

SOUTH AFRICA / JUDGMENT

**Tlhagwane v Sedcom Incorporated
(Association
not for gain) and Others (13726/2013) [2013]
ZAGPPHC 274 (5 September 2013)
[2013] ZAGPPHC 274**

COURT

North Gauteng High Court, Pretoria

BEFORE

Baqwa

CASE / FILE NUMBER

13726/2013

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NOT

REPORTABLE

NORTH GAUTENG HIGH COURT PRETORIA

(REPUBLIC OF SOUTH AFRICA)

Case

no: 13726/2013

DATE:05/09/2013

In

the matter between:

PATRICK
PHALANG
TLHAGWANE.....APPLICANT
And
SEDCOM
INCORPORATED.....1st
RESPONDENT
(ASSOCIATION
NOT FOR GAIN)
PRESTIGE
PARK (PTY)
LTD.....
2nd RESPONDENT
SOUTH
AFRICAN UNION CONFERENCE
OF
THE SEVENTH-DAY ADVENTIST
CHURCH.....3rd

RESPONDENT
TRANS
ORANGE CONFERENCE OF THE
SEVENTH-DAY
ADVENTIST
CHURCH.....4th
RESPONDENT
KORSTEN
AND GYS LOUW INCORPORATED5th
RESPONDENT
THE
REGISTRAR OF
DEEDS.....6th
RESPONDENT

JUDGMENT

BAQWA J

- [1] The applicant herein, Patrick Phalang Tlhagwane launched an urgent application against the respondent on 4 March 2013.
- [2] First, third and fourth respondents are structures of the seventh day Adventist Church (The Church) whilst second respondent is the purchaser of property owned by the church. Fourth respondent are the attorneys of the first respondents whilst the sixth respondent is the registrar of Deeds cited herein in his capacity as such.
- [3] The first, third and fourth respondents are opposing the application and have filed papers to that effect.
- [4] In terms of the constitution of the church the fourth respondent conducts its work through its districts which operate within specific territories and its membership consist of organised churches in any part of a designated geographic territory.
- [5] The first respondent has the power to receive and collect all rental income and interest on behalf of the church and also has power for the purpose of the administration of the trust to buy, sell, let and deal with immovable property belonging to the church and to give and take transfer of such immovable property.
- [6] First respondent can however only alienate such property upon authorisation by a resolution of the Executive Committee of the fourth respondent subject to certain conditions.
- [7] In the notice of motion it is prayed by the applicant that the first respondent be ordered not to alienate and be refrained from doing anything that may have an adverse effect on the interests of the applicant in the immovable property.

[8] On the face of it the order sought is strange in light of the fact that first respondent is a creation of the third and fourth

respondent which would ipso facto include the applicant as a member of the church and as such would have the fiduciary duty to protect the interests of the church. The application is brought on the assumption that the property in question is to be transferred to the purchaser thereof (the second respondent) without any compensation.

[9] The assumption arises from the minutes of a Special Constituency of the Trans Orange Conference of the Seventh Day Adventist Church held in the SAU Auditorium at 2 Fairview Street, Bloemfontein on Sunday 24 February 2013 at 09h00.

[10] Item 13.12 dealing with the Diswilmar matter recorded a resolution that reads as follows:

‘Voted to note the report of A.W Du Preez, SEDCOM Director, on the Diswilmar Farm matter Information Books were distributed to all regular delegates and delegates at large, and the presentation on power point was displayed.

FURTHER VOTED to approve the transfer of the Diswilmar Farm to the purchaser;

FURTHER VOTED to mandate the SEDCOM Director to negotiate a proper out of court settlement with the purchaser on the initial contract signed.

FURTHER VOTED to note that the purchaser will be required to settle the full purchase amount agreed in the 2006 Deed of Sale notwithstanding any claim for damages that the purchaser might believe he has.

Delegates voted as follows:

Yes-198

No-1”

[11] Mr Myburgh appearing for the applicant submits that that resolution created the possibility of an infringement of applicant’s

rights in that Mr Du Preez was virtually given carte blanche to settle the matter.

[12] Respondents in their response have denied that this is the correct interpretation of that resolution. Mr Liversage for the respondents submits that an agreement in law subsists and remains valid until cancelled subsequent to breach or by consent and that it cannot be made subject to the resolution of a conference and that the interpretation by the applicant cannot therefore be the correct one.

- [13] Mr Liversage further submits in his supplementary Heads of Argument that the purchaser of the property, the second respondent, paid the R500, 000.00 deposit and delivered guarantees on 24 January 2008 for the balance of the purchase price in the amount of R9.1 million which is indicative of the fact that even the purchaser intends making payment of the full purchase consideration.
- [14] Where there are factual disputes in application proceedings and where final relief is sought the approach was set out in *Plascon-Evans Paints Ltd 1984(3) SA 623(A)* at 634 H-636 C by Corbett JA as follows:
- ‘It is correct that, where in proceedings on notice of motion dispute of facts have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant’s affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order.’
- [15] Mr Liversage submits that on respondent’s version, the applicant’s assumption was always incorrect and respondent’s denial cannot be regarded as far fetched or clearly unattainable.
- [16] I have considered these submissions against objective facts such as payment of the deposit and provision of guarantees and come to the conclusion that the interpretation of the resolution in question by the applicant cannot be the correct one.
- [17] Regarding the requirements of a final interdict, it cannot be disputed that applicant has a clear right to protect as a member of the church. I have however come to the conclusion that he has not made out a proper case regarding a threat or infringement thereof. Given the objective facts to which I have already referred to, Du Preeze cannot possibly infringe applicant’s rights even if he was inclined to do so. The remedy sought, namely, an interdict is accordingly not applicable.
- [18] In the result the application is dismissed with costs such costs to include the costs incurred on 7 March 2013.

TJUDGE OF THE HIGH COURT)

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