

**C of A (CIV) NO.2/2013**

**IN THE COURT OF APPEAL OF LESOTHO**

In the matter between

<b>REV. FR. JOSEPH SEPHAMOLA O.M.I</b>	<b>1<sup>st</sup> Appellant</b>
<b>PROVINCIAL COUNCIL</b>	<b>2<sup>nd</sup> Appellant</b>
<b>REV. RAMOSA J. SALOOE O.M.I</b>	<b>3<sup>rd</sup> Appellant</b>
<b>FORMATION TEAM OBLATES OF MARY IMMACULATE</b>	<b>4<sup>th</sup> Appellant</b>
<b>OBLATES OF MARY IMMACULATE</b>	<b>5<sup>th</sup> Appellant</b>

**and**

<b>BROTHER METHODIUS T. PONYA</b>	<b>Respondent</b>
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CORAM: SCOTT JA  
HOWIE JA  
HURT JA

Heard 2 April 2013

Delivered 19 April 2013

## **Summary**

*Review – entitlement to a hearing of a temporary member of a religious order before excluding him from renewing his vows – Court’s power to intervene where the religious order in question fails to abide by the tenets of natural justice – the failure to hear the respondent before excluding him conflicted with such tenets and was reviewably irregular.*

## **Judgment**

### **HOWIE JA**

- [1] The respondent completed his sixth year as a student religious in the Oblate Scholasticate of the Oblates of Mary Immaculate at Maseru and was due to renew his annual vows on 24 January 2013 preparatory to his final year of religious study.
- [2] Renewal required an application by him, which he duly made. In response he received a letter from the Major Superior, the Reverend Father Sephamola, dated 19 December 2012 informing him that his request for renewal had been declined. The decision so to decline was taken by Father Sephamola.
- [3] As a result, the respondent went to see Father Sephamola, (also designated the Provincial Superior) who read to him from a written

report of findings adverse to the respondent in relation to various misconduct allegations. The report, dated 16 December 2012, had been compiled by the Reverend Salooe with the assistance of members of Scholasticate. The report concluded with the recommendation that the respondent not be permitted to renew his vows, which recommendation was the basis of Father Sephamola's decision.

- [4] Before the contents of the report were disclosed to him, the respondent was unaware of the report or its recommendation and before receipt of Father Sephamola's letter he was unaware that the decision to decline his request for renewal had been taken.
- [5] On the ground that that decision was irregularly taken without first affording him the opportunity to be heard, the respondent succeeded in moving the High Court (Chaka - Makhooane J) for an order reviewing and setting the decision aside, the cited respondents being Father Sephamola, the Oblates' Provincial Council, Reverend Salooe, the Scholasticate's Formation Team and the Oblates (a juristic person) itself. Consequent upon that order, all the then respondents now appeal. For convenience I shall call them the appellants.

- [6] Broadly put, the appellants' case is that as and when various misconduct accusations against the respondent emerged during 2012 he was questioned about them by members of the Oblates. However, apart from ascertaining his responses on those occasions, no provision of canon law, as incorporated into the rules of the Oblates, entitled him to be heard further whether before a report concerning his suitability for Oblate life would be compiled, or before his exclusion from further profession of vows was decided upon. In short, the appellants' argument was that the respondent's continuing membership of the Oblates was governed by contractual principles which made no provision for what natural justice might require.
- [7] The record and the respondent's heads of argument on appeal each contain excerpts from the Code of Canon Law, with accompanying commentary. It would be a matter for diverting debate to essay conclusive findings on the question whether and to what extent Canon 689 of that law, which deals with exclusion of a member from subsequent profession, requires or accommodates application of the *audi alteram partem* principle. In my view it suffices for the decision of the appeal to invoke the decision of this Court in Lesotho Evangelical Church v Pitso L.A.C (1990 – 1994) 474. An order of the Church involved in that matter purported to oust the

jurisdiction of the courts but it was held (at 480E – 481B) that even if the parties to an agreement creating the domestic tribunal of a voluntary association can in certain respects exclude the jurisdiction of the courts, they cannot do so in all circumstances. More particularly they cannot do so where the act complained of is against the principles of natural justice.

[8] In the present case the respondent had completed six years of training and had one more year to complete. Exclusion from subsequent profession would render the completed years wasted and cause a substantial disruption of his chosen way of life. The allegations against him were serious and involved accusations of dishonesty and moral reprehensibility. In all the circumstances natural justice required that he be afforded a hearing before the accusations were accepted, the report acted upon and the decision excluding him pronounced.

[9] The decision of the High Court was accordingly right and the appeal must fail.

[10] As to the costs of appeal, the appellants sought costs in the event of their success and there is no good reason not to order costs against them now that the appeal has failed.

The appeal is dismissed, with costs.

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**C. T. HOWIE**  
**Justice of Appeal**

I agree

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**D. G. SCOTT**  
**Justice of Appeal**

I agree

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**N.V. HURT**  
**Justice of Appeal**

For the Appellants :                      Adv. T. Matookane KC

For the Respondent:                      Adv. K. J. Nthontho