

IN THE COURT OF APPEAL

In the matter between:

THE MANAGEMENT COMMITTEE OF EMANUEL		1ST APPELLANT
PULENG 'MOLAOA	-	2ND APPELLANT
TOPOLLO MATLATSA	-	3RD APPELLANT
REBECCA NCHEE	-	4TH APPELLANT
MONALETSANA QHOBELA	-	5TH APPELLANT
REVEREND D. SENTSO	-	6TH APPELLANT
ZAKARIA NTOI	-	7TH APPELLANT
ARTHUR PHOLO	-	8TH APPELLANT
PETER KEMENG	-	9TH APPELLANT

AND

THE EIGHTEENTH EPISCOPAL AFRICAN METHODIST EPISCOPAL CHURCH	RESPONDENT
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HELD AT  
MASERU

CORAM

MAHOMED P.  
KOTZE` J.A.  
LEON J.A.

J U D G M E N T

KOTZE`J.A.

On the 4th May, 1994, MONAPATHI J. confirmed with

costs against the nine appellants a rule nisi in terms of which they were inter alia restrained from making public broadcasts on behalf of the respondent church, conducting meetings or services under its name, occupying any of its property and threatening, assaulting or insulting any of its office bearers. The rule as confirmed furthermore restrained the 6th, 7th, 8th and 9th appellants from holding themselves out as pastors of the said church and to perform services, functions or activities in its name.

The confirmation of the rule was based on allegations by the respondent church, and disputed by the appellants, that they (the appellants) were lawfully expelled from the positions they held in the church and the resulting deprivation of their rights, duties and privileges attaching thereto. Briefly stated the approach of MONAPATHI J. was that the expulsions were valid "as shown in the replying affidavit of the applicant" (i.e. the respondent in this appeal).

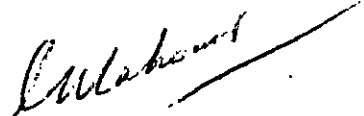
⊂ The approach of the learned Judge was wrong. The respondent (unrepresented at the appeal) approached the Court a quo on motion. The crucial allegation was disputed. The respondent did not apply for the

hearing of viva voce evidence and chose to let the matter run its course on the disputed crucial allegation. In the circumstances the proper approach would have been to assume the truth of the denial of the factual allegation. In the circumstances the appeal is upheld with costs. "



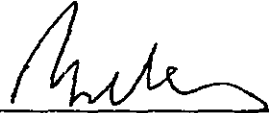
G.P.C. KOTZE  
JUDGE OF THE COURT  
OF APPEAL

I agree



I. MAHOMED  
PRESIDENT OF THE COURT  
OF APPEAL

I agree



R.N. LEON  
JUDGE OF THE COURT  
OF APPEAL

Delivered at Maseru this 13<sup>th</sup> day of January, 1995.