



## IN THE HIGH COURT OF ESWATINI

Held at Mbabane

Case No.: 444/2018

In the matter between

<b>THE TWELVE APOSTLES CHURCH IN CHRIST</b>	<b>Applicant</b>
<b>AND</b>	
<b>THE TWELVE APOSTLES CHURCH IN CHRIST</b>	<b>1<sup>st</sup> Respondent</b>
<b>JULIUS PATRICK NYONI</b>	<b>2<sup>nd</sup> Respondent</b>
<b>SAM TFUMBATSA</b>	<b>3<sup>rd</sup> Respondent</b>
<b>BHEKITHEMBA ELLIOT LUBISI</b>	<b>4<sup>th</sup> Respondent</b>
<b>COLLEN NKOSINGIPHILE MAGAGULA</b>	<b>5<sup>th</sup> Respondent</b>
<b>ANDREAS MASHABA</b>	<b>6<sup>th</sup> Respondent</b>
<b>REGISTRAR OF COMPANIES</b>	<b>7<sup>th</sup> Respondent</b>
<b>ATTORNEY GENERAL</b>	<b>8<sup>th</sup> Respondent</b>

**Neutral Citation:** *The Twelve Apostles Church In Christ Vs The Twelve Apostles Church In Christ & 7 Others (444/2018) [2019] SZHC 56 ( 26<sup>th</sup> March 2019)*

<b>Coram:</b>	Hlophe J.
<b>For the Applicant:</b>	Mr M. Dlamini
<b>For the Respondent:</b>	Mr N. Manzini
<b>Date Heard:</b>	24 <sup>th</sup> July 2018

**Date Judgement Delivered:**

28<sup>th</sup> March 2019

**Summary**

*Application proceedings – Interdict sought – Respondents establish or register a company using a protected name under the Protection of Names Uniforms And Badges Act No.10 of 1969 – 2<sup>nd</sup> to 6<sup>th</sup> Respondents initially members of the same church founded under the name of the applicant – Without the said church’s approval, 2<sup>nd</sup> to 6<sup>th</sup> Respondents register a company in the protected name of the Applicant – Whether applicant entitled to interdict Respondents from calling and holding revivals under the said name – Whether the Respondent and their agents can be interdicted from using the applicant’s protected name for their gain – Whether the 7<sup>th</sup> Respondent can be ordered to deregister the 1<sup>st</sup> Respondent from its register – Court of the view that since name is protected no one other than the applicant is entitled to use it – Application succeeds therefore – Costs to follow the event.*

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**JUDGMENT**

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[1] The Applicant, an entity which is described in its constitution as an association incorporated not for gain, instituted the current proceedings. This association is a church, whose name was registered under the Protection of Names, Uniforms And Badges Act No.10 of 1969.

[2] The institution of these proceedings followed a discovery by the Executive Committee of the applicant that the 2<sup>nd</sup> to 6<sup>th</sup> Respondents, one of whom was a member of the same Executive Committee of the Applicant, had registered a company in the protected name of the applicant without a mandate or authority from the applicant.

[3] Emphasising that this had been done without its consent and/or knowledge and/or approval, the Executive Committee of the applicant called a meeting and deliberated on its discovery. It was there agreed that a meeting of another structure of the applicant, established in terms of its Constitution, and known as the Joint Executive Committee be convened for apparent information purposes. It was then resolved that these proceedings, challenging the decision of the 2<sup>nd</sup> to 6<sup>th</sup> Respondent, establishing a company in the name of the Applicant without its authority or mandate be instituted.

[4] These proceedings were then instituted where an order inter alia interdicting the Respondents from calling and holding any church revivals or services under the name of the First Respondent as an entity was sought. There was further sought an order interdicting the 2<sup>nd</sup> to 6<sup>th</sup> Respondents from using the

name of the Applicant for their benefit contrary to the latter's constitution. There was also sought an interdict restraining the holding of any revivals in the name of the protected name of applicant as used in registering the First Respondent. The Applicant further asked for an order directing the Registrar of Companies to deregister the First Respondent from its register given that the name it had used in establishing itself, had already been registered and protected under the Protection of Names, Uniforms and Badges Act No.10 of 1969. An order for costs was sought only in the event of opposition to the application.

[5] It is clear from the papers filed by the applicant through its chairman, one Mfanasibili Mkhonto, that the applicant feared that the 2<sup>nd</sup> to 6<sup>th</sup> Respondents were trying to form a breakaway church and that in so doing, they wanted to impersonate the applicant which it was contended was bound to cause confusion to the members of the public. The upshot of this fear was in that the said Respondents could end up accessing the Applicant's bank accounts. It was further feared they could simply produce a resolution entitling them to the said access and control by a resolution that would make it look like it was taken by the Applicant.

[6] Describing the structure of the Applicant, the chairman of the local executive committee stated that at the pinnacle was the Chief Apostle also known as the President. The incumbent was said to be one V.N.Mlangeni. The second in command was the Deputy Chief Apostle. This one was followed by the Board. These structures and their incumbents were based in the Republic of South Africa where the Head Office or Head Quarters of the Applicant as a church was based.

[7] Each country outside the Republic of South Africa has a National Executive Committee responsible for the control of all the affairs including the branches of the church in that country. This National Executive Committee is sometimes referred to as the Executive Committee. Each Executive Committee is made of overseers and heads of the Church Districts in that country. The Eswatini church of the applicant is allegedly led by a Chairman who is, currently the deponent to the founding affidavit, Mfanasibili Mkhonto. He runs the affairs of the local church as signified in the established branches. He does together with the Secretary, who is

presently Sandile Mhlanga and the executive members who are Nkosingiphile Dlamini, Samson Ndlovu, Dubula Cindzi, Vigaredo Lala and Julius Nyoni.

[8] It appears that although there are structures below the Executive Committee, such as the District Committees and the Youth Committees there are instances where these structures, join forces with the Executive Committee to form a structure called the Joint Executive Committee which in practice might be bigger and perhaps even more powerful than the Executive Committee on decision making.

[9] It was discovered that the person behind the alleged secret registration of the First Respondent company in the name of the applicant was the member of the local Executive Committee, Julius Nyoni. He had allegedly gone on to appoint people as directors of the company, he had formed. These were the 3<sup>rd</sup> to 6<sup>th</sup> Respondents. It is contended he had no authority to form this company using the Applicant's protected name. He had apparently not

informed any identifiable member of the church be it locally or internationally.

[10] In this application the applicant sought the reliefs referred to above while contending that the First Respondent had been established using a protected name without their consent or authority. This they contended was illegal and they sought to have it inter alia deregistered over and above an interdict having to issue preventing the use of the same name by the Respondents among the other reliefs sought. It is important to point out that the citation of the Applicant and the First Respondent is misleading because it is as though one entity is suing itself when that is apparently not the intention given that the obvious intention was for the applicant as a church to sue the First Respondent as a company established using a protected name.

[11] Reacting to the application filed by the Applicant, the 2<sup>nd</sup> to 6<sup>th</sup> Respondents, who are the only ones who opposed the application, filed an answering affidavit deposed to by Julius Nyoni. Otherwise the third to sixth respondents filed supporting affidavits in terms of which they aligned themselves fully with what was stated by the said Julius Nyoni, the second

respondent. As I understand it, the answering affidavit was divided into three main segments. The first segment concerned what the deponent termed the background. The second one concerned the points in limine raised and the third one, concerned the merits of the matter. I will briefly refer to each one of the segments as used to express the Respondent's defence or grounds for opposition to the reliefs sought.

**I. Background by the 2<sup>nd</sup> to 6<sup>th</sup> Respondents.**

[12] In terms of the background, Julius Patrick Nyoni contended that the Twelve Apostles Church in Christ in Swaziland, was found by him in 1980 together with a few other church members such as Ngisana Mkhonta and Sam Tfumbatsa. At the time he said he had left a church called the Twelve Apostles Church In Africa. He claimed to have thereafter asked his colleagues mentioned herein above to join him from the Twelve apostles Church In Christ. He says it was him and these two gentlemen who had their names registered as the founders of the applicant in this country. I take it he means the applicant was registered by them in terms of the Protection of Names, Uniforms and Badges Act No. 10 of 1969.

[13] The Second Respondent states further that the deponent to the founding affidavit Mr Mfanasibili Mkhonto only joined the applicant relatively recently and around 1999 or 2000. This would mean that the said Mr Mkhonto knew little about the history of the church. He further stated that as the local church has 7 overseers, he was one of those and he was also responsible for 37 branches in the country which were all under his stewardship.

[14] Without giving fuller details or particulars on his assertions herein, he claims to have been mandated by the elders (who are not identified in full) to register the applicant as a formal company with the 7<sup>th</sup> Respondent who is the Registrar of Companies. In effecting that mandate he said he called Sam Tfungbatsa who he says was the only one whose name appeared in the records of registering the applicant in terms of the Protection of Names, Uniforms and Badges Act of 1969. He alleges that they were the only ones who could be allowed to register the applicant as a company or to use that name in registering the applicant as a company, given that they were the ones who had featured when the name was registered for name protection in terms of the Act referred to above.

[15] Upon being served with the papers in the current matter, he said he was advised by his attorneys to seek guidance from the Church Elders or the Executive Committee or the Board based in the Republic of South Africa. This Executive Committee is the one led by the Chief Apostle or the President, Mr V.N.Mlangeni, he said. I note that he says nothing about the particulars of these Elders who he alleged had mandated him to register the applicant as a company in the country.

[16] He claims to have met the Chief Apostle in the company of the other members of the Executive Committee or Board of the Church such as Apostle S.S. Magano, Hlongwane and the other Apostle Magano, who is a brother to Apostle S.S. Magano. The outcome of that meeting, he claims, was the advice that the application should not proceed in court until the main Executive Committee would have met in KZN in a week's time then to try and resolve it. That meeting was to take place on the 28<sup>th</sup> March 2018 in Kwazulu Natal, Republic of South Africa. The Elders of the church he contended would take a decision in that meeting as to the fate of the First

Respondent as incorporated; which is to say whether it was or it was not being allowed to stand.

[17] The parties never managed to reach a firm stand on the proposal made as the attorneys of the applicant were allegedly still to take instructions. Otherwise the 2<sup>nd</sup> to 6<sup>th</sup> Respondents' position was that the matter be left to the elders for their determination in the hitherto intended meeting and not the courts. For the sake of clarity, it must be noted that the then intended meeting in the Kwazulu Natal Province of the Republic of South Africa had long been finalized as at the time the matter was argued in court, as it had indeed proceeded on or around the 28<sup>th</sup> of March 2018, a year from todate.

## **II. Points In Limine**

[18] In his second segment of the answering affidavit, the 2<sup>nd</sup> – 6<sup>th</sup> Respondents raised four points in limine. These were briefly that;

(a) The application had not been properly sanctioned in terms of the applicant's constitution.

- (b) The Applicant had failed to exhaust the local remedies or those remedies as are enshrined in the applicant's constitution before instituting the proceedings in court.
- (c) The Respondents contended that prayers 2, 3.1 and 3.2 were incompetent to seek or grant as their grant would effectively render all the 37 branches under the 2<sup>nd</sup> Respondent for instance unable to worship.
- (d) As concerns the prayer for the deregistration of the company formed by the 2<sup>nd</sup> Respondent and those acting at his behest it was contended that it would be inappropriate or undesirable to determine this prayer before the meeting of the elders meant to be held in Kwazulu Natal on the 28<sup>th</sup> March 2018 was held.

I must turn to each one of the points in limine raised before I consider the merits of the matter.

**A. Application allegedly not properly sanctioned on behalf of the applicant and in line with the applicant's constitution.**

[19] It was argued in this regard that the meeting that took the resolution to institute the current proceedings had no power in law to do so because it was not a meeting of the Executive Committee yet such a power resided with the

Executive Committee. Reference was made to a copy of the resolution. The resolution on its face suggests that the resolution was taken at a meeting of the Joint Executive Committee. This appears to be a senior structure in that it comprises almost all the other structures of the local church, including the Executive Committee, which was obviously in attendance as it was the one that called for the convening of that structure.

[20] The Respondent does not refer to any provision of the constitution which says such a decision should be taken by the Executive Committee only; and that a structure inclusive of all the sub – structures ( including the Executive Committee) could not lawfully do so. In any event it is not stated anywhere what the other attendees were doing in that meeting including whether or not they were involved in the taking of that decision. It suffices that the resolution was on the face of it signed by members of the Executive Committee only which must confirm it was a decision of the Executive Committee. That the Executive Committee may have decided to consult other structures in order for it to take an informed decision did not taint its decision in my view, particularly because no part of the church appears to have been prejudised. Now that there are no facts on the role played by the other structures, we cannot speculate what they did there if they did

anything, suffice it that no one has been shown to have suffered any prejudice.

[21] Clearly the Respondents want this court to speculate in this regard which it cannot do, particularly whether the decision came from a structure that included all the facets of the applicant as an entity or not. I therefore cannot uphold this point particularly because it does not seem to occasion any of the parties any unfairness or prejudice. It is in fact short of informative particulars.

[22] It was argued further that the resolution did not authorize the institution of proceedings. The resolution concerned provides as follows on re relevant portion:

*“After we had discovered as the church that Overseer Julius P. Nyoni and Others had registered our church without our mandate and went on to appoint directors by himself without consulting the overseership executive after discussion we have taken a resolution that we are opposing the registration done by Nyoni and others. We resolved that the registration must be withdrawn so that it gives a way for proper*

*registration by [a] legitimate Executive. The Chairman of the Upper House, Overseer MP Mkhonto and his executive (overseer SA Mhlanga and ND Dlamini), were instructed to pursue the matter further and report back to the Joint Executive within two weeks. (This resolution was signed by the Chairman, Secretary and the Coordinator respectively). (underlining added)*

[23] Clause 5.4 of the Applicant's Constitution annexed to the papers reads as follows:-

*5.4. The above mentioned resolution shall appoint a member of the Executive Committee to do all things necessary, sign all documents, and otherwise attend to the litigation brought against the church.”*

[24] The resolution in question appointed MP Mkhonto, SA Mhlanga and ND Dlamini to effectively put into effect the resolutions concerned. It therefore cannot be said that the resolution does not authorize the institution of legal proceedings as per clause 5.4. The thrust of the resolution was to the effect that the registration of the by Julius Nyoni was being opposed. Without

being overly technical, opposing a registration is similar to challenging it in Court, which has been done by the Applicant through Mfanasibili Mkhonto.

[25] On the contention that the meeting was not sanctioned by the Chief Apostle as provided under clause 11.8 of the constitution, it is not in dispute that the major function of the Executive Committee was to assist in controlling and managing the affairs of the church. Certainly, when the executive took up the issue of the unlawfully registered company in the name of the applicant that was a control and management issue of the affairs of the church. I do not think it would be a proper interpretation of the applicant's constitution to say that because the Chief Apostle was not informed even though a proper function was being done on behalf of the church, such should be viewed as a nullity. It shall be remembered that other than putting it in a speculative form, there was no factual averment that the Chief Apostle was not informed prior to the meeting that took the decision to come to court. Besides, if the Chief Apostle had not been informed initially, he later got to know about the exercise and he indirectly authorized it when he said it should await a decision of the Elders in the KZN meeting then meant for March 2018. It is trite that the meeting in question eventually happened where the proceedings were authorized in line with the direction by the Chief Apostle.

[26] The a contention a shortcoming cannot therefore be sustained in a matter where the Respondents themselves brought the matter to the Chief Apostle attention who did not insist on such a clause but instead allowed the matter to be deliberated upon in a particular manner as directed by him. As the aim is clearly to ensure that the Chief Apostle is kept in the know about issues that go on in the church, the matter of the registration of the church as a private company without authority and the subsequent challenge of it in court, are matters that are already known to the Chief Apostle at this stage. The Chief Apostle has taken a position on how best the matter can be resolved and that position was not against the matter continuing in court for finality thereafter.

[27] The contention that the meeting resulting in the resolution to challenge in Court the irregular registration of the applicant as a company had been held without notifying the Chief Apostle of same can no longer stand and it should be dismissed, when considering that the matter continued in Court after the Chief Apostle had allowed it to be proceeded with in a particular manner which led to its being in court.

**B.Failure to Exhaust local remedies.**

[28] It is contended that the applicant, in particular the chairman of the applicant, did not follow the provisions of clause 19 of the constitution, particularly clause 19.8 in so far as no steps were taken to resolve the dispute concerned within the structures of the church. Clause 19.8 provides as follows:-

*“All disputes or contentions relating to church dogma, organization, management or any member shall be resolved in the church by the church.”*

[29] I do not think that applies to the circumstances of the matter. This is because in this matter, the institution of the proceedings in this court followed a deliberate decision by the applicant who after discussing how best the nature of the problem could be resolved, they all decided it be through a court of law. As I understand it the clause concerned did not outlaw the resolution of such a dispute by the courts but instead provided that the applicant can decide and or resolve on taking some disputes to court for resolution. Besides, even if it were to be argued that when the matter was instituted in Court not all of its structures, such as the Chief Apostle had

been notified, that was eventually done where the said structure directed how it was to be dealt with which has been clarified above. Clearly when the matter was eventually heard in court, all the structures that could resolve it had played their part and eventually endorsed it being finalized in Court.

[30] It would not be real to ignore the meetings held at Johannesburg and later in KZN with the elders of the church. Indeed it is clear from the Respondent's own contention that the elders had earlier ordered that the matter be suspended from court whilst it was being discussed internally. It is clear from annexure TACC 2 to the Replying Affidavit (the resolutions from the KZN meeting) that it could not be resolved internally hence the decision to have it continued with in Court. In fact Mr Mkhonto was there given power to proceed with the matter, unhindered at paragraph 2 of annexure TACC 2, the copy of the Resolution on what had come to be known as the Swaziland dispute.

[31] I therefore cannot agree with the Respondents on this point and I am of the view that cannot succeed. Consequently, I dismiss this point in limine as well.

**C. Prayer 2, 3.1 and 3.2 are allegedly inappropriate to seek or grant given that their grant can lead to at least 37 Branches under the 2<sup>nd</sup> Respondent's overseership being unable to worship.**

[32] The point in this contention is that in so far as these prayers seek an order interdicting the Respondents from either calling revivals under the auspices of the First Respondent or from using the First Respondent's name for their benefit or in so far as they seek to have the Respondents interdicted from calling and holding revivals under the name of the First Respondent, the Applicant is allegedly rendering the church unable to function because if the Respondents were to heed that, the church would not operate in Swaziland. It is argued this should be the case because the First Respondent for instance is in charge of at least 37 branches of the applicant which are under his stewardship. It is contended were that to happen, about 37 branches of the Applicant's local church would invariably be interdicted from carrying out their co-function which is to worship.

[33] I do not agree with the Respondent's contention. I do not believe any of the church's deployees or structures can, as I understand it, be bigger than the

church so that they can do as they please because if one tried to call them to order that would render the church dysfunctional. Were this to be upheld, it would mean that the Respondents should not be called to order if they run the affairs of the church contrary to their constitution. Clearly it was never the intention of the founders of the church that an incumbent overseer of certain churches cannot be subjected to discipline or control for fear that the church will disintegrate if he is told to abide by the Constitution. What matters is whether or not the constitution is being violated or not. If the action being challenged is unconstitutional, it should be upset with a view to the constitution being upheld.

[34] The objection raised by the Respondent as a point in limine cannot stand and I am convinced it should be dismissed.

**D. Determination of the Prayer for the Deregistration of the company registered by the 2<sup>nd</sup> to 6<sup>th</sup> Respondents using the Applicant's name should await a meeting to decide the issue in KZN.**

[35] This point by the 2<sup>nd</sup> to 6<sup>th</sup> Respondents should not be decided as a point in limine given that it is clearly overtaken by events. In fact as of the day the matter was heard or argued in court, the meeting meant to determine the issue in KZN on the 28<sup>th</sup> March 2018 had long come and gone with a resolution having been taken on how the matter was to be taken forward which is all recorded in annexure TACC2. The resolution taken in that meeting was unequivocal and was to the effect that the Respondents concerned were to deregister the company in question. This point was recorded as follows in that annexure:-

*RE: Resolutions taken on Kingdom of Swaziland Matter.*

*“A meeting held of [the] Church NEC & the Kingdom of Swaziland delegation [members present were Messrs M.M.Mkhonto, SA Mhlanga, PJ Nyoni and ND Dlamini]. It was held on [the] 30/03/2018 @ 1815 hours in Aloedale Lodge Venue which is located in Mpangeni, KZN Province, in South Africa. After some lengthy discussions, [the] following are the resolutions taken:*

- 1. Overseer P.J.Nyoni who is currently the member of church NEC, will deregister his church with*

*immediate effect. He understands that he is and was also never mandated by the TACC to register the said church in the Kingdom of Swaziland. He, in turn, admitted that he made a mistake in doing so and apologized to both his colleagues present in the meeting and to all the NEC members. He also apologized (kneeling down with hand on his heart) to the church leader, the Honourable President and Chief Apostle N.V.Mlangeni and the Honourable Deputy President, Apostle N.C. Khumalo, for what he did in bringing the church into disrepute.” (underlining has been added)*

[36] What is however worthy of note is that the said Mr Nyoni does not seem to be a man of his word because notwithstanding the directive by the elders that he deregisters his church which is shown to have been accompanied by a solemn undertaking he gave whilst kneeling down (with his hand to his heart) he still has not deregistered same and he in fact tried to argue profusely through his lawyers that a case had not been made for the reliefs sought.

[37] This point in limine can therefore not succeed and it is dismissed.

### **III.In the Merits**

[38] In the merits of the application the Respondent contended that he had received an instruction from some elders in the Republic of South Africa to register the church as a company in this country. He went further to claim that it had to be him and a certain Mr Tfumbatsa who did the task of registering the company because they were the ones who had initially registered the church in terms of the Protection of Names, Uniforms and Badges Act of 1969. He claimed that it was felt that they would for that reason be best suited to carry out this further registration of the church as a company.

[39] It is not difficult to see that the said Mr J.P. Nyoni is not telling the truth in what he says. Firstly he does not come out to say who these elders who ordered or instructed him to register the church as a company who are based

in South Africa are. He contents himself with just making a general or bare statement that he was sent by the elders of the church to do so.

[40] Furthermore, in his own words, after he firstly met the Chief Apostle Mr V.N. Mlangeni he does not contend to have alerted him of his having been sent or instructed by some church elders to register the church as a company including clarifying who those Elders were. He did not make the same plea during the KZN meeting. He is instead shown as having asked for mercy whilst he knelt down with his hand to his heart, which was, on the face of it, an act of being sorry and solemn about what he had done. This aspect was damning and he would have disputed if it was not truthful.

[41] Clearly an inference is inescapable that the 2<sup>nd</sup> Respondent and those who acted at his behest were trying to form a breakaway church using the name of the applicant which must have had some value looking at the extent of the Church's tentacles in the Southern Africa Region.

[42] The position is long established in our law that where a set of facts in existence can only lead to one conclusion after they are shown to be consistent with all the facts, then that conclusion can be safely drawn. In other words, it would be proper in such a case for one to reason by inference. See **R V Blom 1939 AD 344**. It is the only inference to draw that the 2<sup>nd</sup> to 6<sup>th</sup> Respondents intended to form a breakaway church using the applicant's name and possibly its resources as well. They have not given another reasonable conclusion to draw from the facts.

[43] The applicant sought an order interdicting the respondents from several actions including restraining them from calling a service or revival utilizing the applicant's name or from using the protected name of the applicant for its own purposes.

[44] It seems to me that from the facts of the matter, there would be no basis for this court to refuse to accede to the applicant's request given that it cannot be denied that the name in question was protected by the applicant long ago and the Respondents had not obtained any authority to utilize such a name for the purpose it did which from the look of things was beneficial only to

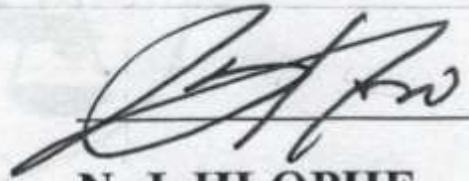
the Respondents and, to no one else. Accordingly the applicant's application should succeed and I make the following order:-

44.1. The 2<sup>nd</sup> to 6<sup>th</sup> Respondents be and are hereby interdicted and restrained from calling and holding any church revivals under the auspices of the First Respondent company or in the name of the applicant without its authority.

44.2. The 2<sup>nd</sup> to 6<sup>th</sup> Respondents be and are hereby interdicted and restrained from using the name of the applicant for their unlawful or illicit personal gain contrary to the applicant's constitution.

44.3. The 7<sup>th</sup> Respondent be and is hereby ordered to deregister the 1<sup>st</sup> Respondent company from its register given that the name used to effect the Registration of the First Respondent as a company had already been protected in terms of the Registration of Names, Uniforms and Badges Act No.10/1969.

44.4. The costs are to be paid by the 2<sup>nd</sup> to 6<sup>th</sup> Respondents.

A handwritten signature in black ink, appearing to read 'N. J. Hlophe', written over a horizontal line.

**N. J. HLOPHE**

**JUDGE - HIGH COURT**