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**REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
(LIMPOPO DIVISION, POLOKWANE)**

**Case Number: 3100/2021**

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: NO

Date: 7/7/2023

**In the matter between:**

**THE FAVORS CATHEDRAL CHURCH  
SESHEGO BRANCH**

**APPLICANT**

**AND**

**MONGADI JACOB CHUENE  
ID NO: 5[...]**

**RESPONDENT**

**JUDGMENT**

**MTHIMKULU SS AJ:**

[1] The Applicant has launched a substantive application seeking both declaratory order as well as ancillary compelling orders against the Respondent. The orders sought by the Applicant are fully set out in the notice of motion. In order not to unnecessarily burden this judgment, I will not repeat the orders sought by the Applicant, save to state that the said orders are fully enumerated in the Applicant's notice of motion.

[2] The Applicant, duly represented by Mr. Mosia, in his capacity as the resident pastor and head of the Applicant, entered into a verbal lease agreement with the Respondent, to lease the property known as erf 8[...], Seshego [...] (herein after referred to as “the property”), to the Applicant for a period of three months from March 2017 to July 2017.

[3] The Applicant contends that the verbal lease agreement between the parties incorporated an option by the Applicant to purchase the property after the lapse of the three-month lease period.

[4] A written agreement of the sale of the property was entered into between the parties as evidenced by “Annexure D” and the Respondent was paid the purchase price of R150 000,00 (one hundred and fifty thousand rands) on 10 August 2017. In this regard the Applicant relies on “Annexure E”. The sale of the property and acknowledgement of receipt of the purchase price was confirmed by the Respondent.

[5] The Application is launched as a result of the Respondent’s failure to transfer the property into the Applicant’s name, albeit that, the Applicant contends the agreement between the parties is legal in all material respects.

[6] The Respondent opposed this application and in its opposition raised points *in limine*. It is on the basis of these points *in limine* that the Respondent argues that the Applicant has failed to make out a case and that the application should be dismissed with costs.

[7] The Respondent argues that Mr. Mosia, the person who deposed to the founding affidavit in this application, lacks the authority to bring the application on behalf of the Applicant. The Respondent argues that “Annexure B” found on page 34 of the Bundle does not authorise the deponent to bring this application. The Respondent makes the submission that since the deponent of the founding affidavit has not been authorized to launch these proceedings, the application stands to be dismissed.

[8] It is further the Respondent's submission that the Applicant lacks *locus standi* to bring the present application. The Applicant in its papers alleges that it is authorised by its Constitution to acquire, own and dispose of property apart from its members and to litigate or defend itself against legal action. In support of this averment, the Applicant attached its Constitution marked "Annexure A". It is the Respondent's submission that nowhere in "Annexure A" does it state that the Applicant has powers to litigate and therefore, the Applicant lacks *locus standi* to bring this application.

[9] The Respondent further submits that the alleged sale agreement between the parties does not comply with the formalities of the ***Alienation of Land Act No.68 of 1981***. The contention is that "Annexure D" attached by the Applicant as being the alleged sale agreement, does not constitute a valid sale agreement for sale of immovable property and therefore, "Annexure D" is unenforceable. The Respondent makes this submission based on the provisions of Section 2 (1) read with Section 28 of ***Act No.68 of 1981***. It is further the Respondent's submission that there is no written authority attached by the deponent as required by the Act indicating that he was authorised by the Applicant to purchase the property.

[10] It was further the Respondent's submission that the sale agreement is unenforceable as it is in contravention of the ***Matrimonial Property Act No. 88 of 1984***.

[11] Section 15 of the ***Matrimonial Property Act No .88 of 1984*** provides that:

"

(1) *Subject to the provisions of subsections (2), (3), and (7), a spouse in a marriage in community of property may perform any juristic act with regard to the joint estate without the consent of the other spouse.*

(2) *Such a spouse shall not without the written consent of the other spouse-*

(a) *alienate, mortgage, burden with servitude or confer any other real right in any immovable property forming part of the joint estate;*

*(b) enter into a contract for the alienation, mortgaging, burdening with a servitude or conferring of any other real right in immovable property forming part of the joint estate.”*

[12] The Respondent admits to signing “Annexure D”. He however contends that he owned the property with his wife who is now deceased, with whom he was married to in community of property. However, his late wife did not sign “Annexure D” and the half share of the property is now subject to his late wife’s deceased estate. The Respondent contends that the property could not be transferred to the Applicant because the Respondent’s wife’s consent in the selling of the property was lacking. It is for these reasons that the Respondent submits that the Applicant’s application should be dismissed.

[13] The Applicant’s counsel argued that the deponent to the affidavit has signed the affidavit in his capacity as the head of the church. That he in fact states that he is deposing to the affidavit in support of the application brought by the Applicant. Therefore, he is simply a witness in the proceedings brought by the Applicant and does not need authority from anyone to act as a witness.

[14] It is further the Applicant’s contention that it is not procedural for the Respondent to raise this point in their answering affidavit. A proper challenge to the authority of a party to act in legal proceedings will be to issue a notice in terms of **Rule 7 (1) of the Uniform Rules of Court**, which was not done by the Respondent.

[15] The Applicant’s counsel contends that the point *in limine* raised by the Respondent that the Applicant lacks *locus standi* to bring this application is frivolous and mendacious. This point was raised by the Respondent because the Constitution of the church does not mention that the church has the power to litigate. The Applicant contends that the primary objective of the church is not to litigate.

[16] The submission of the Applicant is that in order for the church to achieve its objectives, the Applicant is entitled to purchase land upon which to build a church. Furthermore, that since the Respondent has now reneged from a binding agreement

entered into between the parties, his actions require that the Applicant as the aggrieved party approaches this court for recourse. This means that the Applicant, as a voluntary association, has the *locus standi* to bring this application in order to enforce its rights against the Respondent.

[17] As alluded to earlier in this judgment, the Respondent submitted that the alleged agreement of sale between the parties does not comply with the provisions of Section 2(1) and Section 2(2A) of the ***Alienation of Land Act No.68 of 1981***. The Applicant contends that this point can at best be relied upon by the Applicant who is the purchaser, and not by the Respondent since the Respondent is the seller in these proceedings. It is further the Applicant's contention that even if the clause affording the purchaser the right to terminate the deed of alienation in terms of Section 29A existed in the agreement, it was never the Applicant's intention to revoke the offer to purchase and this is the reason why the Applicant is proceeding with the application to enforce the sale agreement.

[18] Lastly, the Applicant argues that the Respondent has failed to prove a marriage between himself and one Louisa Lethettoa Chuene and can therefore not rely on Section 15 of the ***Matrimonial Property Act No. 88 of 1981***. This submission is based on the glaring discrepancies when one looks at the date of birth of the Respondent on his marriage certificate, his identity number on the marriage certificate as well as the identity number provided by the Respondent on the deed of sale.

[19] Alternatively, the Applicant argues that in the event it is found that the Respondent was married in community of property to Louisa Lethettoa Chuene, it should be found that she consented to the sale of the property. This contention according to the Applicant is supported by "Annexure D" and "Annexure F" to the founding affidavit.

[20] "Annexure D" states that: *"This is to confirm that Mongadi Jacob id no 5[...] and Louisa Lethettoa Chuene agreed to sell our property to The Favors Cathedral Church represented by Rev Molahlehi P. Mosia.*

*The property is situated on 8[...] zone [...] Seshego Polokwane. We are selling the property for hundred and fifty thousand rands only (R150 000.00)."*

"Annexure F" states that: *"This is to confirm that Mongadi Jacob id no 5[...] and Louisa Lethetoa Chuene agreed to sell our property to The Favors Cathedral Church represented by Rev Molahlehi P. Mosia.*

*The property is situated on 8[...] zone [...] Seshego Polokwane. We are selling the property for hundred and fifty thousand rands only (R150 000.00)."*

The Applicant submits that the aforesaid proves that Louisa Lethetoa Chuene consented to the sale of the property.

[21] The Respondent has not raised any *bona fide* defence on the merits of the application. I now proceed to deal with the points *in limine* raised by the Respondent.

[22] The deponent on behalf of the Applicant deposed to the founding affidavit in his capacity as the head of the church and as a witness. As a witness he does not require authority to give evidence on behalf of a party in legal proceedings. The Respondent in challenging the authority of the deponent should have issued a notice in terms of **Rule 7(1) of the Uniform Rules of Court**. This was not done by the Respondent. Instead the Respondent raised it as a point *in limine*.

[23] **Rule 7(1) of the Uniform Rules of Court** provides as follows:

*"(1) Subject to the provisions of sub-Rules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, where after such person may no longer act unless he satisfies the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application."*

[24] The purpose of **Rule 7(1)** is to deal with challenges such as the one raised by the Respondent. In **Firststrand Bank Limited v Michael Gary Hazan and Another**

(unreported judgment under case number 2013/47366, Gauteng South High Court) at paragraph 26, Opperman AJ, stated as follows:

“In determining the question whether a person has been authorised to institute and prosecute motion proceedings, it is irrelevant whether such person was authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof that must be authorised. The remedy of a respondent who wishes to challenge the authority of a person allegedly acting on behalf of the purported applicant is not to challenge the authority in the answering affidavit but instead to make use of Rule 7(1) of the Uniform Rules of Court.”

[25] In ***Ganes and Another v Telecon Namibia Ltd, 2004 (3) SA 615 (SCA)*** at 624I to 625A; Streicher JA held:

“There is no merit in the contention that Oosthuizen AJ erred in finding that the proceedings were duly authorised. In the founding affidavit filed on behalf of the respondent Hanke said that he was duly authorised to depose to the affidavit. In his answering affidavit the first appellant stated that he had no knowledge as to whether Hanke was duly authorised to depose to the founding affidavit on behalf of the respondent, that he did not admit that Hanke was so authorised and that he put the respondent to the proof thereof. In my view, it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not to be authorised by the party concerned to depose to the affidavit”.

[26] The judgment of Streicher JA was cited with approval by the full bench in the matter of ***ANC Umvoti Caucus v Umvoti Municipality 2010 (3) SA 31 (KZP)***.

[27] From the aforementioned judgments what is paramount is that the deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. The deponent to the Applicant’s founding affidavit is a witness in these motion proceedings. He does not require the authority of any party

to depose to the affidavit. There is therefore no merit in the point *in limine* raised by the Respondent that the deponent in the founding affidavit lacks authority to bring this application on behalf of the Applicant.

[28] In the result, the first point *in limine* raised by the Respondent is dismissed with costs.

[29] Secondly, the Respondent raised the point *in limine* that the Applicant lacks *locus standi* to bring this application, because the Constitution of the Applicant, does not state that the church has the power to litigate. The fact that the Applicant's Constitution does not state that the Applicant has the power to litigate, does not infer that the Applicant should be denied the right to have its disputes resolved and /or adjudicated through a fair judicial process.

[30] **Section 9(1) of the Constitution No. 108 of 1996** provides that: "*everyone is equal before the law and has the right to equal protection and benefit of the law*". **Section 34 of the Constitution** provides that: "*every person has the right to have any dispute that can be resolved by the application of the law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum*". To deny the Applicant access to the courts to have its disputes resolved and or adjudicated through a fair judicial process would amount to an unreasonable encroachment of the rights as entrenched in the bill of rights and enshrined in Section 9(1) and Section 34 of the Constitution.

[31] **Section 8 (4) of the Constitution** provides that: "*A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person*". The Applicant is a juristic person and is therefore entitled to the rights in the Bill of Rights.

[32] In the result, the second point *in limine* raised by the Respondent is dismissed with costs.

[33] The Respondent argues that the alleged sale agreement fails to comply with the formalities of **Section 2(1)** and **Section 2 (2A) of the Alienation of Land Act**,



**No. 68 of 1981**, in that the agreement of sale does not afford the purchaser the right to terminate the deed of alienation in terms of **Section 29A**. **Section 29A (1)** affords the Applicant as the purchaser the right to revoke the offer to purchase or to terminate the deed of alienation, in the event of non-compliance. The point *in limine* raised by the Respondent can at best be relied upon by the Applicant and not by the Respondent.

[34] Noteworthy is the fact that **Section 29A (5)(b)** provides that **Section 29A (1)** shall not apply if the purchaser or prospective purchaser is a trust or a person other than a natural person. In this matter the purchaser is not a natural person. The right to terminate the deed of alienation, therefore, was never available to the Applicant.

[35] It is for these reasons that the third point *in limine* raised by the Respondent stands to be dismissed with costs.

[36] Lastly the Respondent alleges that the sale agreement is in contravention of **Section 15 of the Matrimonial Property Act, No. 88 of 1984** and is therefore unenforceable. In an attempt to prove a marriage which is in community of property the Respondent filed a marriage certificate to his papers ("MJCI"). The marriage certificate presented by the Respondent compounds the Respondent's problems in that it relates to a Chuene Mongadi Jacob with identity number 5[...], whose date of birth is 1953-01-[...]. However, the identity number of the Respondent on the deed of sale is 5[...]. It is different from the one on the marriage certificate. The date of birth on the marriage certificate does not correspond with the identity number as recorded on the deed of sale.

[37] The Respondent has not given a plausible explanation for the discrepancies in his identity number as it appears on his marriage certificate and on the deed of sale. The Respondent has failed to prove that the person stated on the marriage certificate is indeed him. The Respondent cannot rely on Section 15 of the Matrimonial Property Act since he has failed to prove that he was indeed married in community of property to Louisa Lethetoa Chuene.

[38] In the result the fourth point *in limine* is dismissed with costs.

[39] The Respondent has not raised any *bona fide* defence on the merits of the application. The Applicant has made out a case for the order sought.

[40] I therefore make the following order:

(a) The application is granted as prayed for in the notice of motion.

**SS MTHIMKULU**  
**ACTING JUDGE OF THE HIGH COURT**  
**LIMPOPO DIVISION, POLOKWANE**

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 16h00pm on 07 July 2023.

**DATE OF HEARING: 20 March 2023**

**DATE JUDGMENT DELIVERED: 07 July 2023**

**APPEARANCES:**

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