

SOUTH AFRICA / JUDGMENT

Free Baptist Church v Hephzebah and Others (12497/04) [2004] ZAGPHC 34 (27 October 2004) [2004] ZAGPHC 34

COURT

High Courts - Gauteng

BEFORE

Willis

CASE / FILE NUMBER

12497/04

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IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 12497/04

DATE:2004-10-07

In the matter between

FREE BAPTIST CHURCH..... Applicant

and

PETRA HEPHZEBAH AND OTHERS..... Respondents

JUDGMENT

WILLIS, J: The applicant has approached the court seeking relief which amounts essentially to an assertion of its alleged rights of ownership of a church situate at Erf 1960, Eldorado Park Extension 1.

It is common cause that the ownership of the property was registered in 1985 under Title Deed No. T30748/1985. The ownership of the property, it is common cause, is registered in the name of the Vrye Baptiste Kerk, Eldorado Park. In other words, it is registered in the name of Free Baptist Church, Eldorado Park.

In essence, the entire dispute depends upon whether the Free Baptist Church, Eldorado Park was an autonomous body or whether it was a parish or congregation (ailing under the aegis of the applicant - the Free Baptist Church or "Vrye Baptiste Kerk". In other words, crisply stated, the issue before me is whether the registration of the property in the title deed referring to Eldorado Park is simply a description of where the Free Baptist Church (the applicant) was functioning in a particular area or whether it was the name of an autonomous and independent body.

I have given serious consideration to referring the dispute to oral evidence. The answer to that question is, however, in my opinion to be found in the following which appears in the answering affidavit of the respondents (the affidavit is that of Mr Palayandi.) In paragraphs 9 and 10 of the affidavit it says the following:

"9. Further I am a member of the Executive Council of Eldorado Park Extension 1 Free Baptist Church since about 1990 until the resignation of the latter from the Applicant. I functioned in the capacity of chairperson throughout my service on the said Council.

10. On or about the latter of 2003 the congregation of Eldorado Park Extension 1, a voluntary association affiliated to the Free Baptist Church and which to the best of my knowledge had not been registered, resigned from the Synod of the Applicant. I am also of the belief that at the time of the aforementioned resignation the Applicant itself had not been a registered non-profit organisation", (emphasis added) It is clear therefore, on the version of the respondents themselves that they constitute the breakaway group and accordingly could not have been an autonomous body in 1985, the time when the ownership of the property was registered. Accordingly, the only conclusion that one can make in this matter is that the property was registered in the name of the applicant and that (i) it was indeed the owner of the property at that time and (ii) that the reference to Eldorado Park is merely a reference to place in respect of the registration of the property.

Accordingly an order is granted in terms of prayers 1, 2, 3, 4 and 5 of the notice of motion.

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