

IN THE LESOTHO COURT OF APPEAL

In the Appeal of :

LESOTHO EVANGELICAL CHURCH

Appellant

v

ESEAU KHIKA MANDORO

Respondent

HELD AT MASERU

Coram:

MAISELS, P.
VAN WINSEN, J.A.
GOLDIN, J.A.

J U D G M E N T

Goldin, J.A.

This appeal concerns the dismissal by appellant of respondent as parish priest stationed at Cana Mission.

By letter dated 22nd May, 1979 respondent applied to the Synod committee for study leave "to go and do a B.A. in Theology at N.U.L. when it opens". He also asked for a scholarship for that purpose. On 4th July 1979 his application was rejected on the ground that "Church work must not be hampered in any way due to the shortage of ministers and the work in general."

On 27th July, 1979 respondent asked for his application to be reconsidered and in the absence of a reply he wrote again on 16th August, 1979 saying "that because of your delay I inform you that I am already there (The University) but still would like to know your attitude". He went on to say that he would continue "to discharge duties at Cana Parish with regards to plans for feasts and some other things which may require the services of a minister".

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On 27th August, 1979 the Executive Committee replied to his letter, ordering him to vacate church property occupied by him and to stop "to perform any duty as a minister at Cana Parish". He was also informed that his payments of salary would not continue. The reasons for his dismissal in this manner are set out as follows :

- "1. Now that you are already at N.U.L. contrary to the manner in which Committee had replied your application, it finds it not necessary to reply your letter dated 26th July because you have made your own decision contrary to that of the Committee.
2. I am again instructed to inform you that as you have gone to N.U.L. on your own, leaving the Cana Parish without permission of the Committee, you have relinquished yourself from the control of the Synod and its Committee and that you have on your own left the work which the Synod gave you through its Committee".

Respondent replied on 3rd September, 1980 that he did not accept the decision to dismiss him because "it is not based on the constitution". He concluded by informing the Committee that if it did not accept his "decision" not to accept his dismissal the Committee "can go to the Synod".

Notwithstanding the decision to relieve him of his duties he continued to perform duties as a minister mainly during weekends and to occupy the dwelling house at Cana Mission. He carried on with his studies at the University.

The highest governing body of appellant is the Seboka (or Synod) consisting of 72 members. The Seboka elects an Executive Committee known as the "Committee of the Seboka" and also as the "Synod Committee". Whenever the Committee relieves a Minister of his duties such Minister "has a right to appeal to the Seboka" "Section 210 of appellant's constitution". Respondent did not appeal.

A meeting of the Seboka was held on 30th August, 1980 to discuss this matter at the request of the Committee. On the 3rd August the Executive Secretary of the Committee went to the University "to advise (respondent) of the Seboka meeting, but he could not find him. In fact respondent was present at the meeting but declined a request to participate and left while his dismissal was being discussed. The Seboka confirmed the

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decision of its Committee.

Appellant instituted an action on 4th December, 1979 for an order of ejectment from the premises occupied by him at Cana Mission. The claim was dismissed by a Resident Magistrate and an appeal to the High Court against this judgment also failed. Appellant now appeals against its unsuccessful appeal to the High Court.

The main contentions for the appellant are as follows. Firstly, that respondent was rightly dismissed on the grounds that he deserted or left in terms of section 205 of the Constitution. Secondly that the doctrine of "audi alteram partem" was not applicable" "because this was purely administrative decision". Therefore the Court a quo erred by relying upon the failure to invoke this doctrine as the main reason for dismissing appellant's claim and the appeal against it. Thirdly that in any event the respondent was afforded but declined an opportunity to discuss his dismissal at the meeting of the Seboka.

Section 205 reads as follows :

"205. Those who leave for unacceptable reasons or join the Ministry of other churches without prior permission of the Seboka, automatically forfeit their rights in the Ministry of the Lesotho Evangelical Church. Their rights may be restored by the Seboka or its Committee when such people return to the Lesotho Evangelical Church if the Seboka or its Committee considers it proper to do so."

I agree with the decision of the Court a quo that this section does not apply to a Minister absenting himself from parish duties without permission. The section relates to "those who leave" the church as such. The relief available to those who "return" to the church fortifies this view. There is a clear distinction between being a member of a church and holding office as a Minister of the church. A minister may be relieved of his duties as a minister but he remains an ordained minister and member of the church. He may even cease to be a minister and remain a member of the church by adhering to its principles and rules.

It is relevant that respondent did not leave the church

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nor did he cease to fulfil obligations as a minister. The main complaint is that as student he could not and did not fulfil all his obligations. In his letter dated 16th August 1979, he asserted that he would continue "to discharge duties at Cana Parish". The evidence confirms that he did so. Moreover in the letter dated 31st August 1980 confirming his dismissal he is accused of "working as a Minister at Cana despite the Executive Committee having stopped you from doing so".

In my respectful view, Cotran C.J. has rightly said that "there is no authority for the proposition that a priest of a church (of any denomination) is the servant of the governing body of the church" (Lesotho Evangelical Church v. Nyabela 1980(2) L.L.R. 446 at 448). The position in this dispute is that the rights, obligations and tenure of office of a Minister are governed by the constitution of the church. The relationship between a Minister and appellant is contractual. The provisions of the constitution to which the Minister subjects himself upon ordination and appointment to a Parish and the rights conferred and obligations imposed upon the governing body of the church constitute the terms of the contract between them. It is therefore necessary to apply the relevant provisions of the constitution to the dispute between the parties. There is no need to debate the application of the principles of natural justice if the constitution in fact provides for it. (See African Congregational Church v. Dimba 1933 WLD 29 and Motaung v. Kumbela and Another 1975(1) SA 618 (OPD)).

Upon being ordained as a Minister he is required to take an oath to subject himself to the authority of the Seboka and its committee "and to obey the rules governing the church". "Duties and rights" of Ministers are set out in great detail in Chapter 16 of the constitution. The relevant provisions concerning relieving a Minister of his duties are contained in section 205 quoted above and in sections 208, 209 and 210 which follow :

"208. The Minister who does not execute his duties properly may be asked for reasons by the Committee of the Seboka.

209. Any Minister, whether ordained or not, is charged with whatever offence, or breaks the rules of the Church, is convicted by

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the Committee of the Seboka. The Committee must invite the Chairman of the Presbytery under which the Minister is serving and one layman to the hearing. If the charge relates to the management of schools, the Committee must seek the opinion of the Education Commission before the hearing.

210. Whenever the Committee relieves the Minister of his duties, whether permanently or temporarily, the Minister convicted has a right to appeal to the Seboka. He will however stand suspended until the Seboka decides either way."

Section 211 provides that "whoever is relieved of his duties in the Ministry will also forfeit his monthly stipend after three months". It is noteworthy that respondent's pay was stopped upon being notified of his dismissal.

The terms "charged", "offence" and "convicted" are usually found in criminal law. It is clear however that the church did not assume the powers of criminal courts or the State to charge and convict Ministers for offences. These terms relate and apply to any failure to abide by provisions of the constitution in the performance of duties or obligations. It is relevant that in section 210 being relieved of duties is described as a conviction. In Chapter 20 "punishment" for "offences" concerns those who fail to obey the rules of the church.

In this case the respondent could have been charged firstly with the offence of enrolling as a student contrary to the decision of the Committee and secondly with failure to execute his duties properly by absenting himself from his parish while he is at the University. These were the grounds upon which the Seboka Committee dismissed him. The extent and effect of the periods during which he was not present at his parish were not fully canvassed in evidence but could be relevant at a hearing provided in section 209. Except that by attending University he rendered himself incapable of fulfilling all his obligations, it is not clear on what basis his going to the University of Lesotho without permission constitutes a separate offence.

In my view, therefore, the Constitution provides for a hearing in terms of section 209 before respondent could be

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relieved of his duties. The Committee was not entitled to terminate his services merely by writing to him as it did, that it had decided to do so. This is not only contrary to the procedure laid down in section 209 but is also out of harmony with the practice of fairness and justice required in respect of other offences dealt with in Chapter 20 of the Constitution. Section 244 provides that no person "will be punished before he has personally given evidence before the judges".

Accordingly I would dismiss the appeal with costs.

Signed: B. Goldin
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 B. GOLDIN
 Judge of Appeal

I agree Signed: I.A. Maisels

 I.A. MAISELS
 President

I agree Signed: L.de V. Van Winsen

 L. DE V. VAN WINSÉN
 Judge of Appeal

Delivered this 23rd day of April 1982 at MASERU

For Appellant : Mr. Ebersohn

For Respondent: Mr. Masoabi

IN THE LESOTHO COURT OF APPEAL

In the Appeal of :

MILLION CENTRE CONSTRUCTION

Appellant

v

BARLOWS OFS LTD

Respondent

HELD AT MASERU

Coram:

MAISELS, P.
VAN WINSEN, J.A.
STEYN, A.J.A.

J U D G M E N T

Van Winsen, JA.

Appellant was sued by respondent company for payment of the sum of M6,380.00 being in respect of goods sold and delivered by respondent to appellant and services rendered in connection with such goods during the period May to December 1980 and by virtue of a verbal agreement entered into between the parties. Interest at 6% per annum and costs of suit was also claimed. Appellant filed a notice of intention to defend whereupon respondent applied in terms of Rule of Court 28(2) for summary judgment. The application was supported by an affidavit of the credit manager of respondent company in which he stated that appellant was indebted to respondent in the amount claimed in the summons and that he verified the amount of the claim and cause of action. Mr. P.P. Makhoza, a major director and controlling shareholder of appellant company, duly authorised thereto by that company, filed an opposing affidavit on the ground that the summons was so vague as to leave appellant in doubt as to what the claim related to. He further opposed the granting of the order claimed on the same grounds as those advanced by him in his opposition to respondent's

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claim in the case of Barlows O.F.S. Limited v. P.P. Makhoza, Civil Case 122/1981.

The Court a quo, despite the opposition, granted summary judgment as prayed. The appellant now appeals against this judgment.

The arguments advanced by counsel for the parties were the same as those submitted in Civil Case 122/1981. The relevant facts in the two cases do not differ from each other. For the reasons given in the judgment delivered by the Court in the latter case the appeal is dismissed with costs.

Signed: L. de V. Van Winsen
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L. DE V. VAN WINSEN
Judge of Appeal

I agree Signed: I.A. Maisels
.....
I.A. MAISELS
President

I agree Signed: J.H. Steyn
.....
J.H. STEYN
Acting Judge of Appeal

Delivered this 23rd day of April 1982 at MASERU.

For Appellant : Mr. Maqutu
For Respondent: Mr. Viljoen