



IN THE HIGH COURT OF ESWATINI

JUDGMENT

HELD AT MBABANE

Case No.: 1027/2023

In the matter between:

TERRENCE MTHETHWA

1st Applicant

PETROS NKAMBULE

2nd Applicant

ANDREW DLAMINI

3rd Applicant

KENNETH MABUZA

4th Applicant

SABELO DAMOI

5th Applicant

EDWARD NHAMBOSSE

6th Applicant

KENNETH LUKHELE

7th Applicant

THEMBA SIFISO DLAMINI

8th Applicant

And

AFRICA EVANGELICAL CHURCH

1st Respondent

MESHACK DLADLA N.O

2nd Respondent

BUSISANI SIZIBA N.O

3rd Respondent

SIHAWUKELE NGUBANE N.O

4th Respondent

BONGUMUSA CHONCO N.O

5th Respondent

THEMBEKILE GHOBOZA N.O

6th Respondent

PHILIP MGEWU N.O

7th Respondent

SIBONISO KETI N.O

8th Respondent

BONGANI TSELA

9th Respondent

SIPHO MHLANGA

10th Respondent

STALIN TSELA

11th Respondent

NELISWA THWALA

12th Respondent

SIZWE NDZINISA

13th Respondent

Neutral Citation: *Terrence Mthethwa and Others vs Africa Evangelical Church and Others* (1027/2023) [2023] SZHC 222 (17/08/2023)

Coram: **J.M. MAVUSO J**

Date Heard: 7th July, 2023.

Date Delivered: 17th August, 2023.

SUMMARY : *Civil – Matter brought under a certificate of urgency, seeking to have reviewed and set aside, a decision of the 1st to 7th Respondents, matter allocated a date of argument, soon after the first appearance, on date of argument, confusion on same by the parties – Matter removed from the roll – Subsequent date for hearing, sought and granted to the parties pending hearing on the merits, to maintain the status quo – Applicants seek an order in terms of prayer 6 of Applicants’ notice of motion dated the 4th May 2023 – Initially prayer 6 was not sought because the matter was to be heard within a relatively short period of time – Court grants prayer 6 of the notice effecting the stay – Costs to be costs in the cause.*

JUDGMENT

J.M. MAVUSO J:

[1] On the 11th of May 2023, Applicants approached this Court under a certificate of urgency, seeking the orders here under listed:

- “1. Dispensing with the usual forms and procedures relating to the institution of these proceedings and allowing the matter to be heard and enrolled as one of urgency.*

- 2. Staying the removal of the First and Eighth Applicants pending the finalization of prayer 4 hereunder.*

- 3. Reviewing and setting aside the decision by the First and Seventh Respondents to dissolve the African Evangelical Church Executive Committee and have an interim executive committee elected as arbitrary, ultra vires and irrational.*

4. *Directing the First to Seventh Respondents to furnish a copy of the Minutes of the meeting dated 18th March 2023 to the Registrar of the High Court within seven (7) days.*

5. *An order staying the operation of the Interim Executive Committee from exercising any functions and/or powers of an executive committee pending the finalization of this matter.*

6. *That prayer 2, 4 and 5 operate with interim effect pending finalization of this matter.*

7. *That a Rule Nisi hereby issue calling upon the Respondents to show cause on a date to be fixed by the Honourable Court, why prayers 1, 2, 3, 4, 5, 6, 7 and 8 herein, should not be made final.*

8. *Costs of suit.*

9. *Granting further and/or alternative relief as it may deem fit.”*

[2] (i) A brief background of this matter, is that it appeared, for the first Time in the Court Roll, on the 11th May 2023 scheduled for hearing at 2:30 p.m. of the same day. At 2:30 p.m. due to the Court being held up in the hearing of other matters it was then stood down to 9:30 a.m. the following day, for hearing. Once again, due to similar reasons as before, the matter was postponed to the 16th of May 2023 for argument. On the said date, the matter was removed from the Roll due to non-appearance, by the parties.

(ii) In terms of the Notice of Motion dated the 30th day of May, 2023, served upon Respondents’ Attorneys on the 31st May 2023, the matter was set for the 1st of June, 2023 at 9:30 a.m. for an order.

“(1) Re-instating the matter on the Roll accordingly;

(2) That the matter be allocated a date for arguments;

(3) *Granting Applicants such further and/or alternative relief as it may deem fit.”*

[3] Supporting the re-instatement of the matter, at paragraph 6.2 of its application dated the 30th day of May, 2023, Applicants’ Attorney states thus:

“I duly state that it was not through any negligence on the part of the attorneys that the matter was not heard on the 16th May 2023. I aver that both attorneys laboured under the impression that the matter was set for hearing on the 17th May 2023. I duly aver that I clearly did not hear the date set for hearing the matter properly and to my best knowledge, the matter had been set for hearing for 17th May 2023.”

[4] (i) Accepting that Learned Counsel may not have properly heard the date, to which the matter was set for hearing, the Court proceeded to have it re-instated and set for hearing on the 18th July 2023. On this date, arguments were heard by the Court.

(ii) The agreed issue for determination on the said date, was for an interim order staying:

(a) the removal, from office, of the 1st to 8th Applicants pending the review and setting, aside of the 1st to 7th Respondents' decision to dissolve the African Evangelical Church Executive Committee.

(b) the operation of the Executive Committee pending finalization of the review application.

[5] The clear purpose of the interlocutory orders sought by Applicants is to preserve the status *quo*, until the review proceedings are finalised. This is further made clear by prayer 4 of the Applicants' application, in which an order is sought to have 1st to 7th Respondents, furnish Applicants with a copy of the Minutes of the meeting dated 18th March 2023 and to file same with the Registrar of the High Court within seven (7) days, as per procedure in review applications, under High Court Rule 53 of the Rules as amended.

[6] Applicants in this case, with the exception of the 7th and 8th Applicants are Applicants in **Civil Case Number 646/22** pending before my brother his

Lordship B.S. Dlamini. In that matter 7th and 8th Applicants, Edward Nhambosse and Maphikelela Dlamini, respectively, are the only two individuals whose names do not appear as Applicants in this application.

[7] In Civil Case Number 646/22, the Court issued an interlocutory order, which reads thus:

IT IS HEREBY ORDERED THAT:

- “1. The usual forms and procedures relating to the institution of these proceedings are hereby dispensed with and the matter is allowed to be (sic) heard and enrolled as an urgent one.*

- 2. That the then purported suspension of the current executive being the 2nd to 8th Applicants is hereby set aside as irregular, ultra vires and contrary to the provision of section 33 of the Constitution of Eswatini Act No.1 of 2005.*

3. *The suspension is hereby stayed pending the finalization of prayer 3 hereof.*

4. *That prayer 3 and 3.1 operate forthwith with interim effect pending finalisation of prayer 2, 3, 4 and 5 of the Notice of Motion.”*

The above order is contained in page 195 of the Applicant’s Book of Pleadings.

[8] In the present application, Civil Case Number 1027/2023, Applicants seek, in its Notice of Motion the orders hereunder:

“1. *Dispensing with the usual forms and procedures relating to the institution of these proceedings and allowing the matter to be heard and enrolled as one of urgency.*

2. *Staying the removal of the First to Eighth Applicants pending the finalization of prayer 4 hereunder.*

3. *Reviewing and setting aside the decision by the First to Seventh Respondents to dissolve the African Evangelical Church Executive Committee and have an interim executive committee elected as arbitrary, ultra vires and irrational.*

4. *Directing the First to Seventh Respondents to furnish a copy of the Minutes of the meeting dated 18th March 2023 to the Registrar of the High Court within seven (7) days.*

5. *An order staying the operation of the Interim Executive Committee from exercising any functions and/or powers of an executive committee pending the finalisation of this matter.*

6. *That prayer 2, 4 and 5 operate with interim effect pending finalisation of this matter.*

7. *That a Rule Nisi is hereby issued calling upon the Respondents to show cause on a date to be fixed by the Honourable Court why prayers 1, 2, 3, 4, 5, 6, 7 and 8 herein should not be made final.*
8. *Costs of suit.*
9. *Granting further and/or alternative relief as it may deem fit.”*

[9] The prayers in Civil Case Number 646/22 which culminated in the order, set out in paragraph 7 above, are hereunder set out; starting with prayer 3:

“3. That the purported suspension of the current executive being the 2nd to 8th Applicants be set aside as irregular, ultra vires and contrary to the provision of section 33 of the Constitution of Eswatini Act No. 1 of 2005;

- 3.1 An order staying the suspension pending finalisation of prayer 3 hereof.*
- 4. An order declaring that the correct body with powers to run the church (1st Applicant) is the current executive committee being the 2nd to 8th Applicant as duly elected.*
- 5. An order that the 1st Respondent changes its name forthwith.*
- 6. That the Respondents be interdicted and/or restrained from interfering in the governing of the affairs (sic) of Applicant.*
- 7. That prayers 3 and 5 operate forthwith, with interim effect pending finalisation of prayer 2, 3, 4 and 5 of the Notice of Motion.*
- 8. That a Rule Nisi be hereby issued calling upon the Respondents to show cause on a date to be fixed by the*

Honourable Court why prayers 1, 2, 3, 4, 5, 6, 7 and 9 should not be made final.

9. Costs of suit.

10. Granting the Applicants any further and/or alternative relief.”

[10] The Court finds that there are material similarities between the two applications, both pending before this Court.

- (i) Starting with the parties, 1st Applicant in the present case, Civil Case Number 1027/2023, is Terrence Mthethwa. He is cited as 2nd Applicant, in Civil Case Number 646/2022. In Civil Case No. 1027/2023 Petros Nkambule is cited as the 2nd Applicant whilst in Civil Case Number 646/2022 he is cited as the 3rd Applicant. In Civil Case Number 1027/2023 Andrew Dlamini is cited as 3rd Applicant whilst in 646/2022, he is cited as 4th Applicant. Kenneth Mabuza in Civil Case 1027/2023, is cited as 4th Applicant whilst in 646/2022 he appears as 5th Applicant. In Civil Case Number

1027/2023, Sabelo Damoi appears as 5th Applicant whilst in Civil Case Number 646/2022, he appears as 6th Applicant. Edward Nhambosse is cited as 6th Applicant whilst in 646/2022, he is cited as 7th Applicant.

- (ii) Apart from the prayer requiring 1st Respondent to change its name, in Civil Case Number 646/22, the meaning and effect of the orders sought in both applications is similar. There is no legal justification for not consolidating the two applications.

[11] Based on the above, the Court is of the considered view that, there is no reason, for it, not to grant an interim order, staying the removal from office, of the 1st to 8th Applicants pending the outcome of the review proceedings directed at having the decision of the 1st to 7th Respondents (to dissolve the African Evangelical Church Executive Committee) set aside and/or corrected.

[12] The Court is of the view that granting an interim order, will not prejudice the Respondents as there is already a similar order in place, under case number 646/22. This is the order referred to in paragraph 7 of this Judgment.

[13] Accordingly, an interim order in terms of prayer 6 of the Notice of Motion dated the 4th day of May 2023 bearing the Registrar's stamp, dated the 10th May 2023, is hereby granted. Costs to be costs in the cause.

J.M. MAVUSO
JUDGE OF THE HIGH COURT OF
THE KINGDOM OF ESWATINI

For the Applicants: S.V. MDLADLA & ASSOCIATES

For the Respondents: DYNASTY INC ATTORNEYS