IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH

Case No.: 3606/2016

Date Heard: 14 May 2020

Date Delivered: 20 October 2020

In the matter between:

ENDTIME LIGHT CHRISTIAN ASSOCIATION (PE TABERNACLE) Applicant

and

PETER ROBERT TWYNHAM First Respondent
HARRY VAN ROOYEN Second Respondent
MANIE FRANCIS Third Respondent
PETER PETERS Fourth Respondent
LINSAY NICHOLSON Fifth Respondent
PREGALATHAN PILLAY Sixth Respondent

JUDGMENT

RONAASEN AJ:

Introduction

[1] The dispute which underlies this application is aptly reflected in the following quotation, attributed to John Calvin:

"When divisions are rife in religion it is bound to happen that what is in men's minds will soon erupt in real conflict. For while nothing is more effective for joining us together, and there is nothing which does more to unite our minds, and keep them peaceful, than agreement in religion, yet if disagreement has somehow arisen in connection with it, the inevitable result is that men are quickly stirred up to engage in fighting, and there is no other field with fiercer disputes."

[2] The applicant is a voluntary association governed by a written constitution, which was adopted in 1978 and amended in 1980. In this constitution the applicant's object, in clause 1, is described as follows:

"The purpose and object of the Association shall be the establishing and maintaining of a non-Denominational body of Christian persons whose sole object is to further the gospel of Jesus Christ in such a manner as it may think fit inter-alia by:

(a) Providing a centre at which the public can attend and participate in its Church Services;

(b) undertaking Evangelical programmes;

(c) publishing, distributing and advertising books and documents of a religious nature."

[3] The first respondent was appointed as the pastor of the applicant in 1972. The applicant contends that he was dismissed from this position on 28 May 2016, which is disputed. The remaining respondents are members of the applicant and are also office bearers of the applicant and/or interested parties who have involved themselves in the dispute, which is the subject matter of this application.

[4] This application is directed at removing control of the applicant's buildings, bank accounts and documents from the respondents and, in particular, from the first respondent to allow the affairs of the applicant to be conducted by its members as required by its constitution. Against this background the applicant, in summary, seeks relief against the respondents directing them to:

4.1. deliver property, documents and records of the applicant to the applicant's attorney;

4.2. vacate all buildings of the applicant occupied by them;

4.3. refrain from representing that the church services they hold fall under the auspices of the applicant or from conducting any church services in the name of the applicant;

4.4. refrain from soliciting financial contributions of any nature in the name of or on behalf of the applicant;

4.5. divulge the identities of any financial institutions at which banking accounts were or are opened in the name of the applicant, by the respondents;

4.6. hand over any funds which are the property of the applicant under their control;

4.7. refrain from disrupting the applicant's church services or any other of the applicant's activities;

4.8. pay the costs of this application on a punitive scale.

Background to the present dispute

[5] The applicant split into two factions in 2012. The one faction, styled as the concerned believers, were of the view that the finances of the applicant were being mismanaged by the first respondent. The other faction, styled as the true believers, aligned themselves with the first respondent.

[6] The dispute essentially revolved around the requirement of the South African Revenue Service that in order to maintain its status as a public benefit organisation, the applicant had to amend its constitution which provided that the applicant's pastor would be solely responsible for the collection of tithes and offerings and to decide on their use and distribution.

[7] It is quite clear that during the period 2012 to 2016 the "civil war" which raged in the ranks of the applicant was occasioned by the first respondent's refusal to give up control of the funds and financial management of the applicant. The first respondent conveniently blurred the lines between his personal income and the funds of the church, which brought him into conflict with the South African Revenue Service and the prosecuting authorities. In December 2015 he was convicted of eight counts of fraud relating to his tax affairs. In this process his assets were attached by the asset forfeiture authorities. Despite all this the first respondent remains in control of the finances and property of the applicant.

[8] An application which had been initiated in this court in 2012 was ultimately argued on 3 December 2015 with judgment being handed down on 9 February 2016 in terms of which an order ("the order") was issued directing that:

8.1. the applicant convene, within a period of 30 days from the date of the order, a general meeting of its members to allow allegations of misconduct by the first respondent to be presented to the meeting; and

8.2. the *bona fide* members of the applicant attending the meeting were to decide on whether or not disciplinary action should be instituted against the first respondent and, if so, the procedure to be adopted in respect thereof.

[9] The present dispute essentially concerns whether the order was correctly applied and, in particular, the validity of decisions taken at:

9.1. the meeting of office bearers of the applicant on 21 April 2016 as to how the membership of the applicant would be determined for the purposes of holding a general meeting as envisaged in the order; and

9.2. the general meeting of members held on 28 May 2016.

Initial attempts to implement the order

[10] After the order was handed down there were protracted negotiations between the legal representatives of the parties in an endeavour to arrange the general meeting foreshadowed in the order.

[11] Towards the end of February 2016 it appeared that the parties had reached agreement on the arrangements for the general meeting and had agreed on a date for the meeting, i.e. 5 March 2016. However, attempts to convene a meeting on that date ultimately proved futile as a result of a dispute as to the membership composition of the applicant. Shortly before the proposed date of the meeting the first respondent delivered a substantially increased membership list containing some 200 additional names that were unknown to the parties. The new membership list proffered by the first respondent raised suspicions as it differed markedly from list that he had proffered in the prior litigation.

[12] The suspicions raised by the new list of members put up by the first respondent resulted in an impasse, causing the proposed meeting to be abandoned.

The meeting of office bearers of the applicant held on 21 April 2016

[13] Given the dispute as to the membership of the applicant it was decided to convene a meeting of office bearers of the applicant to agree a mechanism to establish the membership of the applicant for purposes of conducting the general meeting of members required by the order.

[14] The process of convening a meeting of office bearers was, equally, fraught with difficulties, despite the judgment in terms of which the order was granted clearly establishing who the office-bearers were. With some effort, again requiring extensive involvement by the attorneys for the parties, a date for the meeting of the office bearers was arranged for 21 April 2016. Throughout this process the first respondent made

every effort to thwart the holding of a meeting. He created endless disputes about the identity of the office bearers and attempted to appoint office bearers himself. The opposing faction furnished various undertakings to satisfy the first respondent's faction.

[15] The first respondent, resolutely, remained dissatisfied. On 19 April 2016, purportedly in the name of the applicant, he launched an urgent application in this court to stop the scheduled meeting of office bearers. The application was heard and dismissed just hours before the scheduled meeting.

[16] The meeting of office bearers duly proceeded on 21 April 2016. The respondents were represented by their attorney at the meeting and a transcript of the proceedings confirms that an agreement was reached between the parties that the membership of the applicant would be established with reference to clause 2 of the constitution of the applicant, which provides as follows:

"THE ASSOCIATION

The Association shall consist of those persons who maintain a regular fellowship together at the Church Centre and will actively support the work of the Association with their free will, tithes and offerings. Such persons shall be entitled to a single vote on matters falling under the POWERS of the Association as set out hereunder."

[17] In application of the abovementioned provision of the constitution the following procedure was adopted at the meeting:

17.1. the respective factions would submit their financial records and bank statements for the previous two years to the independent chairperson of the membership meeting;

17.2. membership lists would be prepared by the factions and submitted to the independent chairperson who, in turn, would forward each faction's list to the other faction;

17.3. the factions would be given an opportunity to make representations and voice their objections to the opposing faction's membership list to the independent chairperson.

[18] At the meeting of office bearers it was further agreed that the membership meeting would be held at an agreed venue on 28 May 2016 and that the meeting would be chaired by an independent chairperson in the form of an attorney of this court, Mr Dean Murray. Peripheral issues such as how notice of the meeting would be given to members of the applicant, the procedures which would apply at the meeting and the method of voting (a secret ballot) were also agreed.

Run up to the members' meeting of the applicant on 28 May 2016

[19] Despite the mechanism for determining the membership of the applicant having been clearly agreed upon at a meeting of office bearers at which, as stated, the respondents' attorney was present, the respondents chose not to participate in the process. The other faction complied fully.

[20] Again a to-ing and fro-ing ensued between the legal representatives of the parties, in which the respondents alleged that the minutes of the meeting of office bearers were not accurate, but disingenuously failed to identify the alleged inaccuracies.

[21] Further, disingenuously, the respondents stated that the reason for their failure to produce financial statements was due to the fact that the applicant had been under curatorship for the period December 2013 to December 2015. That is patently incorrect as it was the first respondent whose assets had been placed in the hands of a curator pursuant to asset forfeiture proceedings. Again this is a demonstration of how the first respondent blurs the lines between his personal assets and those of the applicant.

[22] In repudiation of the agreement reached at the meeting of office bearers regarding the method of determination of the membership of the applicant, the respondents now raised a number of disputes in this regard. Essentially they contended, with reference to clause 4(g) of the applicant's constitution that it was the members and not the office bearers who were to determine the membership of the applicant. This clause of the constitution, however, merely states that it is the members of the applicant who determine the procedure for meetings of the applicant. Quite how the members of the applicant would resolve a dispute as to who its members are, is not understood.

[23] The respondents called a meeting on 15 May 2016, which they described as a meeting of members of the applicant, despite the fact that at the date of that meeting the membership of the applicant had not yet been determined in in terms of the agreed procedure adopted at the meeting of office bearers.

[24] At the meeting called by the respondents it was purportedly resolved that whilst the membership criteria set out in clause 2 of the constitution of the applicant remained, those criteria were unenforceable. Certain other criteria were then adopted. Clearly this approach ignores the mandatory terms of clause 2 of the applicant's constitution and amounts to an invalid amendment to the constitution as no notice of such proposed amendment was given to members in terms of clause 12 of the constitution.

[25] The meeting of 15 May 2016 amounted to nothing more than an attempt by the respondents to unravel, unilaterally, the agreed procedure adopted at the meeting of office bearers. The "resolutions" passed at the meeting were *ultra vires* the constitution of the applicant and are void and of no force and effect.

The meeting of members of the applicant on 28 May 2016

[26] I am satisfied, with regard to the formal requirements agreed upon at the meeting of office bearers, as to notice and advertisement, that the meeting of members of the applicant held on 28 May 2016 was properly constituted.

[27] Thus, the first respondent and his faction at their peril chose not to attend the meeting of members.

[28] Much was made by the respondents about the alleged failure by the chairperson of the meeting, Mr Dean Murray, to verify the list of members put up by the concerned believers faction. The dispute which revolved around this issue caused the postponement of this application after it had almost been fully argued. The

postponement resulted in the delivery of voluminous additional papers and delayed the outcome of this application substantially. The "issue" is, in fact, a non-issue. The agreed procedure allowed for objections to the respective membership lists. Verification would surely only be required if there was an objection to a list. The respondents chose to repudiate the agreement in terms of which the procedure for determining the membership of the applicant had been established and refused to participate in the procedure. The respondents and their faction were not in any way withheld from submitting their list of members, as agreed at the meeting of office bearers of 21 April 2016. They chose not to submit a list, advancing various spurious grounds for their failure to do so. They also chose not to attend the meeting of members and raise objections to the list of members put up by the concerned believers. In the circumstances it was not required of Mr Murray to verify that list, in the absence of any objections.

[29] The first resolution adopted at the meeting was to institute disciplinary proceedings against the first respondent. This was in line with the order.

[30] The second resolution passed at the meeting was that the services of the first respondent as a pastor of the applicant would be terminated. The validity of this resolution is not an issue in these proceedings as no relief is sought by the applicant pursuant thereto. To the extent that the first respondent is or was in an employment relationship with the applicant the termination of such relationship can only be considered pursuant to due process in terms of relevant labour legislation. The validity of the second resolution will be tested in such proceedings, if any, and no further

determination is required from me in this regard. Significantly there is no evidence that the first respondent has challenged his dismissal in terms of labour legislation. Further significantly the resolutions passed at the meeting of members were not sought to be set aside by a counter-application.

[31] In terms of the third and fourth resolutions passed at the meeting of members one David Cupido was appointed as a pastor of the applicant and it was resolved to institute the present legal proceedings. The respondents complain that they did not receive the notice of the intention to table the third and fourth resolutions and that, therefore, they were invalid.

[32] All members of the applicant were invited to attend the meeting of members on 28 May 2016. No one was refused admission to the meeting. As stated members of the respondents' faction chose not to attend the meeting.

[33] At a validly constituted meeting of the applicant, which the members' meeting of 28 May 2016 was, the members present at the meeting, in terms of clause 4(g) of the constitution of the applicant, were entitled to determine the procedure for the meeting. In circumstances where the constitution does not specifically prescribe that notice be given for the tabling of a resolution, such a resolution may be tabled and passed at a validly constituted meeting of the applicant despite the absence of prior notice that such a resolution would be tabled. The constitution of the applicant, in terms of clause 12 thereof, only requires prior notice to be given of a resolution in terms of which an amendment to the constitution is proposed.

[34] The third and fourth resolutions, furthermore, are not precluded by the constitution of the applicant. The constitution does not envisage that the applicant would have only one pastor. Clause 4(h) of the constitution also enjoins the members of the applicant to generally deal with the property and the funds of the applicant and to do all things necessary to ensure the fulfilment of the objects of the applicant. The resolution to institute the present application conforms with this constitutional prescript and I am satisfied that the present application was properly authorised by the applicant.

Conclusion

[35] The challenges raised by the respondents to the present application are largely, if not entirely, procedural.

[36] I have found that the meeting of office bearers on 21 April 2016 had validly and by agreement between the parties determined the procedure for establishing the membership of the applicant as well as the procedure for the conduct of the membership meeting required by the order. In respect of the membership meeting which was held on 28 May 2016 I am satisfied, in the circumstances set out above, that the resolution authorising the present application was validly passed.

[37] The fourth resolution, which allowed for the institution of the present application, is aimed at applying the constitution of the applicant and enforcing the envisaged constitutional dispensation, which allows for the control of the property and finances of the applicant by its members and not by a single person, such as the first respondent, for his personal benefit and to the exclusion of all others. In fact, the applicants were

simply seeking to restore the *status quo* contemplated by the applicant's constitution, which *status quo* has been disturbed by the conduct of the first respondent, in particular.

[38] Thus, the applicants are entitled to the relief they seek.

Costs

[39] The applicants ask that I make an award for punitive costs against the respondents.

[40] The second to the sixth respondents made common cause with the first respondent and should therefore not be treated differently to the first respondent when the question of costs is considered.

[41] The respondents confined themselves to procedural arguments in their opposition to the application rather than address its merits in terms of which serious allegations were made against the first respondent, supported by the remaining respondents, as to the conduct of the affairs of the applicant. The first respondent is clearly unable to differentiate between his property and that of the applicant.

[42] In dealing with the history of the dispute the applicants confirmed the serious malfeasance on the part of the first respondent, which he has not disputed. His malfeasance was the subject matter of the proceedings in terms of which the order was granted. Despite this he has doggedly refused to give up control of the assets and finances of the applicant, resisting all efforts to enforce the constitution of the applicant

on dubious procedural grounds. He has tried to manipulate the appointment of office bearers of the applicant and has misrepresented the membership composition of the applicant. He has been assisted in these efforts by the remaining respondents.

[43] The respondents have only purported to cooperate in giving effect to the order but, in fact, at every step of the way have endeavoured to thwart its implementation. Along the way the respondents agreed to mechanisms to implement the order, but repudiated those agreements and endeavoured to raise yet further procedural hurdles, all the while delaying a resolution to the dispute.

[44] The respondents were quite happy to invoke the constitution of the applicant when it suited them, but generally ignored its provisions. For instance they raised clause 4(g) in support of their contention that only members could decide the membership composition of the applicant. They refused to concede that that clause supported the passing of the resolutions tabled at the members meeting of 28 May 2016, which they spuriously contended were irregularly passed.

[45] I am therefore of the view that the conduct of the respondents described above warrants the imposition of a punitive order for costs.

Order

[46] Accordingly the following order will issue:

1. The respondents shall deliver to the office of the applicant's attorney of record, within three days of the date of this order all property belonging to the applicant, which includes but is not limited to:

    1.1 the proceeds of all offerings received by any of the respondents, in the name of, or on behalf of the applicant;

    1.2 financial documents held on behalf of the applicant by the respondents;

    1.3 all of the applicant's movable property in the possession of the respondents;

    1.4 all keys and alarm codes to all the applicant's premises in the possession of, or within the knowledge of the respondents;

    1.5 all bank cards for the applicant's bank accounts in the possession of the respondents;

    1.6 all of the applicant's bank books and administrative documents in the possession of the respondents.

2. The respondents shall immediately vacate all church buildings belonging to the applicant, which are occupied by them or are under their control.

3. The respondents are interdicted and restrained from representing that the church services they hold fall under the auspices of the applicant or from conducting any church services in the name of the applicant.

4. The respondents are interdicted and restrained from soliciting financial contributions of any nature in the name of, or on behalf of the applicant.

5. The respondents shall divulge in writing to the applicant's attorney of record, within three days of the date of this order, the names and addresses of any financial institutions at which banking accounts were or are operated in the name of, or on behalf of the applicant, by the respondents and shall immediately refrain from operating on those accounts.

6. The respondents shall hand over any funds which are the property of the applicant, which are under their control, to the applicant's attorney of record, within three days of the date of this order.

7. The respondents are interdicted and restrained from disrupting the applicant's church services or any of the applicant's activities in any way.

8. The respondents are directed to pay the applicant's costs of this application on the scale as between attorney and client, as taxed or agreed, jointly and severally, the one paying the other to be absolved.

O H RONAASEN

ACTING JUDGE OF THE HIGH COURT

Appearances:

B Dyke SC for the applicant,
Instructed by G Malgas & Associates

M Veldsman for the respondents,
Instructed by D Gouws Inc.