Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CIRCUIT LOCAL DIVISION, THEMBALETHU)

CASE NUMBER: 156 / 2022

In the application for leave to intervene

MATJESRIVIER INDEPENDENTE KERK	**INTERVENING PARTY**

In re:

UNITED CONGREGATIONAL CHURCH OF SOUTH AFRICA (OUDTSHOORN)	**APPLICANT**
and	
THE MINISTER OF THE DEPARTMENT OF AGRICULTURE AND LAND REFORM AND RURAL DEVELOPMENT	**FIRST RESPONDENT**
THE DIRECTOR GENERAL OF THE DEPARTMENT OF AGRICULTURE LAND REFORM AND RURAL DEVELOPMENT	**SECOND RESPONDENT**
SYLVIA FREDIRIKA CARELSE N.O.	**THIRD RESPONDENT**
JEREMIA JOHANNES BARNARD N.O.	**FOURTH RESPONDENT**

THE REGISTRAR OF DEEDS, CAPE TOWN FIFTH RESPONDENT

Coram: Wille, J

Heard: 31 August 2023

Delivered: 12 October 2023

JUDGMENT

WILLE, J:

Introduction

[1] This is an unfortunate dispute between two church groups about the ownership of an immovable property.[1] The intervening party's application in these proceedings is predicated on their alleged direct and substantial interest in the matter. This matter concerns, among other things, an examination of the fundamental characteristics of a 'congregational' church.[2] The churches' approach to property ownership is grounded in the principle of local autonomy. The ownership of immovable assets, encompassing land and related resources, firmly resides under the jurisdiction of each respective local congregation.

[2] Central to this ethos is the emphasis on self-governance on a local level. This extends into property matters, where each congregation rules supreme over their assets. This bolsters a sense of communal responsibility and ownership. Congregations are able to make decisions that best align with their contextual demands whilst nurturing a strong sense of identity within the specific congregation. The first, second and fifth respondents take no part in the opposition of this application.

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[1] Portion 1 of the 'Farm Matjesrivier No 34, Oudtshoorn' ("the property").
[2] Hereinafter referred to as the "church".

History

[3] Initially, a missionary outpost was established on the property under the umbrella of a mission society. This was during the nineteenth century.[3] During this time, a 'planter church' with nineteen other congregants purchased certain farmland. After that, approximately thirty congregants were established on the property. As a result, this extended congregation 'owned' the property for religious purposes. Several congregations were then encouraged to become independent, which resulted in the subsequent establishment of the first three independent churches.[4]

[4] As a result, certain church buildings were built, and the construction was done with the assistance of the three independent churches. Some decades later, the property was donated to the intervening party. The three independent churches then amalgamated as much as they joined an umbrella association.[5] During the early twentieth century, the building on the property was extended. Following this and without the knowledge of the intervening party, the property's title deed was endorsed with a name change.[6] It is a matter of common cause that the said name change endorsement influenced no status rights concerning the property.

[5] Ultimately, this property was dealt with as a 'designated' property.[7] An official was appointed to investigate various of these designated properties.[8] The property was one of these defined properties. The applicant did not object to the property becoming part of these 'designated' properties. Thus, following the official's investigations and findings, the property was transferred to a trust controlled by the third and fourth respondents.

[6] In the interim, the intervening party had no objection to the current status registration being maintained and regarded the registration of the property into the name of the trust as beneficial to its religious activities and a benefit to this particular community. It is so that there is no room to dispute that two distinct congregations existed as far back as seventeenth century and that they regrettably now have competing interests. Also, they have their own and share a common history.

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[3] The London Missionary Society (LMS).
[4] At 'Deysselsdorp' at ' Oudtshoorn' and at 'Matjesrivier'.
[5] The 'Congregational Union' of South Africa,
[6] In terms of Section 93 of the Deeds Registry Act, Act 47 of 1937.
[7] The Minister of Land Affairs designated the property in terms of the Land Titles Adjustment Act, Act 111 of 1993.
[8] The designated 'Commissioner'.

Overview

[7] It is argued that the acceptance of these peculiar principles is strategically aligned with the historical records of both the intervening party and the applicant. Both have historically adhered to these principles for many decades. The historical records reflect the genesis of the intervening party's congregation, which aligned itself with various other organisations while maintaining its autonomy while steadfastly adhering to congregational church principles. The donation of the property was designated explicitly for the intervening party. Also, the property has served the intervening party and the community also for many decades.

[8] By contrast, the applicants say that they own this property because they do not accept the status of the intervening party as a congregation and because they claim ownership by way of specific legislative intervention.[9] They also say that the transfer of the property to the third and fourth respondents was erroneously executed. This is then the core dispute between the parties through the process and medium of motion proceedings.

Consideration

[9] The historical records undoubtedly confirm the existence of the intervening party, who was the recipient of the property through an initial donation. Further, it seems that the enshrined principles of a congregational church support the independent existence of the intervening party. Also, the name change endorsement did not dilute the property rights of the intervening party as vested in the trust. These are all issues that bear further scrutiny. The applicant's case is that the applicant has a right to own the property. Thus, the property should never have been declared a designated property.

[10] Following this, the argument is that the property's registration into the trust's name was in error and violated the applicant's rights. The applicant also argues that the official's appointment was suspect and his actions concerning the property are to be reviewed and set aside. These allegations and submissions must be viewed against the canvass of the status and existence of the intervening party from a historical perspective also considering the initial donation.

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[9] By way of application of the name change endorsement in accordance with section 93 of the Deeds Registry Act.

[11] It is apparent from the deed of donation that the applicant was not a party to the donation agreement. Thus, the legal argument is that the applicant is accordingly barred from enforcing any rights stemming from the donation agreement by applying principles in connection with the doctrine of privity of contract. In summary, the relief sought by the applicant is to rectify the alleged erroneous property transfer into the name of the trust controlled by the third and fourth respondents. The alleged error has genesis in the process initiated to declare the property a designated property to attempt to rectify and settle disputes related to the property.[10] Significantly, in this case, no appeal or review is pending regarding the decision rendered by the designated official. Thus, to protect and preserve adherence to the doctrine of judicial overreach, this court cannot deal with the validity or otherwise of the decision made by the said official, irrespective of whether the decision was right or wrong.

[12] By elaboration, the doctrine of separation of powers dictates that courts must be cautious about interfering with the decisions of appointed bodies to perform tasks that have been legislatively empowered to deal with matters that fall beyond the jurisdiction of the courts. Accordingly, the decision to designate the property still stands. Thus, the property would still be considered 'designated' per the decision rendered, and a defined and specified process would need to be followed concerning the property to declare it to be an 'undesignated' property.

[13] Put another way, even an invalid administrative action cannot be ignored. It is still valid and effective until a competent court sets it aside.[11] The fact that ownership was disputed before the property's designation does not change the status position, as the designation of the property would still render the transfer of ownership from the previous owner valid.

[14] To counter this argument, the applicant relies heavily on an official departmental letter, which refers to the alleged flawed appointment of the official concerned and the erroneous transfer of the property. Significantly, the author of this official letter refers to the appointment of a new official with a new detailed term of reference concerning the property.

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[10] By the then Minister of Land Affairs.
[11] *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA) at par [26] - [31].

[15] This court is not able to perform the functions of the appointed official. Thus, the relief sought by the applicant must be considered against the canvass of the status and principles that apply to a congregational church and the community that makes up the ethos and spirit of that congregational church. The legal position regarding final relief in motion proceedings is that the court may only grant final relief if the facts alleged by the applicants (which are admitted by the respondents in the answering affidavits), together with the facts alleged by the respondents, justify granting such final relief.[12] These proceedings were not designed to deal with the factual disputes that arose in this application. The facts, as stated by the opposing respondents and the facts alleged by the applicant (admitted by the opposing respondents), did not justify the order sought.[13] I was also not satisfied that the opposing respondents' version consisted of bald or uncreditworthy denials, raised fictitious disputes of fact, or was so far-fetched or so clearly untenable or palpably implausible as to warrant its rejection merely on the papers.[14]

[16] In addition, in the detailed consideration of this case, it must be so that on the facts the intervening party was an outstation of the applicant (and thus be a logical extension also the rights of the third and fourth respondents) and thus the principles underlying that of a congregational church find application. This is so when a congregation is an outpost of an independent church. This principle was explained in essence to mean that the control of a local congregational church community did not rest with or vest in the top structures of the organisation but rather with the local community.[15] As a general proposition, a congregation's affiliation to a larger umbrella organisation at various levels does not dilute the principles inherent to a congregational church. This is now settled law.

[17] In conclusion, I find that because of the peculiar status of the parties before me coupled with the nature of the final relief sought, the applicant did not discharge the onus that rested on it to be entitled to the relief that it sought. In my view, the applicant should have proceeded in accordance with the objection process open to it, alternatively by way of action proceedings.

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[12] *Plascon-Evans Paints Limited v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634 – 635.
[13] *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235.
[14] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 635 C.
[15] *Community of Grootkraal v Botha NO* 2019 (2) SA 128 (SCA) at par [56].

Costs

[18] On the facts, the intervening party made a proper case for its intervention because it no doubt had a real and substantial interest in the matter. Thus, it is permitted to intervene as another respondent in these proceedings. In view of my reasoning above, it is unnecessary to deal with the relief sought by the intervening party as set out in its proposed conditional counter application. Accordingly, I also do not have to deal with the costs of the intervention and the costs associated with the proposed counter application.

Order

[19] In all the circumstances, an order is granted in the following terms:

1. The intervening party is granted leave to intervene as the fifth respondent.

2. The application is dismissed with costs.

3. The applicant shall be liable for the costs of the application on the scale between party and party, as taxed or agreed.

4. The respective parties shall bear the costs of the intervention and conditional counter application, and no cost orders will be made in this connection.

E D WILLE
(Cape Town)