
SOUTH AFRICA / JUDGMENT

Conjwa and Others v United Methodist Church of Southern Africa (1263/2014) [2018] ZAECHGHC 112 (6 November 2018) [2018] ZAECHGHC 112

COURT

Eastern Cape High Court, Grahamstown

BEFORE

M Roberson

CASE / FILE NUMBER

1263/2014

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GRAHAMSTOWN

CASE NO 1263/2014

DATE HEARD: 18/10/2018

DATE DELIVERED: 06/11/2018

In the matter between

S. P. CONJWA

1ST APPLICANT

S. COLANI

2ND APPLICANT

Z.A. TAFENI

3RD APPLICANT

M.L CONJWA

4TH APPLICANT

and

UNITED METHODIST CHURCH OF SOUTHERN AFRICA RESPONDENT

JUDGMENT

ROBERSON J:-

- [1] This is an application for condonation of the delay in bringing an application for rescission of judgment, and for condonation of the late filing of the first and second applicants' replying affidavit in the rescission application.
- [2] On 8 May 2014 the respondent, as plaintiff, obtained a default judgment against the first and second applicants in terms of which they were interdicted from holding themselves out as members of the respondent and committing related conduct; directed to hand over to the respondent's attorney the keys and title deeds to all the respondent's premises in their possession; and to vacate various premises of the respondent. According to the particulars of claim the first and second applicants were former ministers of the respondent but had been lawfully expelled as members. Despite this expulsion, so it was pleaded, the first and second applicants continued to hold themselves out as members of the respondent, occupy the respondent's premises and retain possession of the keys and title deeds of the premises. Judgment was granted following the first and second applicants' failure to enter an appearance to defend the action, despite personal service of the summons.
- [3] The rescission application was launched on 30 October 2014. The applicants brought the application in terms of rule 42
- (1) (a), alternatively in terms of the common law, alternatively in terms of rule 31 (2) (b). The respondent's answering affidavit was filed on 27 November 2014. The application for condonation of the late filing of the replying affidavit was launched on 16 March
2015. According to the court file the applications have been postponed a number of times over the years. An application for the joinder of the third and fourth applicants was granted on 17 January 2017.[1]
- [4] The first applicant deposed to the founding affidavit in the rescission application He claimed to be authorised to institute the rescission application and to depose to the affidavit in terms of the United Methodist Church of Southern Africa (UMCOSA) Constitution, the Laws and Discipline. He maintained that he and the second applicant are legitimate members of UMCOSA and have a reversionary interest in the maintenance of its constitutional structure as a Protestant church under the presidential system. According to the first applicant the respondent is a breakaway group from UMCOSA and there is an ongoing dispute over the leadership of the church.
- [5] The first and second applicants' explanation for not entering an appearance to defend was that an undertaking had been given by the secretary of the respondent that the respondent would not apply for default judgment because of certain negotiations and a judgment of the Mthatha High court. The explanation for the delay in bringing the rescission application was that they were waiting for the Mthatha High Court documents, which were vital to the rescission application. The first applicant did not say when they learned of the judgment but

according to the answering affidavit the order was served personally on the second applicant on 29 May 2014 and the first applicant refused to accept service. The explanation for the delay in filing the replying affidavit was again that Mthatha High court documents were awaited and a further explanation was a confessed lack of diligence on the part of the first and second applicants' former attorney.

- [6] In addition to alleging that the respondent was a breakaway group from UMCOSA, a defence of res judicata was raised, with reference to a judgment of the Mthatha High Court. Presumably the High Court documents which were allegedly awaited

related to this judgment.

- [7] It was revealed in the answering affidavit that the first and second applicants were not parties to the Mthatha matter and a considerable portion of the answering affidavit was devoted to refuting the defence of res judicata. For reasons which will later become apparent I do not intend to consider whether or not this defence carries some prospect of success for the purposes of a rescission application.

- [8] According to the deponent to the answering affidavit, Bishop Mfamana, the respondent is a well-established church with a written

constitution. After the Methodist Church of Southern Africa was declared an undesirable organisation in the former Transkei, a Conference of Methodist ministers and their congregations in the former Transkei formed the respondent, which was brought into

existence by the United Methodist Church of Southern Africa (Private) Act 1978. This Act is appendix 1 to the respondent's

constitution. The constitution was handed in and such an Act is appendix 1 to the constitution, but it does not have a number.

No-one was able to tell me the number of this Act. The heading is indeed "United Methodist Church of Southern Africa (Private) Act, 1978" and it purports to have been enacted by the "Presiding Bishop and the National Assembly of the Republic of Transkei". The closing provision of this Act is:

"This Act shall be called the Methodist Church of Transkei (Private) Act, 1978."

I shall refer to this Act as the unnumbered Act.

- [9] According to the Bishop, in terms of this legislation all properties of the church vest in the Presiding Bishop. A further Act was passed which confirmed the autonomy of the respondent and its name. This Act is appendix II to the respondent's constitution and is titled "United Methodist Church of Southern Africa (Private) Act, 1979". This Act does have a number, 10 of 1979. The opening section of this act provides:

“1. Notwithstanding the provisions of the Methodist Church of Transkei (Private) Act, 1978 (Act 41 of 1978) (hereinafter referred to as the Principal Act) or any other law, and as from the date of commencement of this Act –

- (a) The Methodist Church of Transkei (hereinafter referred to as the church) shall be known as the United Methodist Church of Southern Africa.”

Section 2 provides:

“Any reference to the “Methodist Church of Transkei” in the principal Act or any other law or in any deed, book or other document of whatever nature made executed, written or issued prior to the commencement of this Act, shall be construed as a reference to the “United Methodist Church of Southern Africa”.

Section 3 provides:

“The Principal Act shall be construed in conjunction with the provision of this Act: Provided that nothing in this Act contained shall be construed as affecting:-

- (a) The continued existence of the church of the Conference as constituted by the principal Act: or;
- (b) Anything done by the virtue of the provisions of the Principal Act prior to the date of commencement of this Act.”

[10] The Bishop said that there was a significant difference between the respondent and the Methodist Church of Southern Africa, namely that the leader of the respondent is the Presiding Bishop and the leader of the Methodist Church of Southern Africa is a President. He said it was clear from the legislation in terms of which the respondent was brought into being that it falls under the leadership of a Bishop. He denied that the first and second applicants were legitimate members of the respondent.

[11] The replying affidavits of the applicants also went into considerable detail in support of a defence of res judicata. In response to the allegations concerning the legislation in terms of which the respondent was established, they referred to the Methodist Church of Transkei (Private) Act 41 of 1978 (see paragraph [9] above) in terms of which the Methodist Church of Transkei came into existence. They denied that the constitution put up by the respondent is the constitution of UMCOSA but a constitution drawn up in 2007. The constitution of UMCOSA came into existence in

1978. This constitution was also handed in and Act 41 of 1978 is appendix 1 to this constitution. Section 2/2 of this constitution refers to Act 10 of 1979 as the Act which changed the name of the Methodist Church of Transkei to the United Methodist Church of Southern Africa. Section 4 of Act 41 of 1978 provides that all property of the church vests in the President of the Conference.

[12] Effectively, both in the founding affidavit and the replying affidavit, as well as the founding affidavit in the joinder application, the applicants dispute the locus standi of the respondent to litigate in the name of UMCOSA. In their heads of argument it was alleged that the legislation in terms of which the respondent claimed to be established had been falsified and that there was no United Methodist Church of Southern Africa (Private) Act, 1978 (the unnumbered Act).

Evaluation

[13] In my view neither rule 31 (2) (b) nor Rule 42 (1) (a) are of application and I shall deal with the application as one in terms of the common law.

[14] In *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA), Jones AJA said the following at paragraph [11] (footnotes omitted):

“[11] I turn now to the relief under the common law. In order to succeed an applicant for rescission of a judgment taken against him by default must show good cause (De Wet and Others v Western Bank Ltd (supra)). The authorities emphasise that it is unwise to give a precise meaning to the term 'good cause'. As Smalberger J put it in HDS Construction (Pty) Ltd v Wait:

'When dealing with words such as "good cause" and "sufficient cause" in other Rules and enactments the Appellate Division has refrained from attempting an exhaustive definition of their meaning in order not to abridge or fetter in any way the wide discretion implied by these words (*Cairns' Executors v Gaarn* 1912 AD 181 at 186; *Silber v Ozen Wholesalers (Pty) Ltd* 1954

(2) SA 345 (A) at 352 - 3). The Court's discretion must be exercised after a proper consideration of all the relevant circumstances.'

With that as the underlying approach the Courts generally expect an applicant to show good cause (a) by giving a reasonable explanation of his default; (b) by showing that his application is made bona fide; and (c) by showing that he has a bona fide defence to the plaintiff's claim which prima facie has some prospect of success (*Grant v Plumbers (Pty) Ltd*, *HDS Construction (Pty) Ltd v Wait supra*, *Chetty v Law Society, Transvaal*)."

[15] I am of the view that the defence of lack of locus standi has some prospect of success. On the face of it the claimed enabling legislation (the unnumbered Act) lacks authenticity. It has no number. It is almost identical in content to Act 41 of 1978 but where for example the word "President" appears in Act 41 of 1978, in the unnumbered Act it is substituted with the word "Bishop". The effect of the substitution is that the unnumbered Act purports to have been enacted by the Bishop and the National Assembly of the Republic of Transkei and that all church property vests in the Bishop. The closing provision in Act 41 of 1978 and in the unnumbered Act is "This Act shall be called the Methodist Church Transkei (Private) Act, 1978. On the face of it, there cannot be two such Acts. Nor for that matter can there be two constitutions for the one true church. It is also significant that Act 10 of 1979, which changed the name of the Methodist Church of Transkei to the United Methodist Church of Southern Africa, when referring to the principal act, specifically refers to Act 41 of 1978, not to the

unnumbered Act.

[16] It is so that the explanations for not entering an appearance to defend the action, for the delay in bringing the rescission

application (a delay I consider to be unreasonable), and the delay in delivering the replying affidavit, are not particularly strong.

However the challenge to locus standi, supported as it is by the factors which I have mentioned, is so fundamentally important to the dispute between the parties, that I am of the view that the delay in bringing the application should be condoned, the late filing of the replying affidavit should be condoned, and rescission should be granted. If it was established at a trial that the unnumbered Act never existed, this goes to the root of the true identity of the respondent and its claim to be the true United Methodist Church of Southern Africa. As was pointed out by Beard AJ, in her judgment granting the joinder application at paragraph [14]:

“The dispute between the parties thus relates to the identity of the true representatives and office bearers of UMCOSA and thus, in turn, in whom the property, both moveable and immovable, of UMCOSA vests. An examination of the order sought to be rescinded indicates that this issue is of cardinal importance in the rescission application”

So too, the issue is of cardinal importance in the action.

[17] In the result, the following order will issue:

[17.1] The delay in bringing the application for rescission of judgment is condoned.

[17.2] The late filing of the replying affidavit is condoned.

[17.3] The order of this court in case number 1263/2014 granted on 8 May 2014, is rescinded.

[17.4] The costs of the application for condonation and rescission, the application for condonation of the late filing of the replying

affidavit, and the costs of the application for joinder[2], are reserved for the decision of the court hearing the action.

J M ROBERSON

JUDGE OF THE HIGH COURT

Appearances:

For the Applicants: Adv M Mpahlwa, instructed by Mili Attorneys, Grahamstown

For the Respondent: Adv J Wild, instructed by Huxtable Attorneys, Grahamstown

[1] Judgment of Beard AJ under the same case number.

[2] Beard AJ reserved these costs for the court hearing the rescission application.

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