CIV/APN/59/2012

IN THE HIGH COURT OF LESOTHO

In the matter between;-

METHODIST CHURCH OF SOUTHERN AFRICA APPLICANT

And

REVEREND TEBOHO LEKITLANE	**1st RESPONDENT**
METHODIST CHURCH OF SOUTHERN AFRICA MAFETENG	**2nd RESPONDENT**
COMMISSIONER OF POLICE	**3rd RESPONDENT**
POLICE MAFETENG	**4th RESPONDENT**
ATTORNEY GENERAL	**5th RESPONDENT**

JUDGMENT

Coram : Hon. Majara J.

Date of hearing : 31st May 2013

Date of judgment : 13th June 2013

Summary

Application for confirmation of Rule Nisi granting interdict and application to hold 1st respondent to be in contempt of court – application for the calling of viva voce evidence moved on the day of hearing – discretion of the court and principles to be applied – application not confined to narrow and well-defined issued and dismissed – both applications for interdict and for contempt of court riddled with material disputes of facts – replying affidavits not filed – Rule nisi discharged and contempt of court application dismissed with costs

ANNOTATIONS

BOOKS

1. Herbstein and Van Winsen, The Civil Practice of the Supreme Court of South Africa (Now the High Courts and the Supreme Court of Appeal) 4th Edition

STATUTES

1. The High Court Rules of 1980
2. The Companies Act of 1967

CASES

1. Keitumetse Serage and Another v 'Matlaleng Taioe C of A (CIV) No. 34/2010
2. Kalinyane Seitlheko and 3 Others v Letuka Nkole and 3 Others C of A (CIV) No. 17 A/2012 (unreported)
3. Room Hire Company (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155
4. Adbro Investments Co Limited v Minister of Interior 1956 (1) SA 345
5. Setlogelo v Setlogelo 1914 AD 221

6. Methodist Church of Southern Africa (MCSA) v Reverend Daniel Rantle CC: 2113/06 (unreported)
7. The Methodist Church of southern Africa v Daniel Rantle and Another CIV/APN/175/2012 (unreported)
8. Motlatsi Lesaane v Melaphe Sholoko & Another CIV/APN/158/2009 (unreported)

[1] There are two applications in the present matter. In the first one the applicant approached the Court for relief for confirmation of a Rule Nisi which was granted by Moiloa J on the 3rd February 2012 in terms of which the 1st and 2nd respondents were interdicted from holding celebrations at the applicant Church in Mafeteng being the second respondent's premises pending the outcome of this application.

[2] The second application, emanates from the first one in that the applicant seeks this Court to send the 1st respondent and one Reverend Nyobole to prison for contempt of the interim Order of Court in the main application in that they allegedly defied the said order having been duly served with it on the eve of the celebrations in questions.

[3] Facts that precipitated the main application as gleaned from the papers are briefly that a while back, the applicant Church in Lesotho split into factions resulting in a protracted dispute over its ownership. In terms of the applicant's assertions, the 3rd respondent herein has had to intervene in different districts of Lesotho especially in Mafeteng where violence has erupted as a result of this dispute. Further that several criminal and civil cases have been instituted in the Courts in this regard.

[4] The deponent to the founding affidavit Reverend Daniel Rantle, who describes himself as the applicant therein avers as follows at paragraph 16 – 19 thereof:-

> *"On the 31st January 2012 I have heard* (sic) *an announcement over Lesotho Television that preparations are made* (sic) *to celebrate hundred years of the presence of this church in Lesotho.*
> *This celebration is done without my consent and without my knowledge by among others the first respondent.*
> *The said celebration will take place at my church which is the second respondent on the 4th February 2012.*
> *This kind of behavior is intended to undermine my authority and to cause confusion and bloodshed in my church."*

[5] It is on the basis of these averments that the deponent sought relief that the respondents be interdicted from going ahead with the celebrations and the 3rd respondent to stop same from taking place at the Church premises in Mafeteng. In this regard, the applicant is supported by one Stephen Mapheelle who describes himself as the Circuit Steward of the applicant in his supporting affidavit.

[6] The answering affidavit filed in opposition to this application is deposed to by one Reverend Vuyani Gladstone Nyobole who states that he is the duly appointed Secretary General of the applicant and is duly authorized to oppose the application on behalf of the Church. He has attached annexure **"VGN1"** in this regard *to wit*, a document entitled the **11th Edition of Laws and Discipline of the Church**. He is referred to as the Secretary General thereof in the foreword of the document.

[7] Rev. Nyobole avers that the applicant is an association, *universitas* formed to represent Methodist Church interests in Southern Africa and is not restricted to Lesotho, and that its activities span its interest in South Africa, Lesotho, Namibia,

Botswana, Mozambique and Swaziland. He adds that the Church in Mafeteng, 2nd respondent herein, is one of the applicant's societies. At paragraphs 6 and 7 thereof the deponent states further that:-

> *"The entity that the deponent to the Founding Affidavit, Reverend Daniel Rantle (Rantle), has cited (incompletely) as the Applicant in this application, namely the Methodist Church of Southern Africa (Proprietary) Limited is a limited liability company which the Methodist Church of Southern Africa constituted under the Lesotho COMPANIES ACT, 1967. It is a company constituted by the Methodist Church of Southern Africa to,* ***inter alia****, hold property in Lesotho on behalf of the Methodist Church of Southern Africa.*
> *It is an entity separate from the Methodist Church of Southern Africa. It is also an entity separate and distinct from the said Rantle. In fact, as dealt with hereinafter, he has no interest in the said limited liability company at all. He is not a member of the company, nor is he an office bearer thereof, nor a Director, or* (sic) *even a servant thereof."*

[8] To this end, the deponent has attached annexure **"VGN2",** a Certificate of Incorporation and the Memorandum and Articles of Association of the Church. He adds at paragraph 16 of his affidavit that the company was incorporated in Lesotho in terms of the law on the 31st January 1984 and that this was long before Reverend Rantle was discontinued in 2006.

[9] The deponent admits that there is a long standing dispute between the Church and Rev. Rantle in the subsequent paragraphs and adds that as an ordained Minister of the church, the latter Reverend fell out with it and after disciplinary proceedings were conducted against him he was discontinued as a minister in the Church having been found guilty of misconduct in 2006 and that as a result he is no longer a Minister of the church. The deponent also makes the following assertions at paragraph 9 of his affidavit:-

> *"After he was discontinued, Rantle formed a break-away Church in Lesotho. There was a time when he referred to himself and his break-away Church as the Methodist Church of Lesotho. Later, when he realized that he could not claim ownership of the assets of the Methodist Church of Southern Africa in Lesotho or attempt to control and influence its affairs he held himself out as the Methodist Church of Southern Africa."*

[10] It is Rev. Nyobela's further averments that Rev. Rantle has no interest nor a say in the affairs of the Church in Lesotho or anywhere and that despite his having been discontinued the latter has not relinquished control over some of the interests of the Church in Lesotho including the main Church in Maseru and the manse attached thereto where he still lives.

[11] The deponent to the answering affidavit also relates examples of how the dispute has unfolded over the years and admits that there are a number of pending court cases between Rev. Rantle and the Church. With respect to the position of Rev. Rantle in the Church, Rev. Nyobole deposes as follows in relevant parts of paragraph 21 of his answering affidavit:-

> *"Rantle is not the managing Director or even a Director of the Methodist Church of Southern Africa (Pty) Ltd. Nor is he a member, office bearer or employee thereof. He simply has no interest in or control over the said company at all. As stated he is merely a usurper. He is the leader of his own break-away Church. Presently – and in the past – he is merely trying to take over control of the property, affairs and interests of the Methodist Church of Southern Africa. Rantle is not even a Minister of the Methodist Church of Southern Africa."*

[12] He further denies that Rev. Rantle *'as a natural person'*, can be the applicant in this matter as the present applicant as it is cited, is a juristic person, an entity

incorporated according to the law. He also disputes that the Reverend is the head of the said Church and adds that it is controlled by a Board of Directors and that he is not one of them. He admits that the 1st respondent was transferred to be in charge of the Church at Mafeteng as one of the Churches in Lesotho that are part of the cited applicant Church and that it was not necessary to inform Rev. Rantle of same as his approval was not necessary because he has nothing to do with the cited applicant Church. He adds further that the latter cannot have branches in Lesotho.

[13] With respect to Rev. Rantle's assertions that there have been conflicts and criminal acts resulting from the long dispute over the Church, the deponent to the answering affidavit disputes same and adds that some people have been hurt and the Superintendent of the Church Rev. Daniel Jacob Senkhane was kidnapped by men who informed him that they had been sent by Rev. Rantle to kill him and was rescued by members of his Church. He however admits that a criminal case against Rev. Senkhane and six others is pending in the Magistrate's Court.

[14] With respect to the celebrations, the subject matter in the two applications, the deponent to the answering affidavit states thus in relevant parts of paragraphs 33, 34, 35 and 36 thereof respectively:-

> *"It is true that members of the Methodist Church of Southern Africa announced its intentions to hold a celebration at the Mafeteng Church on 4 and 5 February 2012, over Lesotho national television.*
>
> *I deny that any celebration that the Methodist Church of Southern Africa operating in Lesotho may want to hold requires the knowledge and consent of Rantle. Rantle has no power or control over the affairs (or celebrations) of the Methodist Church of Southern Africa operating in Lesotho. Rantle may have control over his own break-away Church but that is all. For the reasons dealt with this is not in the case* (sic) *of the affairs of the Methodist Church of Southern Africa in Lesotho.*

The planned celebrations had nothing to do with Rantle. I deny that they were intended to undermine his authority ***"and to cause confusion and bloodshed in my church"****. The church at Mafeteng is not Rantle's Church. Rantle is in fact the cause of the trouble and any confusion that may exist. He is the usurper leading his own break-away Church. He is the one who is illegitimately trying to take control of the interests of the Methodist Church of Southern Africa in Lesotho."*

[15] The deponent also disputes the contents of Mapheelle's supporting affidavit and denies that the latter is the Circuit Steward of the applicant. He adds that there are no officers of the company with the designation of "Steward" and that there is nothing to that effect in the Memorandum and Articles of Association of the company. He adds further that *'Mapheelle is Rantle's friend and follower and may be a member of and hold a position in Rantle's break-away Church'*.

[16] The averments of the deponent to the answering affidavit are confirmed by Rev. Daniel Jacob Senkhane with respect to his position in the Church and the entire contents of the answering affidavit in his supporting affidavit as well as by the 1st respondent herein in similar terms.

[17] After the answering affidavits were filed, no reply was filed on behalf of the applicant. Instead, on the 20th February, the applicant instituted another application namely contempt of Court proceedings against the 1st respondent. Just as is the case in the main application, the founding affidavit therein is deposed to by Rev. Daniel Rantle in terms of which he still describes himself as the applicant herein. In the affidavit, the Reverend briefly avers as follows in parts and in so far as it is relevant to the prayers sought, *to wit*, that the 1st respondent and Rev. Vuyane Gladstone be sent to prison for contempt of Court:-

"I moved the Court for the interdict on the 3rd February 2012 which was granted.
The Court Order was duly served and first Respondent told the deputy Sheriff that he would defy the Court Order.
He then appeared over Moafrika F.M Radio that he was ready to defy the Order.
On the 4th February 2012 I sent Mr. Stephen Mapheelle to monitor the situation (sic)
He reported to me that the first and second respondents were defying the Court Order (sic)
I appealed to the Police but to my surprise the Respondents proceeded in defiance until the unveiling of the stone.
On the 5th February 2012 the police of Mafeteng informed me that they had arrested first respondent for the defiance of the 5th February.
I therefore pray this Honourable Court to send the respondents to prison for contempt of Court."

[18] This application is also opposed and two affidavits entitled answering and opposing are deposed to by Rev. Vuyani Gladstone Nyobole and the 1st respondent respectively. In his affidavit Rev. Nyobole disputes that the respondent defied the Court Order of the 3rd February 2012 and adds that same was served at around 18h15 and that only the first respondent was present at the Church premises at that time. He adds that there was no celebration at the time and thereafter. He further makes the following assertions at paragraph 8, 9 and 10 of his affidavit:-

"On the 4th February 2012, when I arrived at the church in Mafeteng where we had intended to hold the Methodist Church of Southern Africa 100th anniversary celebration, Reverend Teboho Lekitlane informed me about this Order. Immediately I wrote to the Police Commanding Officer in Mafeteng to acknowledge receipt of the Court Order and to confirm that we will obey the Order. In the said letter we also informed the Police that we will conduct a religious worship instead. It was our understanding that the Interim Order was only prohibiting us from holding the anniversary celebration but was not prohibiting us from holding sermon and worship services, normally

held at this church. A copy of this letter is attached hereto and marked Annexure "A".

The police seemed not to disapprove of our suggestion. As a result, we stayed at the premises for about four hours for prayer and worship services. At no stage during the religious services did we defy the Court Order. The Respondents and the members of the congregation did not proceed with the 100th Anniversary celebration.

During the course of the day, Reverend Lekitlane informed me that a journalist from MoAfrika Radio station telephoned him requesting him to comment on the Interdict granted on 3 February 2012. Reverend Lekitlane also informed me, which advices, (sic) *I verily believe to be true, that he did not make comments at the time. In fact he told the journalist that he is in the middle of a sermon and cannot take his call. This was the only conversation 1st Respondent had with the journalists."*

[19] It is Rev. Nyobole's further assertion that everyone left at the end of the prayer services but for the 1st respondent who being the leader thereat, stays (at least this was so at the material time) at the manse attached to the Church since 2009. Further that on the 5th February 2012 they held a Sunday sermon for about four hours and that this was not extraordinary as all they did was conduct the normal Sunday church services.

[20] He reiterates his averments in the founding affidavit to the main application regarding Rev. Rantle's position in the Church and the legal status of the Church. He also disputes the correctness of the allegations contained in the founding affidavit insofar as the holding of the celebrations is concerned and the alleged utterances of the 1st respondent to the effect that he was going to defy the Court Order. In this regard, he attached the supporting affidavit of the Deputy Sheriff, one 'Mapalesa Pakisi.

[21] The deponent further disputes that the 1st respondent was arrested by the police on 5 February 2012. To this end, he adds as follows in relevant parts of paragraph 25 of his affidavit:-

> *"The police arrived at the church on 5 February 2012 during the church services indicating that we should halt the Sunday sermon, because our gathering could be interpreted to be in defiance of Court Order* (sic). *Immediately we brought the sermon to a close. Some of the worshippers turned up to be rowdy, but the police and the Senior Pastors managed to keep the situation under control. Nobody was arrested, not even 1st Respondent."*

[22] The deponent also disputes the contents of the affidavit of Stephen Mapheelle to the extent that he avers that he saw the respondents defying the Court Order and reiterates that all they did was hold prayer services only. The deponent's assertions are confirmed by the 1st respondent in terms of contents of his opposing affidavit insofar as they relate to him as well as by the Deputy Sheriff in her supporting affidavit insofar as they relate to her. They both dispute that the 1st respondent ever told the Deputy Sheriff that he was going to defy the Court Order. In a similar vein as in the main application, no reply was filed to the answering, and opposing affidavits. The matters were subsequently enrolled for hearing before me on the 8th November 2013.

[23] On the date of hearing, **Adv. K. Lesuthu** and **Adv. Woker** appeared before the Court on behalf of the respective parties. They informed me that although Nomngcongo J. had granted the Interim Order he had since recused himself from dealing with the matter on the merits with respect to both the main application and the one for contempt of Court.

[24] At the start of his submissions, **Adv. Lesuthu** moved an application for the calling of *viva voce* evidence. His main reason was that the 3rd respondent has not filed an answering affidavit and he should be ordered to come and give evidence in this matter. He added that the respondents had defied the Order of Court and gone ahead with the celebrations and that all those were published on Lesotho Television and captured on video.

[25] It is significant to note that the application was made in respect of both applications. In support of his application that the Court should call for *viva voce* evidence, **Adv. Lesuthu** made the submission that it has been established that it is not proper for the Court to make its decisions based on evidence contained in the affidavits. To this end, he referred the Court to the sentiments that were expressed by the Court of Appeal in the case of **Keitumetse Serage & Another v 'Matlaleng Taioe**.[1]

[26] The said application was opposed and in support thereof **Adv. Woker** pointed out that the alleged dispute of fact which could justify the calling of such evidence is based largely on hearsay evidence which is contained in the applicant's founding affidavit to the contempt of Court applications from paragraph 5 up to 12. He added that the deponent has not filed any supporting affidavit of the people who allegedly gave him the reports of the alleged celebrations in defiance of the Order of this Court as he avers.

[27] He added that the applicant's prayers are based exclusively on hearsay and that the Court cannot be expected to order the calling of *viva voce* evidence under

[1] C of A (CIV) N034/2010 (unreported)

those circumstances. In this regard, he brought the case of **Kalinyane Seitlheko & 3 Others v Letuka Nkole & 3 Others** to the attention of the Court.[2]

[28] It was the submission of **Adv. Woker** that the application for the calling of *viva voce* evidence was completely out of line and was merely aimed at preventing the Court from making a ruling in the main application because the applicant's Counsel was aware that his case was very weak especially when account is taken of the fact that he did not file any reply in both applications.

[29] Having heard submissions made on behalf of the parties I dismissed the application for the calling of *viva voce* evidence and undertook that my reasons thereof will appear more fully in the main judgment. The matter was then postponed for a further hearing on the 31st May 2013. I now proceed to give my reasons for my dismissal of that application hereunder.

[30] The application for the calling for *viva voce* evidence was sprung on the Court without any foundation, basis and/or justification and some of the submissions that **Adv. Lesuthu** was making in support of the application basically constituted evidence from the bar as he was relating assertions that did not appear anywhere in his client's affidavits. Secondly, as **Adv. Woker** submitted, the averments in the founding affidavit were most if not all, unsupported hearsay evidence which was disputed by the respondents.

[31] In addition, in motivation thereof the applicant' Counsel stated that most of the celebrations that allegedly took place on the 4th and 5th February were captured on tapes and videos and he does not know how to draft affidavits based on same. In this regard, I need not state that all that he had to do was to get depositions of

[2] C of A (CIV) N0.17.A (unreported)

the people who were there and could depose to the goings on during the said celebrations at the 2nd respondents' premises.

[32] It is also significant to note that the alleged celebrations came after the institution of the main application in which all that the applicant had to do was respond to the assertions relating to ownership of the Church, his status in the Church and whether or not he had the necessary authority to bring the application on its behalf . It must be remembered that the main dispute in the main application is in relation to the identity and legal status of the applicant Church and who its lawful head is. I might add that the applicant's Counsel did not address any of these issues at all when he moved the application.

[33] I have shown that the application for the calling of *viva voce* evidence was made right at the outset when the applicant's Counsel had to address the Court on both the main application and the one for contempt of Court as they had since been consolidated. It is significant to note that when moving his application in this regard, **Adv. Lesuthu** did not state on which averments and/or issues the Court should order the hearing of *viva voce* evidence and in respect of which of the two applications. This is especially important considering that the applicant did not file any replying papers to the answering affidavits in both applications despite some glaring material disputes of fact.

[34] The case that Counsel brought to my attention in support of the application namely **Serage (supra),** is a decision of the Court of Appeal in which I was part of the Panel of Judges. In the said case, the Court decried the growing tendency by some judicial officers to decide disputes of fact on papers. It was basically a reiteration of the well established principle that it is undesirable for the courts to

resolve disputes of fact on the basis of evidence that is contained in the affidavits as that means the Court chooses to believe one typewriter as against the other.

[35] I find it apposite to point out that nowhere did the judgment of the Court change the provisions of the Rules with respect to the discretion of the Court when a dispute of fact arises where the applicant has approached the Court by way of motion proceedings as *in casu*. To this end the relevant Rule[3] reads as follows:-

> *"If in the opinion of the court the application cannot properly be decided on affidavit the court may dismiss the application or may make such order as to it seems appropriate with a view to ensuring a just and expeditious decision. In particular, but without limiting its discretion, the court may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for him or any other person to be subpoenaed to appear to be examined and cross-examined as a witness, or it may order that the matter be converted into a trial with appropriate directions as to pleadings or definition of issues, or otherwise as the court may deem fit."*

[36] In my opinion, the remarks of the Court in the **Serage case (supra)**, were not meant to do away with the discretion of the High Court with regard to what course of action it should direct in the event of the existence of a dispute of fact in motion proceedings, in as much as it was rather to impress upon the Courts to desist from deciding matters purely on affidavit under such circumstances.

[37] Several decided cases have dealt with the question under what circumstances the court may find that an alleged dispute of fact is real and bona fide and the direction it may take given those circumstances. For instance, in the case of **Room Hire Company (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd** [4]the Court stated

[3] High Court Rule 8 (14)
[4] 1949 (3) SA 1155(T)

that the application should be dismissed with costs when the applicant should have realized when launching the application that a serious dispute of fact was bound to develop.

[38] On the same principle **Herbstein and Van Winsen**[5] state as follows in relation to the provisions of Rule 6, a South African Rule that is in *pari materia* with out Rule 8:-

> *"Rule 6 (5) (g), which provides for oral evidence to be heard on specified issues, was not intended to be used for deciding disputes of fact that give rise to a variety of wide ranging factual inquiries involving real and substantial questions of fact. The court's discretion to order that oral evidence should be heard, though extensive, is not unlimited, for that evidence must be confined to 'specified issues'. It follows that this procedure is appropriate only when the disputed issues are within a comparatively narrow compass."*

[39] *In casu*, it is common cause that both applications are riddled with material disputes of fact. It is now well established that *'a real dispute of fact arises most obviously when the respondent denies material allegations made by deponents on the applicant's behalf and produces positive evidence to the contrary'*.[6] I have already stated that **Adv. Lesuthu** did not state in which of the two applications he required the calling of *viva voce* evidence or on exactly which of the disputed fact and/or issue. His was merely an application that was in my view, not properly thought out and/or motivated.

[40] Coming back to the facts of the present applications, it is obvious that the first dispute in the main one is in connection with the identity of the applicant Church, its legal status and its leadership. Flowing from that is a dispute on the

---

[5] The Civil Practice of the Supreme Court of South Africa 4th Edition p385

[6] Room Hire Co. (Pty) Ltd (supra) at p1165

status and/or position of the deponent to the founding affidavit vis-a-vis the Church and whether he is its head. It is also in connection with the authority of Rev. Rantle to bring these proceedings on behalf of the Church.

[41] All these were brought up the deponent to the answering affidavit in the respondents' denial that the Rev. is the applicant and/or head of the Church and the deponent has produced evidence to the contrary. It therefore immediately becomes clear that these disputes would not be resolved with evidence regarding the celebrations of the 4th and 5th February as allegedly publicized and or televised. I therefore found that there was no need to call for *viva voce* evidence of the alleged celebrations for purposes of dealing with the main application.

[42] With respect to the contempt of Court application, the first dispute is on whether the 1st respondent and other members of the Church went ahead with the celebrations marking the 100th Anniversary contrary to the Court Order of the 3rd February 2013. In terms of the respondents' opposing affidavits, after the 1st respondent received the Court Order, he made an undertaking to obey same and informed the police that he and the others would only go ahead with normal prayer services. He is supported in this regard by Rev. Nyobole and by the contents in Annexure **"A",** *to wit,* a letter written by the 1st respondent to the police wherein he made the undertaking.

[43] The second dispute is on the alleged utterances by the 1st respondent to the Deputy Sheriff that he was going to defy the Court Order and whether he also said so on Mo-Afrika Radio station. Not only has this been denied, but the Deputy Sheriff has filed a supporting affidavit to confirm the respondents' assertions that the allegations against the 1st respondent are not true.

[44] The third dispute is on the alleged arrest of the 1st respondent by the Mafeteng Police as a result of his alleged defiance of the said Court Order by allegedly going ahead with the celebrations. This is also disputed and there is no supporting affidavit from the police officers in this regard. There is also no explanation why the police did not file affidavits yet the allegations in the founding affidavit are based on information presumably gotten from them.

[45] As it can be seen, the above tabulated disputes make the nub of the respective applications. It should be remembered that in both, no replying papers were filed to react to the assertions in the answering affidavits. It is within this scenario that the Court had to exercise its discretion on how the matter should proceed. To this end, it has been laid down that where the applicant should have realized when launching his application that a serious dispute of fact was bound to develop, the Court may dismiss the application with costs.[7]

[46] In addition, the remarks of the Court of Appeal in the case of *Seitlheko (supra)* are apt especially at page 15 of the judgment where the learned Ramodibedi P had this to say:-

> *"It is trite that a party who proceeds by way of motion and who asks for final relief, does so at his own peril of having the application refused if the papers reveal an irresoluble conflict of fact. In such a situation the judge has a discretion, under Rule 8(14) of the High Court rules, to refer the matter to oral evidence if he considers that such referral will lead to a "just and expeditious" result. There were numerous reasons why a discretion of this sort should not have been exercised in favour of the applicants by the time the matter was argued."*

[7] Adbro Investments C0. Ltd v Minister of Interior 1956 (1) SA 345 (A) at 350

[47] In my view, the very fact that the parties herein have made common cause that there has been a protracted dispute over the ownership of the Church and its assets as evinced by a plethora of court cases that are before the Courts, Rev. Rantle ought to have known that the question of ownership or authority over the Church and the other issues I have referred to above would be hotly contested. He therefore took a risk by approaching the Court by way of motion proceedings to seek an interdict, not to mention that even in that respect he would still have to establish the essential requirements for same i.e. a clear right, an injury actually committed or reasonably apprehended, no other alternative remedy and that the balance of convenience favours the granting of the interdict.[8] It is under these circumstances that I dismissed the application for the calling of *viva voce* evidence.

[48] The matter was enrolled again for hearing on the 31st May 2013. On that day, **Adv. Lesuthu** moved the Court to postpone the hearing on the ground that proceeding with it would prejudice his client because the 1st respondent has since gone back to South Africa and it is not known when he will be back in Lesotho if ever. The application was opposed by Counsel for the respondents and having heard their submissions in that respect I ruled against **Adv. Lesuthu** for the reason that he had failed to establish how the absence of the 1st respondent at the hearing would prejudice the applicant.

[49] **Adv. Lesuthu** then proceeded with his address and without much ado, abandoned the application for interdict i.e. confirmation of the Rule Nisi for the reason that the matter has since been overtaken by events as the celebrations had already been held in February 2012 and arguing it would only be academic and serve no purpose.

---

[8] Setlogelo v Setlogelo 1914 AD 221

[50] On the contempt of Court application, Counsel for the applicant submitted that the respondents defied the Order of the 3rd February 2013 by going ahead with the celebrations whereby some arrests were made by the police after the applicant lodged a complaint with the police and that all these were televised on Lesotho Television. He added that the police stopped the celebrations albeit temporarily as the respondents continued up until Sunday and performed the unveiling of the stone ceremony. It was his submission that the applicant must be granted the prayers sought because the respondents were guilty of contempt of court.

[51] For the respondents, **Adv. Woker** moved the Court to discharge the rule nisi in the main as the applicants had decided not to pursue the application for the interdict. It was his submission that they should consent to the discharge and to tender costs for the application.

[52] With respect to the submissions on the contempt of Court charges, Counsel for the respondents made the contention that what Counsel for the applicant had stated before the Court is not contained in the affidavits and that he was effectively giving evidence from the bar.

[53] Most of **Mr. Woker**'s other submissions were contained in his comprehensive Heads of Argument most of which I have already dealt with in my reasons for dismissing the application for the calling of *viva voce* evidence. He added that the applications should be dismissed on the same grounds as those in the case of **Kalinyane Seitlheko & Others (supra).**

[54] In this regard, suffice it for me to say that for the same reasons as already stated above with respect to the existence of material disputes of fact and in the light of the fact that the applicant did not file any reply against such serious and material disputes, that most of his allegations in the founding affidavit were

unsupported hearsay evidence, as well as the fact that cognizant of the long battle between him and the respondents over ownership of the Church, he ought to have foreseen that a dispute was bound to arise, it is my finding that this application cannot be properly decided on the affidavits and falls to be dismissed.

[55] At this stage, I find it apposite to mention that Counsel for the respondents came to Court well prepared from the outset having also filed extensive heads of argument, a sign that he took this matter seriously. I am indebted to him in that respect. Unfortunately, the same cannot be said about Counsel for the applicant who not only did not prepare his heads of argument, but also came to Court unprepared on both occasions.

[56] It would be remiss of me to not also mention that on the date of hearing after I had given my ruling and dismissed his application for a postponement, **Adv. Lesuthu** immediately approached his clients in Court and came back to inform me that they wished to withdraw him as their legal representative. I refused that proposition and insisted that he must proceed with the matter to its finality which he reluctantly did.

[57] I should also add that in the afternoon of the 12th June 2013, i.e. the eve of the delivery of this judgment, Counsel for the applicant submitted some decided cases to in support of a contention he had made during his oral submissions in Court that Counsel for the respondents the submissions that were made on behalf of the respondents were basically an attempt on their part to have this Court determine issues that had already been decided by some of my brother and sister Judges in other matters. Although the judgment was typed and ready for delivery, I decided to have a look at those cases and having gone through them, I formed the opinion that they did not really take the case of the applicant any further.

[58] For instance, in the first one CC: 2213/06, a case that was heard in the Magistrate Court, the action was for ejectment of the applicant from premises that the 2nd respondent claimed belonged to it. It was the latter's case that the applicant had hitherto been in occupation of the property the subject matter of the action, and that he was no longer a serving Minister of their church. The Magistrate found in favour of the 2nd respondent. It therefore follows that the decision does not support the contention that was made on behalf of the applicant. It was on an issue related to the question of leadership on which the Court did not make a finding.

[59] The second case, CIV/APN/ 175/2012, was heard by my sister Hlajoane J. The matter was instituted by the Methodist Church of Southern Africa against Rev. Rantle and the Methodist Church of Lesotho. The prayers were *inter alia*, that the two respondents should be interdicted and restrained from interrupting, disrupting and interfering with or in anyway preventing the applicant from holding church services in the name and under the auspices of the applicant anywhere in Lesotho over the Easter weekend. The second and third prayers were that the respondents should be interdicted and restrained from trespassing upon, entering or being present at any of the applicant's churches in Lesotho over the Easter weekend and from disrupting the peace at or near any of the applicant churches in Lesotho over the Easter weekend.

[60] The prayers having been granted as interim relief, on the return date the Court accepted the contention that was made on behalf of the applicant that the bone of contention was not leadership of the church but about the harm or injury that was stated in the prayers and that the relief was sought only meant for the Easter weekend. As in the above case the contention that the Court determined the issue of leadership over the church is not correct.

[61] In the third and last matter,[9] **Motlatsi Lesaane v Melaphe Sholoko & Another** the dispute was on the applicant's right to bury the body of a deceased woman who he claimed he was married to. None of the present parties was a litigant therein. One of the issues that came up for consideration was whether Rev. Rantle had the authority to solemnize the marriage between the applicant an the deceased. The respondent in the matter submitted that the Reverend had no such authority because he had been removed from priesthood. In this regard Monapathi J had this to say in relevant parts of his judgment:-

> *"One of the things that I think the Respondents failed to demonstrate is that Rev. Rantle was not telling the truth when he says he is running a church that was registered under Methodist Church of South Africa (Pty) Ltd. Most probably it was under that church that the marriage was solemnized or under that church he was appointed by the Minister. It was upon the Respondents to show that Rev. Rantle was not telling the truth. It was upon the Respondents to demonstrate in that regard that what Rev. Rantle said was not true even on a balance of probabilities."*

[62] The learned judge made a finding that the respondents in that case, had not discharged their burden of proof to satisfy the Court that *'Rev. Rantle is nothing in the church'*. I need not mention that the respondents in that case were neither agents nor representatives of the church in question. It is for these reasons that I cannot accept as correct, the submission that the Judge unequivocally made a final determination on the leadership of the church. All that he did was make a finding that by their reliance on the fact of the alleged removal of Rev. Rantle from the church, the respondents therein bore the onus to establish same and that they had not succeeded to. Consequently, the case is not of much help in these two matters.

---

[9] CIV/APN//158/2009 (unreported)

[63] It is for all the foregoing reasons that I hereby dismiss the contempt application and also discharge the Rule Nisi in the main with costs.

N. MAJARA
JUDGE

For the applicant : Adv. K. Lesuthu

For the respondent : Adv. Woker