



**IN THE HIGH COURT OF ESWATINI**

Held at Mbabane

Cases No.: 397/2018

In the matter between

**LIGHT FOR THE NATIONS CHURCH (PTY) LTD Applicant**

**AND**

**THEMBA HLOPHE**

**Respondent**

**Neutral Citation:** *Light For The Nations Church (PTY) LTD And Themba Hlophe (397/2018) [2018] SZHC 138 ( 29<sup>th</sup> June 2018)*

**Coram:** Hlophe J.

**For the Applicant:** Mr S. Matse/ Mr M. Mabuza

**For the Respondent:** Miss N. Gwiji

**Dates Heard:** 16/03/18; 26/03/18; 10/04/18;  
13/04/18; 27/04/18; 04/05/18

**Date Judgement Handed Down:** 29<sup>th</sup> June 2018

### Summary

***Civil Procedure- Application proceedings-Interdict sought – Points in limine raised, including that of the applicant’s locus standi – Whether applicant in its current constitution has locus standi in judicio to bring proceedings – Propriety of resolution relied upon in instituting proceedings considered – When considering the official constitution of the Board of Directors against the Resolution produced, proceedings not properly authorized – Application dismissed- Each party to bear its costs.***

---

## JUDGMENT

---

[1] The Applicant company, which contrary to the rules of court is not described in any detail in the description paragraphs than to say that the deponent to the founding affidavit is its Managing Director empowered and authorized to institute the proceedings, followed by a reference to its certificate of incorporation annexed to the papers as annature “MZ1,” instituted the current proceedings under a certificate of urgency seeking an order of court inter alia interdicting the Respondent from conducting and attending church services at a church called Light For The Nations Church said to be situated at Kandinda area and operating there as the applicant’s branch.

[2] The order further sought to restrain the Respondent from threatening and verbally abusing the Applicant's Directors. There was further sought an order interdicting the Respondent from setting foot at the Applicants' branch premises at KaNdinda together with a directive that the Respondent keeps a distance of some 10km away from the said church.

[3] Further orders sought called upon the Respondent to surrender all church property in his possession to the Deputy Sheriff and for the Royal Eswatini Police Service to ensure compliance with the orders sought including ensuring that should the Respondent defy the orders he be arrested. Otherwise for all the orders sought, it was prayed they operate as a rule nisi with immediate and interim effect.

[4] The propriety or otherwise of the order that the police be authorized to arrest the Respondent should he fail to comply with the order of court calls for comment. It is based on both speculation and conjecture, which is not how the law works. An order of court issues based on substantive proof of an occurrence or one that is about or likely to occur both of which should be supported by substantive evidence. There is no substantive proof in what

the applicant is saying if he speculates on the Respondent not complying with the Order of Court. Such an order can therefore not be granted as there is no case made for it.

It is otherwise true that on the 4<sup>th</sup> May 2018, I handed down my ruling extempore and undertook to avail my reasons for it in due course. This text constitutes such reasons.

[5] The Applicants' case as set out in the founding affidavit deposed to by one Apostle Meshack Boy Zwane, who describes himself as a Director of the Applicant, is that the Applicant, which has its HeadQuarters at Ngwane Park in Manzini, established another church as its branch at KaNdinda area in the Manzini District. It is clear, and is not in dispute, that the Applicant is an institution which renders religious or church services at these churches among others.

[6] It is common cause that the KaNdinda church was built on Swazi Nation Land following the traditional acquisition of land called Kukhonta.

According to Apostle Zwane, he is the one who acquired the land on behalf of the Applicant as its managing Director. I note however that in some parts of his founding affidavit he appears to be failing to distinguish between himself as a person and the applicant as an institution independent of anybody else including himself. I touch on this because whilst it is usual for shareholders and in some instances Directors of companies to fail to draw this distinction, there is no denying that it is wrong to do so and that it often leads to problems in court when the personal ideals of that particular Director or Shareholder clash with those of the company. It cannot be denied that a company is in law an independent entity from its founders, shareholders or Directors. The seminal case of **Salomon V Salomon & Co. (PTY) LTD [1897] AC22**, is authority for this proposition.

- [7] The point being made here is that whereas in a sole trader, decisions are taken by the proprietor as a person; in a company the decisions are taken by the company through resolutions taken by either the shareholders or Directors in a meeting, depending on the nature and level of the decision being taken. This is to say such a decision is expressed in a Resolution.

[8] Apostle Meshack Zwane continues to aver on behalf of the Applicant, that after establishing the KaNdinda branch of the Applicant, there was commissioned the Respondent to be a resident Pastor at the said branch. He clarifies that the Respondent was however required to lead the KaNdinda church under his leadership, that is to say, under the leadership of Pastor or Apostle Meshack Zwane. The situation worked as envisaged for sometime before there developed a misunderstanding between the Applicant's leadership and the Respondent.

[9] According to Apostle Zwane, the misunderstanding came about as a result of his communicating a decision he had made to the Branches of the Applicant including the Kandinda branch that a certain Doctor Tsela was being appointed as his successor given that he (Apostle Zwane) was now getting old and needed to apparently groom somebody to lead the church upon his retirement. This decision was allegedly resented by the Respondent and some of his colleagues who included Pastor Musa Zwane and Benson Simelane, as they challenged it.

[10] This incident points to one of the indicators where a failure to distinguish between a sole proprietor and a company is visible. If indeed the applicant was a company one would expect the applicant's Director and possibly shareholder Apostle Zwane to have acted in line with a resolution of the company taken at a meeting of Directors in taking and effecting such a decision as he makes it look like it was a solo decision by him. I must clarify instantly though that this may not ordinarily justify a person in Respondent's position particularly if he was neither a Director nor Shareholder in the Applicant, to challenge such a decision, particularly in the manner alleged.

[11] Apostle Zwane clarifies further in his founding affidavit, that he was at about the same time, proposing to change the name of the Applicant from Light of Nations Church to Kingdom Embassy centre. This latter name, he discloses he had come up with jointly with the said Doctor Tsela. The Respondent once again took centre stage in opposing such a change to the extent of addressing the congregants where he allegedly referred to it as a satanic name; an allegation he allegedly made in the presence of Apostle Meshack Zwane. This was despite the Respondent being neither a shareholder nor Director of the Applicant according to Apostle Zwane. Apostle Zwane and

Doctor Tsela were themselves allegedly not spared as they were referred to as Satanists by the Respondent. This in my view is another area where the Applicant admittedly took a solo decision in a matter where perhaps the resolution of the Board of Directors would have been appropriate. Ofcourse that again cannot justify the Respondent to act in the wild manner he is alleged to have done.

[12] The Respondent's opposition to these decisions allegedly resulted in a purge from the KaNdinda church of all those who were loyal to Apostle Zwane, which was itself allegedly spearheaded by the Respondent. The KaNdinda church allegedly broke into two factions; one in favour of Apostle Meshack Zwane whilst the other one favoured the Respondent.

[13] The dispute was eventually reported to the conference of churches which resolved it in the Applicants favour in that the Respondent was directed, following his own undertaking, to work under the directorship of Apostle Meshack Zwane. He was also transferred to Ngwane Park which he did not heed. This resolution did not hold however because one Sunday when Apostle Zwane decided to visit the KaNdinda church he was not allowed to



address the congregation by the Respondent and on a subsequent Sunday when he appeared there once again, all hell broke loose as he was attacked physically with all types of weapons including being insulted and called names. Those who supported him were themselves not spared as they were harassed with their cars being vandalized.

[14] Having assessed that the situation at Kandinda was completely unworkable, with the Respondent allegedly being insubordinate to the applicant's structures, the applicant says it decided to institute these proceedings seeking an order of court in the terms set out above.

[15] The Respondent opposed those proceedings. Its opposing affidavit contained several points raised in limine. Owing to the seriousness and or the nature of the points in limine raised, it seems to me that this is a matter to be decided on them without getting into the merits as shall be seen later on in this judgement. Ofcourse this will not be to say there are not the merits or that they are weak. This will be because the points are the type that cannot be ignored. The points in limine raised included those set out herein below.

15.1. That this court had no jurisdiction to hear and determine the matter because the church forming the subject matter of these proceeding was built on Swazi Nation land. This apparently meant the appropriate authority to hear and determine the matter was the KaNdinda Chief's Inner Council. This was alleged to be in line with Section 233 (8) and (9) read together with Section 83(1) of the Constitution of Swaziland. I shall revert to this point later on in this judgement.

15.2. The Applicant had no locus stand in judicio because not enough facts, affording it such a relief, had been alleged in the founding affidavit. This point was in argument linked to the point that the proceedings were not authorized and that the applicant as cited was not a known or existing entity.

15.3. The citation of the applicant was allegedly improper and had the effect that there was no proper applicant before

Court. This was allegedly because there was cited as the applicant an entity by the name of Light For The Nations Church (PTY) LTD, which is not in existence nor is it registered. A company in which the applicant's deponent to the Founding Affidavit, Apostle Meshack Boy Zwane is a joint Director and shareholder with one Musa Moses Zwane, it was contended, was the Light For The Nations Christian Ministries Ltd, and that there was no resolution by its two only registered Directors namely Meshack Boy Zwane and Musa Zwane, authorizing the proceedings.

[16] It was argued that in this regard there was no compliance with the provisions of the Memorandum And Articles of Association, particularly Section 40 thereof, which provided as follows:-

*“40.A resolution in writing signed by every member of the Board of Directors shall have the same effect and validity as a Resolution of the body duly passed at a meeting of the Board properly convened and constituted.”*

[17] It was argued that given that there was no meeting between the only two registered directors of the company to come up with the required resolution, there was then no proper resolution authorizing the proceedings by the applicant as an entity and that the application should for that reason not succeed. The basis of the argument was that the two directors could not meet because they were disagreeing on how to handle the matter such that there was a dispute between the two of them. If this was true, it suggested to me that the applicant's problem may not just be the usual failure to provide a resolution which is easily curable; but that the Directors or Shareholders had reached a deadlock which is resolved differently in law and not by just ignoring that other Director or Shareholder, and by simply appointing others to sign a resolution. I had to hear therefore what the Applicant's Case was in this regard.

[18] The Applicant responded to that point by agreeing that the proper name of the applicant was Light For The Nations Christian Ministries LTD. He however contended that a Resolution was available. To this end there was annexed to the Replying Affidavit a resolution which reflected that the meeting resulting in it was attended by Directors such as Zeph Mziyako,

Busisiwe Mangwe, Muzi Mangwe, Khanya Mabuza, Nomcebo Ngwenya together with Meshack B. Zwane.

[19] In response to this contention, the Respondent argued that at the Registry of Companies, the current Directors whose names appeared per the Registers were only Meshack Boy Zwane and Musa Moses Zwane and that those were the only ones to take a resolution authorizing the proceedings. It was argued that unless and until there was changed properly the names of the said Directors in the Company Register, then there was no other Director who could take a proper resolution and therefore that the Resolution relied upon by the Applicant was not a proper one.

[20] With the other points not having been pursued in argument and the only point to be seriously canvassed, being that of the propriety or otherwise of the resolution filed by the Applicant including who would be entitled to take one, the matter was to be decided solely on that point. This was after it was conceded that although the church was built on Swazi Nation Land where Swazi Law and Custom was applicable, there was nothing to stop the application of the law on interdicts as that did not interfere with the

Customary Law Principles nor did it go to determining the gist of the rights of those who acquired the land including how it was acquired. Commenting on a similar point in the case of **Bhekwako Dlamini And 5 Others V Chief Zulu’elihle Maseko, Appeal Case No.33/2014 [2014] SZSC 84 (03/12/2014)** the Supreme Court had the following to say which is apposite to the current matter:-

*“16. The Trial Court was correct and did not misdirect itself in holding that the Court a quo had jurisdiction to hear the matter. It is common cause that the respondent instituted an urgent application in the Court a quo seeking a mandatory interdict compelling the first appellant to remove a fence from a piece of land belonging to the Chief’s kraal. The respondent further sought an order interdicting and restraining the appellants from holding unlawful meetings at the Chief’s Kraal as such conduct undermined the authority of the Respondent as Chief of the area. From the evidence it is apparent that the respondent satisfies all the requirements of a*

*mandatory interdict; hence, he is entitled to the remedy sought. An application for a mandatory interdict was justifiable.”*

[21] It is not in dispute that a company speaks through its directors and that even then by means of a resolution taken by them. Referring to a resolution in this sense, the Black’s Law Dictionary, 10<sup>th</sup> Edition, defines a resolution in the following words:-

*“Resolution [refers to] “a formal action by a Corporate Board of Directors or other corporate Body authorizing a particular act, transaction or appointment – also termed corporate resolution.”*

It is a long settled position of our law that a company or corporate body requires a resolution authorizing proceedings in Court for such proceedings to be viewed as those of a company or as legitimate. Even then, I have no doubt the Directors who take such a resolution should be those that legally qualify to do so. In other words, a non-Director or one whose term has

expired or one improperly appointed may not qualify to take such a resolution.

[22] According to the Respondent, the current proceedings were not authorized by the Applicant, which is a corporate entity, because they were not through a resolution taken by legitimate directors. This was because according to the Company Register, obtainable at the Registrar of Companies, there are only two registered Directors of the applicant who are namely, Apostle Meshack Boy Zwane and Musa Moses Zwane. Unless and until the names of the new Directors referred to above had their names formally registered with the Registrar of Companies, after that of Moses Musa Zwane would have been lawfully removed, the resolution authorizing the current proceedings would not be a proper one. On the significance of a Resolution and who qualified to take or produce one, see the South African Case of **Barloworld Logistics Africa (PTY) LTD V Silverton 481 CC And Others (48248/2010) [2013] ZAGPPHC 198 (15 July 2013)**.

[23] It not being possible to deny that the registers reflected the Directors of the Company as being Apostle Meshack Boy Zwane and Musa Moses Zwane, I

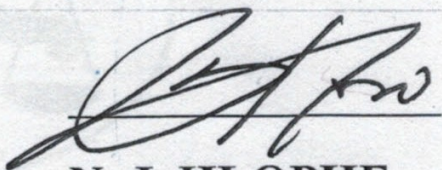


could not possibly arrive at a different conclusion than that these proceedings were not properly authorized. It followed that they should be dismissed. See in this regard the **South African Case of Staar Surgical (PTY) LTD V Lodder (J1333/12) [2012] ZALCJHB 49 (13 June 2012)**.

[24] I must say I could not take this to be a mere technical point because the applicant's counsel had been given leave on several occasions to properly supplement their papers without any success on this particular point. It is true that it may well be that there is a deadlock between the shareholders and or Directors on the taking of resolutions brought about by their misunderstanding. If this is true it may not avail one of the parties to simply wish the other one away, appoint his own Directors who may not disagree with him at the expense of the proper one. I have no doubt such deadlocks have their legal solutions which need to be explored and applied where such a deadlock has arisen.

[25] I have come to the conclusion that the applicant's application cannot succeed and is dismissed. For the removal of doubt, the merits of this matter have not been decided and it is up to the parties to consider the matter closely in

that regard, and take it forward should the law allow a further attempt. Otherwise each party is to bear its own costs owing to the peculiar circumstances of the matter.



**N. J. HLOPHE**  
**JUDGE – HIGH COURT**