

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO. 2291/04

APPLICANT

AND

REVEREND *SIMON J. MANANA*

RESPONDENT

CORAM

K.P. NKAMBULE - J MR.

FOR APPLICANT FOR

MBUSO SIMELANE MR.

RESPONDENT

SIFISO MDLULI

RULING 10/9/04

In this proceedings the applicant has brought an *application* by Notice of Motion seeking an *order* in the following terms:

1. Dispensing with the forms and service and time limits prescribed by the rules of this court and directing that the matter be heard as one of urgency.
2. That a rule nisi do issue calling upon the respondents to show cause on Friday the 20th of August 2004 at 9.30 a.m. or such

time as the court may direct why an order should not be made final in the following terms:

3. The respondent be ordered to deliver or handover all assets of the Swedish Free Church, Malkerns branch to the Regional Church Board.
4. The respondent be restrained and/or interdicted from occupying and/or making use of the property of the Swedish Free Church at Malkerns Branch described as Portion 5707 Farm No. 65 situated in the Manzini District, Swaziland.
5. The respondent be restrained from collecting any church offerings and tithes and to refund the Swedish Free Church Regional Board all offerings and tithes already collected.
6. Pending the return day, an order in terms of 2.1, 2.2 and 2.3 above operate as an interim order with immediate effect.
7. Costs at attorney/client scale.
8. Further and/or alternative relief.

A launching affidavit by Reverend Titus Nzima is filed of record. Respondent has filed an answering affidavit to which a number of preliminary points of law have been raised in the following respects:

1. Locus Standi
The locus standi of the applicant to bring the present proceedings does not appear *ex facie* on the founding papers and/or affidavit and for that reason this application has to

be dismissed with costs. (Applicant has failed to annex documents to show to the court that it is legally empowered to bring this application before this honourable court.

2. Clear Right

The applicant has failed to establish a clear right which is one of the requisites for an interdict.

3. Ad Urgency

Applicant has failed to show the court that the non-observance of normal procedures and time limits prescribed by the rules will result in irreparable harm to his prejudice in the situation giving rise to this application.

4. Jurisdiction

This court does not have jurisdiction to hear this matter and to give an order in the terms prayed for by the applicant.

Starting with the last point, the respondent argues that the power and the jurisdiction to determine this matter has been placed in the hands of the Industrial Court of Swaziland which has been vested with exclusive jurisdiction to hear and determine any matter which may arise at common law between an employee and an employer in the course of employment.

It is not in dispute that before his resignation, Pastor Manana was an employee of the Swedish Free Church and as such the relationship was governed by the Employment Act 1980 as read with the Industrial Relations Act 2000.

Section 8 (1) of the Industrial Relations Act 2000 provides as follows:

"The court shall, subject to Section 17 and 65, have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any of the provisions of this, The Employment Act the Workmen's Compensation Act, or any other legislation which extends jurisdiction to the court, or in respect of any matter which may arise at common law between an employer and employee in the course of employment..."

From the applicant's founding affidavit it is clear that the occupation of the church premises by the respondent arose out of his appointment as the pastor of the Malkerns branch of the Swedish Alliance Church. This therefore places the church in the position of employer and the respondent in the position of an employee. See the case of **Meshack Zwane Vs the Swedish Free Church** Industrial Court Case No. 41/99 In such matters therefore, the Industrial Court has exclusive jurisdiction to hear, determine and grant any appropriate relief.

For the foregoing and conclusions the point *in limine* succeeds. This matter is therefore, remitted to the Industrial Court for determination. I am not going to make findings on the rest of the points because this point alone disposes of the matter.

The application is therefore dismissed with costs.



JUDGE