

SOUTH AFRICA / JUDGMENT

Old Time Ministries and Another v South African Evangelistic Mission (1618/2006) [2012] ZAECHGHC 104 (29 November 2012)

[2012] ZAECHGHC 104

COURT

Eastern Cape High Court, Grahamstown

BEFORE

GG Goosen

CASE / FILE NUMBER

1618/2006

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IN THE HIGH COURT OF

SOUTH AFRICA

(EASTERN CAPE,

GRAHAMSTOWN)

CASE NO: 1618/2006

Date

Heard: 29 November 2012

Date

Delivered: 29 November 2012

NOT/REPORTABLE

In the matter between:

OLD TIME MINISTRIES

.....1st

Applicant

PIET OLIVIER

.....2nd

Applicant

and

SOUTH AFRICAN

EVANGELISTIC MISSION

.....Respondent

JUDGMENT**GOOSEN, J:**

The applicants, represented by the second applicant, appear without legal representation in this application which seeks an order rescinding a judgment of this court given on 8 June 2006, interdicting the applicants from using an immovable property situated in Cradock. The applicants also seek additional relief in the form of an order compelling registration and transfer of the property concerned into the second applicant's name as well as the payment of "financial losses" in respect of said property.

This matter has a long and unfortunate history which has seen the applicants launch a number of applications in relation to their eviction from the property in Cradock. Such applications have either been withdrawn or dismissed, as has an application for leave to appeal. The second applicant has on each occasion appeared in person having been unable to obtain legal representation either from the Legal Aid Board or by way of *informa pauperis* proceedings.

A perusal of the court file indicates that the second applicant has persisted in seeking relief based upon essentially the same set of facts in each of the applications commenced by him. The background to this application may briefly be summarised as follows. In 1986 the second applicant was appointed as the spiritual leader of the South African Evangelistic Mission local church in Cradock. He continued to serve in this capacity for a number of years and by dint of his efforts to raise funds and obtain donations of building materials and the like, the local church, now presently known as Old Time Ministries purchased properties from the local municipality in 1993. Further properties were purchased in 1995. On each of these occasions the second applicant and one Jacobs entered into the agreements on behalf of the respondent. The second applicant disputes this, contending that he purchased the properties in his own name. The purchase agreements annexed to the applicants' papers do not however support him in this contention. During 1995 the several erven purchased from the local municipality were consolidated into a single consolidated erf, namely erf 4334, with street address 52 Shannon Street, Michausdal, Cradock. It appears that the consolidated title deed was sent to the headquarters of the respondent. A church building was then erected on the property which was completed in 1999. It is common cause that during 2005 the executive council of the respondent instituted disciplinary proceedings against the second applicant. As a result of these disciplinary proceedings his membership of the respondent was terminated and in response hereto the second applicant terminated the first applicant's affiliation to the respondent. This much is common cause.

In consequence of the termination of the applicants' membership, the respondent brought proceedings to obtain the ejectment of the applicants from erf 4334, Cradock. It is in these proceedings that this court granted an interdict on 8 June 2006, being the order which the applicants now seek to rescind. Effect has been given to this order and, as I understand the papers, the applicants are no longer in occupation of erf 4334 and have not been in occupation of the property for some number of years.

The applicants' application is fundamentally flawed in a number of respects. In the first instance the applicants seek a rescission of the judgment of 8 June 2006. No basis is however set out in the papers to suggest that the judgment was either wrongly sought or obtained or that it was obtained in circumstances in which the applicants were not aware that the order was being sought. There is in effect no contention that the order was erroneously granted against the applicants in their absence. Quite apart from this material deficiency in the papers, the applicants do not, in any manner, deal with the fact that a previous similar application was dismissed. There is accordingly no basis upon which a rescission of the judgment of June 2006 can be granted.

The applicants' pursuit of the further relief, namely the so called restoration of the title and the registration of ownership in the name of the second applicant is also relief which cannot, in the circumstances of this matter, be granted. That is so because on the applicants' own evidence, in the form of the deeds of sale annexed to the founding affidavit, the purchase of the properties occurred in circumstances where the second applicant was acting as a representative of the respondent. Accordingly the respondent was at all times the purchaser and eventual owner of the immovable property which is at issue in this matter. It is furthermore common cause that the individual erven were consolidated into a single erf and that this occurred in

1995. Although the second applicant seeks to make something of the fact that the consolidated title deed was dispatched to a "wrong address", nothing of moment turns on this. There is no basis to suggest that the true owner of the individual erven and ultimately the consolidated erf is the second applicant. In this regard the second applicant's contention is fanciful. It follows that there is no basis upon which the second applicant can seek registration of ownership in his name and accordingly that relief cannot be granted. There is also no basis for awarding relief in respect of "financial losses" relating to the property. It is also appropriate to note that the application in this respect is in any event fatally defective since the Registrar of Deeds has not been cited as is required by section 97 of the Deeds Registries Act, 47 of 1937.

This matter clearly arises out of an unfortunate dispute within a church community in which it is apparent that the second applicant feels aggrieved by the disciplinary action taken against him in 2005 and, perhaps, aggrieved that his salutary efforts to develop a church community has come to naught. Although one can understand the distress and even the sense of injustice that may flow from these events, the unfortunate fact remains that the applicants' case is without any merit.

It was argued by Mr Wolmarans, on behalf of the respondent, that in the light of the long history of this matter and in particular the second applicant's conduct in persisting with unmeritorious applications that, in addition to dismissing the application, I should also order that the applicants not be permitted to issue any further application relating to the immovable property until all of the taxed costs in respect of previous applications have been paid. In this manner, it was suggested, further inconvenience to the respondent, as well as to the court, would be avoided. Although there is certainly a need to bring to the attention of the second applicant the fact that he should desist from pursuing litigation in relation to the immovable property which has no merit whatsoever, I

do not consider that it would be appropriate to make the order the respondent seeks. The respondent is vested with appropriate remedies to protect itself in the event that the applicants proceed to litigate frivolously and/or vexatiously. These proceedings are however not appropriate for the determination of that matter. It is sufficient in my view to sound a warning to the applicants that in the event that further litigation relating to the issues which have now been determined is commenced they may well invite the ire of this court.

In the result I make the following order:

The application is dismissed with costs.

GG GOOSEN

JUDGE OF THE HIGH COURT

APPEARANCES:

FOR THE APPLICANTS: Mr Piet Olivier (Second Applicant)

FOR THE RESPONDENT: Mr Marius Wolmarans,

instructed by N N Dullabh & Co

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Prepared on 11 October 2026 · Esheria