

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.693/93

In the matter between:

REV. MENTAI M. MDLULI  
and  
THE CHURCH OF GOD OF PROPHECY IN SOUTHERN AFRICA  
(SWAZILAND)  
REV. THOMAS MLAHLEKI

CORAM  
FOR THE APPLICANT

Hull C.J.  
Mr. Mlangeni

Judgement  
(1/7/93)

This is an application by Rev. Mentai M. Mdluli. The first and second respondents are named as The Church of God of Prophecy in Southern Africa (Swaziland) and Rev. Thomas Mlahleki respectively.

By the application, Rev. Mdluli seeks orders on review, setting aside what is described in the notice of motion as being a decision of the first respondent "taken through the General Assembly of the Church of Kwa-Mashu, Republic of South Africa" dismissing the applicant as National Overseer for Swaziland and installing Rev. Mlahleki as National Overseer for Swaziland.

An affidavit of service has been filed to the effect that the application was served on the two respondents on 20th May 1993 by leaving two copies with Rev. Mlahleki at Sihhoye in the Lubombo region. (i.e. in Swaziland).

In his founding affidavit, Rev. Mdluli says that he resides in the Manzini region, i.e. in Swaziland.

He says that the first respondent is "The Church of God of Prophecy in Southern Africa, (Swaziland) an institution with locus standi by virtue of its registration in terms of the laws of Swaziland". He attaches at Annexure "A" what he describes as a copy of its certificate of registration.

He goes on to state that on 6th April 1991 he was appointed National Overseer of the local branches of the first respondent and that as such he was its head in Swaziland with full authority over the church. He says that on 10th April 1993 a meeting took place in Durban, South Africa, of the first respondent's "branches in the Southern African region", and that the meeting constituted a "General Assembly" in terms of Article 2 (Section 1) of the first respondent's constitution. At the meeting the General Assembly resolved to dismiss Rev. Mdluli as the head, i.e. the National Overseer, of the Church in Swaziland and to appoint Rev. Mlahleki in his place.

He annexes at "B" a letter of that date addressed to "The Secretary, Minister of the Interior", P.O. Box 432, MBABANE" under the letterhead "Church of God of Prophecy in Southern Africa" whose address is given as P.O. Box 5110, Durban.

The letter is signed "Moderator: A.M. Khumalo." This is an evident reference to the person described in the letter head as Rev. Aaron M. Khumalo, the Moderator General of the organisation described in the letterhead.

The letter informs the Minister that the General Assembly and Church General Council, at the headquarters of the Church, has removed Rev. Mdluli as National Overseer of the Church in Swaziland, on grounds alleged in the letter, and that Rev. Mlahleki, is now the National Overseer of Swaziland. The letter is copied to the Registrar of Companies and to the applicant and the second respondent.

Rev. Mdluli, in this present application complains that he was not given a hearing prior to his dismissal and further, that being a Minister of the Church, he ought to have been dealt with under section 2 of Article 5 of the first respondent's constitution, by the Judicial Body created under that section, with a consequent right of appeal to the Executive Council under section 4 of the same article.

Accordingly he claims that his removal was ultra vires and the subsequent appointment of Rev. Mlahleki irregular.

In an supporting affidavit, Mr. Percy Mkhonta states that he was present at the meeting of 10th April in Durban. He confirms the course of events alleged by Rev. Mdluli.

The first and second respondents have not appeared to oppose the application.

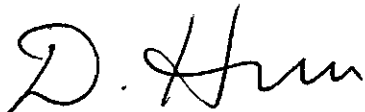
Nevertheless, as it is presented, it poses difficulties.

The organisation that purportedly dismissed Rev. Mdluli is not, on his papers, the same one as the first respondent. The certificate of registration at annexure "A" does not refer to the first respondent. The letter at Annexure B and the constitution at Annexure "C" do not do so either. They all refer to "The Church of God of Prophecy in Southern Africa", which is more fully described in Article 1 Section 1 of that constitution as being the "General Assembly of the Church of God in Southern Africa".

Moreover the fact that that organisation may have registered its name in Swaziland under the Protection of Names, Uniforms and Badges Act 1969 does not mean that it is an entity domiciled in Swaziland. It is a South African organisation. The events complained of occurred in South Africa. Before seeking to proceed against it, the applicant should in my view have sought the leave of this court to sue by way of edictal citation. That is a matter of the court's discretion.

It depends (inter alia) on the court being satisfied that it has jurisdiction over the respondents. In the present circumstances it is in my view clear that it has no such jurisdiction.

For these reasons, the application is dismissed.



DAVID HULL  
CHIEF JUSTICE