



Republic of South Africa  
In the Western Cape High Court of South Africa

In the matter between:

Case No: 9691/12

THE BOARD OF INCORPORATORS OF THE  
AFRICAN EPISCOPAL CHURCH  
THE CAPE ANNUAL CONFERENCE OF THE  
15<sup>th</sup> DISTRICT OF THE AFRICAN METHODIST  
EPISCOPAL CHURCH  
BISHOP ERROROUS EARL McCLOUD JUNIOR NO  
REVEREND MARK PIETERSEN

First Applicant

Second Applicant  
Third Applicant  
Fourth Applicant

And

PETRUS HERADIEN  
DOROTHY HERADIEN  
THE WITZENBERG MUNICIPALITY

First Respondent  
Second Respondent  
Third Respondent

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Judgment delivered: 21 September 2012

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Louw J:-

[1] The African Methodist Episcopal Church (AME Church) is incorporated as a legal entity under the Law of the United States of America and is an international voluntary religious organisation. Worldwide the AME church comprises 80 semi –autonomous episcopal districts which are constituted in terms of and governed by the Book of Discipline which document is the founding charter and governing statute of the AME Church. Each of the

episcopal districts comprises a number of subordinate local churches or congregations. The 15<sup>th</sup> episcopal district comprises the territories of Angola, Namibia, the Northern Cape, Western Cape and the Eastern Cape. This application concerns the affairs of one of the subordinate local congregations situate in the Western Cape territory of the 15<sup>th</sup> Episcopal District, namely, that of the Ebenezer congregation of the AME Church in Ceres. (the Ceres congregation).

[2] The first applicant, the Board of Incorporators of the AME Church, is the legal representative of the AME Church, with the right to sue and be sued in matters in which the property rights of the church are concerned. The first applicant is based in Philadelphia in the United States of America. The second applicant is the Cape Annual Conference of the 15<sup>th</sup> District of the A M E Church (The Cape Annual Conference) and is in itself an incorporated legal entity who when it is sitting, is the highest decision making authority in its area of jurisdiction within the AME Church. The third applicant was, at all times relevant to this application, the presiding bishop of the 15<sup>th</sup> episcopal district of the AME church. He held that position from 3 January 2011 to 4 July 2012. The third applicant deposed to the launching affidavit on behalf of the applicants. The fourth applicant is the Reverend Mark Pietersen. He has been appointed as the pastor of the Ceres congregation but has not taken up his appointment because the first respondent, Mr Petrus Heradien, purports to continue to occupy that position and continues to live in the parsonage of the Ceres congregation. The second respondent is Ms Dorothy Heradien the wife

of the first respondent. She continues to live with her husband in the parsonage of the Ceres congregation with their three minor children.

[3] The third respondent is the Witzenberg Municipality. Ceres falls within the area of jurisdiction of the third respondent. The applicants seek no relief against the third respondent who is joined by them only in so far as it may have an interest in the relief sought by the applicants against the first and second respondents.

[4] The applicants seek the eviction of the first and second respondents from the parsonage in terms of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (PIE). The third respondent has not filed a report in this matter and in my view, the circumstances of this case do not require a report from the third respondent to be filed.

[5] The applicants' case is that the first respondent was the pastor of the Ceres congregation church from 2009 until December 2010 alternatively April 2011, when he was suspended as member of the AME Church and his appointment as pastor was terminated. He was finally expelled from the AME Church in November 2011.

[6] The AME church is the owner of the land on which the parsonage is situated. The title deed of the property reflects that the owners of the property are the trustees for the time being of the African Methodist Episcopal Church,

Ceres. In terms of the Book of Discipline the trustees of the AME church in Ceres hold the property in trust for the AME Church. The applicants contend that there is at present no duly constituted and lawfully functioning board of trustees of the Ceres congregation because that board has not been constituted since the Cape Annual Conference held in December 2010.

[7] The applicants contend that the first respondent was lawfully expelled from the AME Church at the November 2011 Cape Annual Conference, together with ten other former ministers who are members of a dissident grouping known as 'the movement for change'.

[8] After their expulsion, the first respondent and the other ten expelled ministers continued to exercise control over the buildings and property of the AME Church. The AME Church then sought an interdict in this court against the expelled ministers to assert the property rights of the AME Church over the buildings concerned. On 8 March 2012 Zondi J granted the interdict and upheld the property rights of the AME Church. The first respondent and the other expelled ministers were interdicted from acting as pastors of the AME Church and were ordered to surrender the keys to the AME Church property concerned, to the applicants' attorneys.

[9] The first respondent was not reappointed as pastor to the Ceres congregation in December 2010. Bishop McCloud states that in terms of the book of Discipline and the practice of the AME church, a pastor who is not reappointed to a congregation is required to vacate the parsonage within 30

days to allow the new pastor to take up his or her appointment. The first respondent does not deny that this is the rule and the practice in the church but avers that he has, despite the fact that he has been a minister of the AME Church for over twenty years, no knowledge of such rule and practice.

[10] On 19 January 2012 the applicants' attorneys gave the first and second respondents written notice that required them to vacate the parsonage by 31 January 2012. The applicants informed the first and second respondents that if they should not so vacate the premises, eviction proceedings would be instituted against them in terms of PIE. After the orders made by Zondi, J on 8 March 2012, the applicants have not been able to take possession of the parsonage and Church building of the Ceres congregation.

[11] The first and second respondents oppose the application on a number of bases. First of all they raise three points in limine.

1. Bishop McCloud has not been authorised to institute proceedings against them;
2. The decision to expel the first respondent from the AME Church was unlawful and the eviction application is premature.
3. There has been a non-joinder in that the trustees of the Ceres congregation, who are reflected as the registered owners of the property in the title deed, were not joined in this application.



[12] In Unlawful Occupiers, School Site v City of Johannesburg 2005 (4) SA 199 (SCA) at para [14] it was held that Rule 7 (1) provides the remedy for a respondent who wishes to challenge the authority of a person allegedly acting on behalf of an applicant. The procedure provided for in that rule has not been followed by the first and second respondents. It is, however, clear from what is set out in the applicants replying affidavits that their attorneys have been duly authorised to institute these proceedings. It is the institution of the proceedings and the prosecution thereof which must be authorised and the issue is not whether bishop McCloud has been authorised to depose to the launching affidavit or to represent the applicants.

[13] The second point in limine is based on the contention that the first respondent was unlawfully expelled from the AME Church at the 115<sup>th</sup> special session of the Cape Annual Conference. The first respondent contends that the applicants should have waited until after the completion of the internal appeal processes provided for in the Book of Discipline, before instituting the eviction proceedings.

[14] The decision to expel the first respondent, from the AME Church was not taken at the 115<sup>th</sup> special session of the Cape Annual Conference which was held on the 16 April 2011. The decision to expel him was taken at the 116<sup>th</sup> session of the Cape Annual Conference which was held during November 2011. This appears from the minutes of the latter conference.

[15] The first respondent relies on a notice of appeal which relates to his *suspension* at the 115<sup>th</sup> session of the Cape Annual Conference.

[16] There is no internal appeal pending against the decision *to expel* the first respondent taken by the 116<sup>th</sup> session of the Cape Annual Conference. The first respondent and the other expelled ministers have given notice of their intention to appeal their expulsion, but the Judicial Council of the AME Church has ruled that the Book of Discipline does not provide for such a procedure. However, if a notice of intention to appeal is accepted as the due lodging of an appeal, the Book of Discipline makes it clear that the expulsion remains effective until reversed or otherwise changed by an appeal body. Events have in any event overtaken the issue of the occupancy of the parsonage in Ceres. In terms of the Book of Discipline it is the prerogative of the presiding bishop to assign ministers to a particular congregation. Bishop McCloud first assigned the reverend Willem Burger as the pastor to the Ceres congregation but he was prevented from taking up his position by the first and second respondents and other dissident members of the congregation. Thereafter, on 13 November 2011 at the 116<sup>th</sup> Cape Annual Conference, bishop McCloud assigned the reverend Mark Pietersen, the fourth applicant, as the pastor to the Ceres congregation. He was also prevented from taking up this post and from preaching at the Ceres congregation. The position is therefore that even if an appeal or review brought by first respondent against his expulsion from the AME Church should be successful, he would at best, be reinstated as a member and as a minister of the AME Church. A

successful appeal or a review of his expulsion from the AME Church would not have the effect of reinstating him as the pastor to the Ceres congregation.

[17] The third point in limine concerns the contention that there is a fatal non-joinder of the four persons who claim to be the local trustees of the Ceres congregation. The first respondent does not contend that he is a member of that board of trustees. The four persons involved are lay members of the congregation. The Book of Discipline limits the term of office of local church trustees to a period of one year. That period of a year has expired and there is therefore no properly constituted board of trustees. The first respondent contends however that there is a practice in the AME Church that in the absence of the election of a new board of trustees, the then current board of trustees continue in office despite what is set out in the Book of Discipline. However, the Book of Discipline provides that a minister in charge of the congregation is the chairperson of the local board of trustees and that the minister's signature 'shall be necessary to make the acts of the trustees legal'. There is in my view no misjoinder in this case because the four persons who claim to constitute the board of trustees cannot without a minister as Chairperson, be a lawfully constituted board of trustees. Any act purportedly performed by them in that capacity will have no legal effect.

[18] It follows that in my view all the points in limine raised by the first and second respondents must be rejected.



[19] The first and second respondents raise the following two defences to the merits of the eviction application.

1. They occupy the parsonage under a valid lease and they are therefore not unlawful occupiers in terms of PIE.
2. It is not just and equitable in terms of section 4 (7) of PIE for an eviction order to be granted.

[20] The first and second respondents rely upon a document purporting to be a lease agreement concluded by the first respondent with the trustees of the Ceres congregation on 13 April 2011. The document is signed by a Ms Pearly E Malgas and records that the first respondent hires the parsonage from the trustees of the Ebenezer Church, Ceres from 13 April 2011 to December 2012 at a monthly rental of R300.00. Ms Malgas purports to sign this lease on behalf of the trustees.

[21] I agree with the contention by Mr Hathorn on behalf of the applicants that the 'lease' has no legal effect. The four persons who it is claimed constitute the board of trustees of the Ceres congregation are all lay members of the church. Not one of them is a duly appointed minister of the AME Church. As pointed out earlier, the Book of Discipline requires the signature of the duly appointed minister for the acts of a local board of trustees to have any legal effect. Ms Malgas who claims to have been authorised to sign the lease on behalf of the trustees cannot by her signature of the document, give legal validity to the document. The document does not constitute a valid

lease with the AME Church (or for that matter the board of trustees of the Ceres congregation) and gives rise to no binding obligation on the AME Church. It follows that the first and second respondents are unlawful occupiers of the parsonage.

[22] The second defence raised by the first and second respondents is that it will not be just and equitable for them to be evicted from the parsonage.

[23] The applicants contend that it is just and equitable for the first and second respondents to be evicted having regard to a number of facts relating to the first respondent's means. The first is the fact that the first respondent has been a councillor in the local authority for a number of years and receives a substantial remuneration package. During the course of the hearing Mr Carollissen on behalf of the first and second respondents handed up a document reflecting that the first respondent, due to an alleged default with the payment of compulsory public representative contributions for a period of two months, in the amount of R7 284.00 for 'candidate fees', has ceased to be a member and public representative of the political party, the Democratic Alliance. A notice to that effect was served upon the first respondent on the 4<sup>th</sup> September 2012 and records that in terms of the constitution of the Democratic Alliance, the first respondent was granted the opportunity to provide reasons in writing within 72 hours of the service of the notice, why his membership of the party did not in fact cease. It would therefore appear that the first respondent will in all likelihood not continue to be a councillor in the local authority.

[24] The applicants further allege that the first respondent runs a successful street vending business in Ceres, Wolseley and Tulbagh and that he, in addition, owns two properties in Wolseley. The first respondent's response to the allegations of the applicants in this regard is equivocal. Although he purports to deny the whole of the contents of the paragraphs of the launching papers in which the details of his occupation, business and property ownership is recorded, he proceeds to deal with the allegations in question. In regard to the vending business he states:

'I run a vending business but it is not a flourishing vendor business'.

In regard to his alleged ownership of the two properties in Wolseley he states:

'According to the applicants I own two properties and I put the applicants to the proof thereof'.

The first respondent is not candid at all about his income from his vending business and he does not answer the question whether or not he owns two properties in Wolseley. These are all matters which are peculiarly within his personal knowledge. On these papers it must consequently be accepted that the first respondent owns two properties in Wolseley and conducts the street vending business in the three towns mentioned.

[25] The first respondent gives further reasons why it would not be just and equitable for him to be evicted. He points out that he does not receive any

income as a minister of the AME church, and that his income as a councillor is dependent on his and his political party's re-election in that position. He further states that he has a disabled child whom he is required to take to Brackenfell to a special school on Fridays and that he spends a lot of money on medical aid for his disabled child. He is also, he states, the main breadwinner of his family and he contends that an eviction will have a clear hardship on his life. It would consequently not be just and equitable to evict him from the parsonage he contends. He does not claim that if he should be evicted, he and his family will be rendered homeless.

[26] In addition, the AME Church is placed in an intolerable position. Until the first and second respondents vacate the parsonage, the duly appointed minister to the Ceres congregation is not be able to move into the parsonage and properly perform his duties as minister of that congregation.


[27] In the circumstances, it would in my opinion be just and equitable to evict the first respondent and his family from the parsonage. I turn to consider the discretion given to a court in terms of sec 4 (7) of PIE. I conclude that I must in the circumstances set out above, exercise my discretion to grant the order of eviction sought by the applicants.

[28] It follows that the application succeeds and the following order is made:

1. The first and second respondents and any person occupying under them, are evicted from the parsonage situated at 21 Lylle Street,

Ceres, more fully described as Erf 566, Ceres, Western Cape Province ('the parsonage');

2. The first and second respondents and any people occupying under them, are directed to vacate the parsonage by Wednesday, 31 October 2012;
3. The Sheriff for the High Court may carry out the eviction order on Thursday, 1 November 2012, if the first and second respondents, and any people occupying under them, have not vacated the parsonage by Wednesday, 31 October 2012;
4. The first and second respondents, and any people occupying under them, once they have vacated or been ejected from the parsonage, are interdicted and restrained from returning to it; and
5. The first and second respondents are ordered to pay the costs of this application, jointly and severally.



**W.J. LOUW**

Judge of the High Court