

**CIV/APN/175/2012**

**IN THE HIGH COURT OF LESOTHO**

In the matter between:

**THE METHODIST CHURCH OF SOUTHERN  
AFRICA**

**Applicant**

**vs**

**DANIEL RANTLE**

**1<sup>st</sup> Respondent**

**THE METHODIST CHURCH OF LESOTHO**

**2<sup>nd</sup> Respondent**

**JUDGMENT**

**Coram:** Hon. Hlajoane J  
**Date Hearing:** 5<sup>th</sup> June, 2012.  
**Date of Judgment:** 28<sup>th</sup> August, 2012.

**Summary**

*Application papers having been served on the Respondents without having been issued by the Court – No case number, no date stamp, no revenue stamps and affidavits not signed by deponents – Prayer for dispensation having been considered as a cure to the irregularities –*

*Rule confirmed in Part as there has been compliance – No order for costs.*

[1] This is an Application that was brought on urgent basis with reasons for urgency shown in the Certificate of Urgency.

[2] The prayers sought were the following:

1. Dispensation with forms and service provided for in the Rules of Court.
2. That first and second respondents are prohibited, interdicted and restrained from,
  - (a) Interrupting, disrupting and interfering with or in any way preventing the Applicant from holding church services in the name and under the auspices of the Applicant anywhere in Lesotho over the Easter weekend;
  - (b) Trespassing upon, entering or being present at any of the Applicant's churches in Lesotho over the Easter weekend;
  - © Disrupting the peace at or near any of the Applicants churches in Lesotho over the Easter weekend;

- (d) Making any demands of or threats against the Applicant, its Ministers or its members anywhere in Lesotho and in particular at any of the applicants' churches in Lesotho over the Easter weekend.
- (e) Communicating with the Applicant, its Minister or members in any way over the Easter weekend otherwise than through written communications with the Applicant's attorneys of record herein;
- (f) That the first and second Respondents pay costs on attorney and client scale.
- (g) Prayers 2.1.1 and 2.1.5 which are Prayers (a) and (e) of this judgment, to operate as interim relief.

[3] When the matter was placed before Court, the Court did indeed grant prayers 2.1.1 and 2.1.5 of the Notice of Motion as interim relief.

[4] The effect of granting those two prayers was to interdict and restrain the first and the second Respondents from interrupting, disrupting and interfering with Applicant from holding church services in Lesotho over the Easter weekend. Also that in that period the Respondents were to only communicate with Applicant, its Ministers or members through written communications with Applicant's Attorney.

- [5] The papers were duly served on the Respondents who immediately filed intention to oppose and opposing affidavit.
- [6] Some points *in limine* were advanced in the opposing affidavit, and were the following;
- (i) That when the papers were served on first Respondent the papers did not conform to the Rules of Court;
  - (ii) that the papers served did not have a case number, a date stamp, revenue stamp and the affidavits have not been signed by the deponents;
  - (iii) that there was no legal excuse for such irregularities and no application filed for condonation of such irregularities.
- [7] In response to the points raised *in limine* the Applicant in his replying affidavit explained its position. In its explanation, the Applicant has not denied that the papers were served on the Respondents without a case number, date stamp, revenue stamp and not signed. He has however attached a letter Annexure “A” explaining before hand why the papers were served in that state.
- [8] Concerning the issue of condonation the Applicant has referred to Prayer 1 of the Notice of Motion which reads as follows:-

*-“dispensing with the forms and service provided for in the Rules of Court and disposing of this matter at such time and place and in such manner and in accordance with such procedure as this Honourable Court may think fit.”*

- [9] The Court considered the matter to be urgent, but on the basis of Annexure “A” to the replying papers, realized that the Respondents were in anyway made aware that his Application was going to be moved. There was prayer for dispensation which was granted on account of the urgency of this matter.
- [10] On the basis of the above I find that the points *in limine* raised are without merit and are dismissed.
- [11] Applicant’s counsel argued that since the order which the Respondents complied with was only relevant for the period of Easter, the Rule has to be confirmed. Further that confirmation of the Rule will not prejudice the Respondents in any way since Easter has passed.
- [12] According to the Respondents the order that was granted as interim relief had a final effect. They were saying this because according to them the real dispute is over the leadership of the church. They also argued that it would be wrong to be punished by ordering costs on Attorney and client scale yet they peacefully complied with the order of Court. Instead they prayed for the dismissal of

the Application as Applicant has failed to show proof of its existence and who the deponent to the founding affidavit is.

[13] But the Applicant argued that the Application was not about leadership of the church. That the Respondents were not prevented from peacefully coming to church and holding their own service separate from the Applicants. That the fact that Respondents argued that there is a dispute that was a clear indication of them acknowledging Applicant's existence.

[14] The first Respondent in his heads of argument had given a list of cases before this Court and the Magistrates' Courts on a dispute involving him and others over the Applicant.

[15] This Application could also not have been argued on merits without going into the issue of leadership of the Applicant. But so far we only dealt with the points *in limine* concerning the irregularities in the founding papers filed of record.

[16] It has been the feeling of this Court that to have dealt with who was who *vis a vis* the Applicant and 1<sup>st</sup> respondent would be going into the merits of the application which merits were not dealt with.

[17] I have already shown that as counsel for the Applicant said in argument; prayer 1 of the Notice of Motion which was granted as interim relief took care of the irregularities in the papers that were

served on the Respondents. Hence why the Court concluded that the points raised were without merit.

[18] The first Respondent admitted at para 23 of the opposing affidavit that he had intended to interfere with church service had he not been served with the Application for interdict which though was opposed, but there was compliance with the interim order.

[19] The Applicant has asked the Court to confirm the Rule as the case was about Easter weekend only and not about the leadership of the church. Whilst the Respondents on the other side prayed for the dismissal of the Application.

[20] It has been the Court's feeling that under the circumstances of this case the proper thing to do would be to confirm the Rule in terms of Prayers 2.1.1 and 2.1.5 of the Notice of Motion only as there has been compliance by the Respondents.

[21] On the question of costs, since the Applicant succeeded in part and the first Respondent complied with the order that was given as interim relief, which in effect became final, each party is to bear its own costs.

**A. M. HLAJOANE**  
**JUDGE**

For Applicant:           Adv. Woker

For Respondents:       Mr Lesuthu

