

IN THE APPEAL COURT OF LESOTHO

HELD AT MASERU

C OF A (CIV)17/2019

CIV/APN/18/2014

In the matter between:

NATIONAL SPIRITUAL ASSEMBLY OF

THE BAHAI'S OF LESOTHO

APPELLANT

and

MICHAEL DAVID REEVE

RESPONDENT

CORAM: DR K E MOSITO P,

M H CHINHENGO AJA

NT MTSHIYA AJA

Enrolled: 18 May 2020

Delivered: 29 May 2020

CHINHENGO AJA:

RULING BY CONSENT OF PARTIES

Appellant seeking certain relief from High Court and amending relief before hearing- Judge granting relief not sought by appellant

On appeal counsel for parties reaching agreement that as relief not sought was granted case be remitted to High Court for hearing de novo before a different judge- Court acceding to order by consent and remitting case as prayed

CHINHENGO AJA:-

1. This appeal was heard as an electronic court hearing in terms of Rule 30 of the Court of Appeal (Amendment) Rules 2020 (Legal Notice No.39 of 2020). At the hearing counsel for both parties agreed on an order by consent and undertook to file a draft order to that effect. They have since filed a draft attached hereto.
2. The appeal is by the National Spiritual Assembly of the Baha'is of Lesotho against the judgment of Peete J in which he ordered as follows-

“The termination of the applicant’s [respondent in the appeal] membership of the Lesotho Chapter of National Baha’is of Lesotho is hereby set aside as null and void and

as being contrary to the trite precepts of natural justice in Lesotho.”

3. The order by the learned judge does not reflect the relief sought by the respondent in the court below. In that court the respondent, by way of notice of motion, initially sought an order in the following terms –

“1. That the First, Second and Third Respondents herein be compelled to furnish to the applicant the minutes and correspondence relating to the meetings of 9th and 10th August 2003 and the 2nd of August 2008 held at the National Baha’is Centre at Lower Thetsane Maseru in the district of Maseru, in which meetings the applicant was a party;

2. That the First, Second and Third Respondents further be compelled to furnish to the Applicant all correspondence and communication relating to the afore-referred meetings and as so shared between the First Respondent, the Second Respondent and Third Respondent, and the Universal House of Justice and the Spiritual Assembly of the Baha’is of Hong Kong;

3. That the Applicant furnishes to the Respondent the correct version of the minutes within two (2) weeks of his

receipt of same for the Respondent to reverse all the decisions taken against the Applicant resultant from the reading of the minutes and/or any correspondent(sic).

4. That the First and Second Respondents herein pay for the costs on punitive scale in the event of opposition;

5. That the Applicant be granted such further and/or alternative relief.”

4. The reason for seeking the above relief was that the respondent lost his membership of the Spiritual Assembly of the Baha’is as a result of certain alleged but undisclosed misconduct when he was a member of the Faith. He thus contested the decision removing him from membership of the Baha’is Faith.

5. The respondent amended his notice of motion before the application was heard. The amendment in part reads as follows-

“2. That on to the Notice of Motion, be added the following prayers:-

(i) That the Honourable Court reviews and set aside the decision of the respondents for setting aside the membership of the Applicant from the Respondent’s

denomination without Applicant having been afforded a hearing;

- (ii) That the Honourable Court deems it fit for the Applicant to be afforded a hearing and as such, this be an order of this Honourable Court;
- (iii) That the decision of the First and Second Respondents to have denied the Applicant access to the minutes of the meetings as set out in the Notice of Motion and the Founding Affidavit be deemed unreasonable, unwarranted and illegal and subject to being set aside as such.”

6. On 4 April 2017, before the hearing of the application on the merits, the court issued an order recording that the respondent had abandoned the prayers in the Notice of Amendment and paragraphs 2 and 3 of the Notice of Motion. The result was that the only relief that the respondent pursued in the court *a quo*, apart from costs, was for access to the minutes of 9 and 10 August 2003 and 2 August 2008. The learned judge however granted the relief cited in paragraph 2 of this Ruling, which, as became common cause at the appeal hearing, was not the relief sought by the respondent in the High Court. Counsel for the appellant and the respondent agreed that the learned judge erred in granting the order at paragraph 2 of this Ruling and,

for that reason, this matter should be remitted to the High Court to be heard by a different judge and be disposed of as quickly as possible. We agreed with the submissions of counsel and with the order that they proposed.

7. In the result and by agreement between the parties, the following is made an order of Court:-

1. The judgment of his Lordship Judge S.N. Peete dated 15 February 2019 is hereby set aside.

2. The matter is remitted to the High Court for hearing.

3. The Registrar is directed to place the application on the roll as a matter of priority and to give the matter preference for enrollment.

4. The application is to be placed before a newly constituted Court distinct from the original hearing.

5. No order as to costs.



MH CHINHENGO
ACTING JUSTICE OF APPEAL

