidavits in this regard. That means that the Church, as unsuccessful party should pay respondent’s costs in respect of its own unsuccessful application (the main application). The same would apply in respect of the counter-application. In a sense, irrespective of what or who caused the current situation, it all has to do with the running of the Church, which should ultimately bear the burden of costs. In saying this, I make no finding as to whether Ms Koka had actually been mandated to act on behalf of the Church nor do I make any determination as to the costs of the attorney employed by her. These attorneys must look to who had instructed them for their fees. On the other hand, there should certainly be no costs burden for the successful counter-applicants.

Order

[50] Consequently, I make the following order:

1. The main application is refused.
2. The counter-application is granted and it is declared that, until otherwise elected at a subsequent valid general meeting or otherwise ordered by a court, the Board of the Bethesda Christian Centre NPC consists of the following persons: Zakhele Mkhize, Molefe Tselepedi, Tiyani Hlabangwane, Ntombikhona Mlambo, Michael Tshiyoyo, Bongani Mbokazi, Sammy Mashaba and Obakeng Magagula.
3. The respondents' costs of the main application and of the counter-application shall be paid by the applicant in the main application.



N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 27 September 2022

Judgment delivered: 6 October 2022

APPEARANCES:

For the Applicant:

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For the 1st Respondent:

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