

IN THE HIGH COURT OF LESOTHO

In the Application between :

THE EIGHTEENTH EPISCOPAL AFRICAN
METHODIST EPISCOPAL CHURCH

APPLICANT

and

THE MANAGEMENT COMMITTEE OF EMMANUEL
PULENG MOLAOA
TOBOLLO MATLATSA
REBECCA NCHEE
MONALETSANA QHOBELA
REVEREND D SENTSO
ZAKARIA NTOI
ARTHUR PHOLO
PETER KEMENG
COMMISSIONER OF POLICE
ATTORNEY-GENERAL

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT
7TH RESPONDENT
8TH RESPONDENT
9TH RESPONDENT
10TH RESPONDENT
11TH RESPONDENT

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
Acting Judge on the 4th day of May 1994

On the 4th March, 1994 the Applicant filed an application on an urgent basis in which it claimed the following orders:

"1. That the rules regulating service of process be dispensed with.

2. That a further Order be issued in the following terms:

- 2.1 That the 1st to 9th Respondents be interdicted and restrained from making or causing to be made any public broadcast over any radio service in Lesotho or elsewhere, or from making any public announcement whatsoever under the name, style and banner of the Applicant.
- 2.2 That the 1st to 9th Respondents be interdicted from holding, organising, or arranging any meeting or service under the name of the Applicant in any building, Church or Centre belonging to the Applicant.
- 2.3 That the 1st to 9th Respondents be interdicted and restrained from entering, occupying, surrounding or preventing access to any property of the Applicant in any way whatsoever, or in any way whatsoever to interfere with its office bearers in regard to the property.
- 2.4 That the 1st to 9th Respondents be interdicted and restrained from threatening, assaulting or insulting the office bearers of the Applicant or any of the members of the Applicant attending at, or involved in the F. C. JAMES CENTRE, or any of the other buildings or assets of the Applicant.

- 2.5 Interdicting and restraining the 6th Respondent from occupying the residence in the Church area, which belongs to the Applicant.
- 2.6 Interdicting and restraining the 6th, 7th, 8th and 9th Respondents from holding themselves out as lawful Reverends, or Pastors, of the Applicant and/or to perform any Church Service, functions or activities in the name of the Applicant in any way whatsoever.
3. That a Rule Nisi be issued calling upon the Respondents to show cause on a date to be determined by this Honourable Court why this Order should not be made a Final Order of Court and why the 1st to 9th Respondents should not be ordered to pay the costs of this Application.
4. That the 10th Respondent or any of the members of the Force be authorised to assist the Registrar of this Honourable Court, the Deputy sheriff of this Honourable Court, or the office bearers of the Applicant to enforce this Order.
5. That paragraphs 2.1 to 2.6 operate with immediate effect.
6. Further and/or alternative relief."

The interim order having been issued the matter was accordingly heard by me on the 5th April, 1994. Mr. Buys appeared for the Applicant and Mr. Tsotsi appeared for all the Respondents except the 10th and 11th Respondents.

The parties have had substantial and complex litigation concerning the Applicant and some of the Respondents interchangeably. But constantly there has been the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents as Respondents. This litigation has variously in the past concerned control and management of the two properties of the African Methodist Episcopal Church in Lesotho (AME). These properties are the Emmanuel Church and the FC James Centre of the AME. I appreciated that, what is concerned in this long and complicated cases were the following: the status and title of the Applicant, the status of the Respondents and control of the properties of the AME. This appears still to be the case now. As to the history, Organization and property of the AME I associate myself with the remarks of Cullinan CJ in his judgment in CIV/APN/440/92 in which some of the present Respondents were Applicants and the Respondent was the Bishop Richard Alen Chapelle (in his capacity as Bishop of the 18th Episcopal District of the AME). I quote from that judgment from the first page to fourth page, thus :

"THE FACTS

The African Methodist Episcopal Church was founded at Philadelphia in the United States of America over 200 years ago, in 1787. The supreme body of the Church is the General Conference thereof, composed of the Bishops of the Church and an equal number of ministerial and lay delegates, which meets quadrennially. During the interim, the council of Bishops exercises executive control, with the General Board of the Church exercising administrative control.

Church property is vested in a Board of Trustees of the General Conference. Ultimately it was decided that such Board should be incorporated. Incorporation was effected in the State of Pennsylvania in 1933. The corporation was given the name of the "Board of Incorporators of the African Methodist Episcopal Church", as the laws of Pennsylvania prohibited the use of the word "trustee" in the name of any corporation. The articles of incorporation, contained in the Book of Discipline (1988) of the Church (Part III p.56), indicate however that the intent was to incorporate the Board of Trustees of the General Conference, which was to function under the said corporate name, functioning "in all particulars as ascribed to the Board of Trustees of the General Conference".

The General Board of Trustees and its duties is "not to be confounded or confused with the local Boards of Trustees of local churches of the African Methodist Episcopal Church". The reference to local churches are those churches of the nineteen Episcopal Districts into which the Church expanded over the years. The first thirteen districts are located in North America, with the latter six districts located in West, East, Central & Southern Africa, South America, West Indies and London. A Bishop presides over each Episcopal District. The governing body of the Episcopal District is the Annual Conference, a corporate body incorporated, where the Annual Conference covers more than one state in the state of the larger membership. The presiding Bishop of the Episcopal District is the President of each Annual Conference within the Episcopal District. Thus it is that there are five Annual Conferences within the Eighteenth Episcopal District, in respect of Lesotho, Swaziland, Botswana, Mozambique and north-East Lesotho. The respondent to this application presides over the Eighteenth District and is President of those five Annual Conferences.

The first applicant, the Emmanuel A.M.E. Church, Maseru, is a local church within the Annual Conference for Lesotho, in the 18th Episcopal District. As with every other local church, the Emmanuel A.M.E. Church has a Pastor, appointed

by the presiding Bishop, as the Spiritual head of the church. The church is also governed by an administrative body known as the Board of Stewards, who are nominated each year by the Pastor, their appointment being confirmed by the Quarterly Conference of the Church. The Duties of the Stewards is broadly administrative, ranging from financial matters to the registration of marriages and baptisms, the survey of membership and the relief of the sick and the poor. Another board within the local church is the Board of Trustees who are elected annually by the members of the church. The Board, subject to what I shall say later, is required "to manage all the temporal concerns of the church". The stewards are appointed and the trustees are elected. The Respondents are former pastors, stewards and trustees of the Applicant. All have either been expelled or suspended from their duties and functions.

This church's organization is complicated enough, the different cases have complicated this church's affairs even more. This judgment should not add another complication despite all the efforts by both Counsels to make the matter even more complicated. I do not even want to ignore the well prepared Heads of argument filed by learned Counsels which I have found most useful. The matter of the AME has become not only confused but unfounded. I need only to repeat my remarks in TEFO MOEKETSE

v M.A. NQOKO & ANO. CIV/T/572/93 of the 23.02/94. The case should serve to reflect my attitude namely that one should not lose sight of the need to resolve obscurity, render clear decisions and in case of doubt favour validity and one should remove sources of irritation and causes for further litigation. The function of legal inquiry is about the rights, duties, functions, liberties, privileges and obligation of persons. That is the nature of jurisprudential inquiry in practice. I have underlined the work rights. My belief is that if this is the approach to be adopted as between the Applicant on the one side and the Respondents on the other, in respect of the two properties of the AME, the control of the church and other matters raised in the Notice of Motion, we are going to be nearer to the solution which this judgment attempt to bring about. Last but not least we are to look through and see where legality is to be found and then to decide that and furthermore, reject and not recognize what is illegal. This is supported by public policy.

Reverend LETHAHA MIKEA SEKOKOTOANA says in the Applicant's Founding Affidavit that he is the Secretary of the Board of Trustee of the Applicant. He is also the Vice President of the Eighteenth Modified Episcopal District of the AME Church. He says further that he has been authorized by the presiding Elders to file these proceedings. It is significant that the

Respondents have conveniently not answered to this important statement by the Reverend Sekokotoana in his paragraph 1 of the said Affidavit. I did not believe that his authority or that of the Church Elder could be challenged in any way. It would not succeed.

The founding Affidavit of the Applicant details a catalogue of unlawful acts, some based on flagrant disregard of existing orders of this Court. As a result of these there has been filed proceedings for contempt of Court which are still pending. The substance of most of these applications revolves around the allegations made therein that the Respondents are taking the law into their own hands. This is to be inferred from paragraphs 8, 9, 13, 14, 15, 16, 19 and 20 of Applicant's Founding Affidavit. The actions taken by the Applicant in the past have included a restraining order against the Respondents from interfering with the renting of the FC James Centre and to restrain the Respondents from holding themselves out to be lawful representatives and administrators of the FC James Centre. As former trustees and Stewards of the church, the Respondents even deny that they act as the 1st Respondent. But what is more revealing and what is the other and the whole substance of this application is the Respondents' answers to paragraph 16, 17, 18 and 19 Founding Affidavit. These paragraphs speak about the Respondents regular use and occupation of the church property.

the 6th Respondent's use of the church residence despite his having been expelled (as a priest) from the church, the suspension of the 1st to the 6th Respondents from their positions as stewards and trustees of the church. Neither have the suspension of the said Respondents been uplifted and neither have any of them been re-nominated or any of them been re-elected since 1992.

It is interesting to note the replies by the Respondents in the Answering Affidavit of Rev. Sentso.

"15

Ad paragraph 19

I am occupying the place because I am lawfully there in terms of the Book of discipline. Applicant suspended Respondents because they opposed the Bishop's sale of church property when he has no authority to do so.

16

Ad paragraph 18

The decision was never decided on merits. It was therefore decided in points in-limine. Contents hereof are denied and Applicants are out to proof thereof.

17

Ad paragraph 19

The assets of Emmanuel have always been in control and custody of the Respondents constitutionally. In fact I have been put where I am by the bishop. Contents re denied."

What is very important here is an acknowledgment by the Respondents that they have been expelled or dismissed as the case may be, as has been shown above. The decision which is alleged to have been decided on merits is the judgment in Emmanuel AME church and eight others vs Bishop Allen Chappel that I have quoted from at the beginning of this judgment. The point in limine contained a finding that the Applicants had no *locus standi* (in as much as they were either expelled and suspended) and have failed in their duty of disclosure of certain vital information. The judgment did not disturb the expulsions or the suspensions of the Respondents.

Furthermore and throughout the whole proceedings the attitude of the Respondents amounts to urging upon the Court to find fault with the grounds or the reasons of the expulsion or dismissal of the Respondents, in other words to review the decisions of the higher church authorities in taking action against the Respondents. There seems to have been such attempt in the case number CIV/APN/440/93. This failed. The matter is alleged to be on appeal. This does not alter the Respondents

situation in anyway. This seems to be the approach of the Respondents throughout the proceedings. This is untenable. The alleged irregular sale of the church property, and consequently the dismissal and suspensions of the Respondents, which followed their challenging of the sale of church property, can only be decided in this Court if properly motivated and placed before this Court. Most unfortunately this wrong approach took most of the Counsels debate before me. Whether the Respondents have wrongly or rightly been dismissed or suspended it is not what this Court can take it upon itself to decide. For that reason I would safely conclude that the expulsion of Reverends NTOI, PHOLO, SENTSO and KEMENG' can only be but valid as shown in the replying Affidavit of the Applicant and the attached proceedings of the 6th session of the Lesotho Annual Conference of the AME of November 1993.

To show the attitude of the Respondents in response, to the Applicant's allegation that some of the Respondents have attempted to register a constitution of the AME, one has merely to look at paragraph 21 and 22 of the Respondents Answering affidavits which read:

"21

I note this unchristian behaviour and note further the reason for the "expelled" priests expulsion are not stated conspicuously so.

Applicant should show the reasons for each of the expulsions of the reverends to enable me to plead issuably.

22

Ad Para 26

The contents hereof are denied, in as much as aforesaid Respondents are legally authorised to deal with church property constitutionally. Applicants are throwing about wild and unsubstantiated allegations.....".

This issue of expulsion and suspension is being constantly revisited. The attitude of the Respondents is clear namely, the reasons for the expulsions are to be brought into issue and therefore the fact of their suspensions or expulsion should be disregarded as a defence for their continuing to use control of church administration and property. One of their reasons is the alleged support of them by large numbers from all walks of life, even who are said are supportive in the Respondents' plight. I am not even suggesting that the Respondents would be short of sympathy. But The point I make is that the Respondents are engaging in a resort to illegality for the most spurious and unsupportable reasons from the point of view of this Court. That is my view.

To me the issue is very simple. What are the rights and

functions of Respondents as expelled or suspended functionaries of the church, in the running of the church and in the context of this dispute? As I said before this inquiry is to be so direct as not to allow for unnecessary complications. I have no doubt in finding that the effect of a suspension is to deprive a member concerned of the enjoyment of his rights, duties and privileges of membership or office for a temporary period or for a span of time. I would hold that expulsion means a total cessation of membership to an organization or office. Having so decided would it be right for the Respondents to contend that they are entitled to deal with the church property constitutionally? The answer is that they are not so authorized by reason of such expulsion or suspension. That is the law.


I would use the same reasoning as to whether the 6th, 7th, 8th and 9th Respondents are entitled to "holding themselves out as lawful Reverends, or Pastors of the Applicant and/or to perform any church service functions and activities in the name of the Applicant in anyway whatsoever". as shown in the prayer 2.6 of the Applicant. (my underlining) The facts are shown in paragraph 24 and 25 of the Applicant's founding Affidavit. There is no reply to the allegations made by the Applicant in the answering and supporting Affidavits of the Respondents that they did so hold themselves. None at all. It is not denied therefore that an invitation was made on radio for members of the church

to attend a gathering where "The AME church will hold a joint service of the pastors who have been expelled from the church. They are Reverends NTOI, PHOLO, KEMENG and DANIEL SENTSO on the sixth of next month. It will be at the AME" (my own underlining). See Annexure B2. This is not only brazen but sheer brinkmanship against public order (at least of the church). Is it what this Court should countenance? Again the Respondents' response is that they are legally authorised to deal with the church property constitutionally. But they are not.

I would say that I am persuaded that the Applicant has acted properly in its powers to seek to assert proper control of the church and to approach this Court in the circumstances. I am of a view that sufficient facts were stated to entitle the Applicant to act urgently and ask for relief sought. One of the reasons which I found most compelling is what appears a clear appreciation on the part of Respondents, that action which amounts to depriving them of their control and function in the official church affairs has been taken, namely by expulsion and suspension. This Court is only entitled to deal the facts as they are. The current history and fortunes of the church has been chequered to say the least. One would be bound to sympathise. I see this Court as being called upon to do such things (and only such things) and take such decisions (and only such decision) that conduce to good order and legality.

I may only remark that it does not appear that suspensions, as have been imposed on some Respondents appear to have been followed much in the same manner as the expulsions. I need only refer to my remarks in TSELISO HLALELE v DANIEL MARAISANE & ANO. CIV/APN/324/93 on pages four and five. Such a state of affairs would seem to be unjust on the face of things. But as I have said, that is not what I am to decide now.

It is obvious that I would confirm the Rule Nisi with costs against all Respondents except Respondent 10 and 11.



T. MONAPATHI
Acting Judge

For the Applicant : Mr. S.C. Buys

For the Respondents : Mr. B. Tsotsi