IN THE HIGH COURT OF ESWATINI

JUDGMENT

In the matter between: **Case No.1135/2020**

THE AFRICAN EVANGELICAL CHURCH Appellant

And

MANKAYANE TOWN BOARD Respondent

Neutral citation **:** ***The African Evangelical Church vs Mankayane Town Board (1135/20) [2020] SZHC 237 (13th November, 2020)***

Coram **:** **M. Dlamini J**

Heard **:** **7th October, 2020**

Delivered **:** **13th November, 2020**

Rating Act No. 4 of 1995: ***Section 7, interpretation thereof – rateable and exempted properties, accommodation:***

Section 7(4) : ***Until it can be shown that appellant has now changed its purpose as per the provisions of section 7(4), it would be***

difficult for the court to be swayed in favour of respondent:[15]

Section 7(3)(c) : a property otherwise exempted from rates would be liable in the event it has accommodation not just for anyone's staff but for the registered owner of the exempted property.[19]

Summary: The appellant noted an appeal against the orders of the court *a quo* compelling it to pay respondent E79 484.14 and E284 656.29 as rates together with 15% interest thereof and a further 15% collection commission in respect of Portion 1 of Farm 224, Extension 2, situate Mankayane Township and Remaining Extent of Farm 224, Extension 2, situate Mankayane Township, district of Manzini respectively. The appellant contends that its properties fall outside the category of rate payers. The appeal is strenuously opposed on ground that appellant is obliged to pay rates by virtue of the employees residing in the said properties.

The Parties

[1] The respondent is a municipality established in terms of the Urban Government Act No. 8 of 1969. Its principal place of business is situate at Mankayane Town, region of Manzini.

[2] The appellant is a religious institution and the registered owner of Portion 1 Farm 224, Extension 2, Mankayane Township, Mankayane,

district of Manzini and Remaining Extent of Farm 224, Extension 2, situate Mankayane Township, district of Manzini respectively.

Parties' averments in the court *a quo*

[3] Two Notices of Motion served before honourable Magistrate **S.Mbatha.** They were both dated the same day, 27th August, 2018. The first Notice of Motion was in respect of Portion 1 of Farm 224, Extension 2 Mankayane Township. The respondent deposed that the appellant was the registered owner of the said property. It then averred that the appellant owed the following:

"a)	*rates owing for current year*	-	*E7,110.00*
b)	*Interest at 15%*	-	*E 266.63*
c)	*Rates from previous years*	-	*E61,740.01*
d)	*Interest at 15% for previous years*	-	*E10,367.50*
e)	*15% (Fifteen Percent) costs of collection."*[1]		

[4] Respondent then prayed:

> *"1. Directing Respondent to pay arrear rates in the sun of E79, 484.14 (Seventy Nine Thousand Four Hundred and Eighty Four Emalangeni Fourteen Cents) plus interest in respect of balance of rates owing beyond 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018*

[1] Page 8 of the book of pleadings

and 2019 rateable years for ***Portion 1 of Farm 224, Extension 2, Mankayane Township****.*

2. *Directing Respondent to pay 15% (Fifteen Percent) interest per annum of the amount owing for each month for which the default continues as per* ***Section 30 of the Rating Act, 1995.***

3. *Directing Respondent to pay a further 15% (Fifteen Percent) of the amount owing at the institution of this proceedings towards costs of collection as per Section 32 (1) of the Rating Act. 1995.*

4. *Directing Respondent to pay costs of suit in the event the application is opposed."*[2]

[5] The second Notice of Motion asserted that appellant was the registered owner of Remaining Extent of Farm 224, Extension 2, Mankayane Township. Appellant owed the following:

"15.

a)	*rates owing for current year*	-	*E30,120.00;*
b)	*Interest at 15%*	-	*E1, 129. 50;*
c)	*Rates from previous years*	-	*E216, 277. 69;*
d)	*Interest at 15% for previous years*	-	*E37, 129. 10.*

[2] Pages 1-2 paragraphs 1,2,3 and 4 of the book of pleadings

e) 15% (Fifteen Percent) costs of collection." [3]

[6] Respondent then prayed:

> ***1.*** *Directing Respondent to pay arrear rates in the sum of* ***E284, 656. 29*** *(Two Hundred and Eighty Four Thousand Six Hundred and Fifty Six Emalangeni Twenty Nine cents) plus interest in respect of balance of rates owing beyond 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019 rateable years for* ***Remaining extent of Farm 224, Extension 2, Mankayane Township.***
>
> ***2.*** *Directing Respondent to pay 15% (Fifteen Percent) interest per annum of the amount owing for each month for which the default continues as per* ***Section 30 of the Rating Act, 1995.***
>
> **3.** *Directing Respondent to pay a further 15% (Fifteen Percent) of the amount owing at the institution of this proceedings towards costs of collection as per* ***Section 32 (1) of the Rating Act, 1995.***

[7] In its answer, the appellant raised two defences. It pointed out that respondent had correctly defined it as a religious institution. It was therefore in terms of the Rating Act No, 4 of 1995 exempt from

[3] Page 18 paragraph 15 of book of pleadings

payment of rates. The second point was that the authority from the Minister of Urban Government and Housing was incongruent to the respondent's prayers. The respondent had attached a letter from the Minister as authorising it to collect rates. The appellant prayed for dismissal of respondent's prayers.

[8] The matter came before Magistrate **S. Mbatha** who decided in favour of the respondent. She authored:

> *"11. The court finds that the respondent is only exempt and falling within the provisions of section 7(1) only in respect of that portion of property wherein respondent complies with the conditions of exemption by it being used for public worship, a school including its boarding establishment provided for accommodation, use or enjoyment of students or scholars attending such school.*
>
> *12. It follows therefore that property used as Teacher's quarters is not covered under the exemption clause and as such stands to be rateable."*[4]

Grounds of appeal

[9] The appellant, dissatisfied with the reasoning and orders of the court *a quo*, appealed as follows:

[4] Page 45 paragraph s 11 and 12 of book of pleadings

"1. The Court a quo erred in law in not considering all the Appellant's grounds of opposition to the claim for the payment of rates;

2. The Court a quo erred in law in not finding that due to the Eswatini Government Policy that Primary Schools should not charge fees the Appellant therefore has no money to pay for rates;

4. The Court a quo erred in law in ordering the payment of rates when there is no benefit to the Appellant from the school building as the teachers do not pay rent and they stay in those houses for the public benefit."[5]

Common cause

[10] It is common cause that the respondent demands rates from the appellant by reason that appellant has accommodation for teachers. It is undisputed that the appellant has had the school and accommodation for the teachers for a period spanning many decades. It is not in issue that the appellant has not been required by the respondent to pay rates thereof for the past many decades, until 2018 and demand for rates backdated to 2007. It is also not in issue that the appellant is a religious institution. Neither the school nor the accommodation for the teachers generate any income for the appellant.

[5] Pages 47-48 paragraphs 1,2 and 3 of the book of pleadings

Appellant is the registered owner of the property where the accommodation is situate.

Issue

[11] The issues were well captured by the learned Magistrate in the court *a quo.* Is the appellant liable to pay rates under the Rating Act No. 4 of 1995? If yes, from which period?

Determination

[12] The answer to the above poser lies in the enabling Act itself. Section 7 reads:

> *"1. Subject to subsections (3), (4) and (5), the following shall be exempt from the payment of rates, namely immovable property used exclusively throughout the year for purposes of-*
>
> *(i) Public worship;*
> *(ii) A school, college or university, including its boarding establishment or recreation ground or the like provided for the accommodation, use or enjoyment of students or scholars attending such school, college or university;*
> *(iii) Any bona fide registered charitable institution maintained by any company, society or other association of persons;*

(iv) A public library, museum or art gallery;

(v) A hospital, clinic or health centre;

(vi) A cemetery or crematorium;

(vii) Any public place as defined in section 3; and

(viii) Any other purpose, approved by the Minister, after consultation with the local authority, as being for the public benefit.

2. In addition to the properties referred to in sub-section (1), the following properties shall also be exempt from the payment of rates;

(a) properties registered in the name of Ingwenyama and Indlovukazi;

(b) properties registered in the name of Ingwenyama in trust for the Swazi Nation; Provided it is not used for any purpose mentioned in subsection (3)(a), (b) and (c); and

(c) properties owned by foreign governments and used for diplomatic purposes.

3. No exemption from rates shall be granted in respect of any immovable property by virtue of sub-section (1).

(a) if the use of such property has as one of its objects a private pecuniary profit of any person, whether as a shareholder in a company or otherwise;

(b) if any rent, other than a nominal rent, is paid to the owner, lessee or occupier of any such property; or

(c) Where such property is used for the residential accommodation of members of the staff or staff of any institution referred to therein.

4. If, during the currency of any financial year, immovable property is used for any purpose other than a purpose hereby exempted, the local authority shall impose rates thereon, or on such portion thereof so used, at a rate proportionate to the period of such use.

5. Immovable property, or any part thereon, which is exempt from rates under this section shall become rateable and rates shall be deemed to have been made and levied thereon from the date on which it ceases to comply with the conditions conferring exemption."[6]

[13] I have above quoted the entire section 7 of the Act which states the category of properties which are rateable and those exempted. Before

[6] Page 26-28 paragraph 7 of the book of pleadings

I delve into the issues at hand, I must mentioned one glaring lacuna in the pleadings that served before the Honourable Magistrate.

Section 7(4)

[14] Section 7(4) points out that where in the course of the financial year, an exempted property is used for purposes of a rateable property, the respondent may levy rates against it. Following the undisputed fact that appellant has been enjoying exemption for decades, it was incumbent upon the respondent when suddenly levying rates against appellant to lay out in its founding affidavit the fact that appellant was now using its property for purposes of a rateable property. There are no such allegations in the founding affidavit.

[15] In its answer, appellant pointed out that it was not collecting any rentals for the teachers' accommodation. In brief, appellant was saying that in as much as it has accommodation for the teachers, its property has not changed its purpose which informed respondent initially to exempt it from rates over the decades. Respondent replied to the effect that appellant need not generate income to pay rates. I do not think so in light of the undisputed fact that appellant has always been in the list of exempted properties in terms of section 9(1) of the Act despite the accommodation of the teachers. Until it can be shown that appellant has now changed its purpose as per the provisions of section 7(4), it would be difficult for the court to be swayed in favour of respondent. I must point out that in the wisdom of the Legislature,

this was to prevent the registered owner of a property otherwise exempted to find itself liable to rates at the whims and caprices of the municipality.

Section 7(3)(c)

[16] For purposes of better clarity, I shall regurgitate the section:

> "*Where such property is used for the residential accommodation of <u>the staff</u> or staff of any institution referred to therein."*

[17] Of significant note, the section does not read:

> "*Where such property is used for the residential accommodation <u>of staff</u> or staff of any institution."*

[18] There is "*the*" before "*staff*". Why the use of the prefix "*the*" by the Legislature? The answer is simple. The preface "*the*" connotes a particular or identified staff. Now who in the language of the Act is this particular staff? The answer is not far off. It is the staff of the registered owner of the property. In other words, had the prefix "*the*" been absent, the interpretation attributed on behalf of respondent would be correct, namely that accommodation of any staff or irrespective of who the staff belong to. Then the properties would be rateable. With the use of "*the*" preceded by "*staff*" the Legislature

intended that the staff accommodated must belong to the registered owner of the property.

[19] The phrase that follows immediately and reads: "*or staff of any institution referred to therein"* lends credence that the staff must be associated to the registered owner of the property. "*Institution referred therein*" again "*therein*" refers to the properties referred in section 7, namely *in casu*, exempted property. In other words, the subsection must be understood to read that a property otherwise exempted from rates would be liable in the event it has accommodation not just for anyone's staff but for the registered owner of the exempted property.

[20] It is common cause in the case at hand that the teachers accommodated at appellant's two properties do not belong to the appellant. These are employees of the Government of the Kingdom. They are hired by the Government under the Teaching Service Commission. They are in the Government's pay roll. They are not staff for the appellant as the registered owner of the property. It could be that the previous Boards of respondent were so informed and therefore did not demand rates from the appellant. This leads me to the authority by the Minister as attached by respondent.

[21] The authority attached reads:

"*<u>RE: AUTHORITY TO COLLECT LANDED PROPERTY RATES OLDER THAN 2 (TWO) YEAR, EFFECTIVE 1ST APRIL, 2014</u>*

In exercise of the powers conferred by section 32 of the Rating Act, 1995, please be advised that Mankayane Town Board is hereby granted authority to collect all outstanding rates older than two years effective 1st April, 2014."

[22] We know from the pleadings that the appellant's properties were not owing rates as they were exempted. So how could the letter by the Honourable Minister refer to the appellant? The Minister's letter simple states that respondent should collect rate arears from property owners who have failed to pay rates for the past two years effective 2014. The appellant could not be categorised as such following that it had not failed to pay rates by reason that its two properties were exempted. Those whose rates were "*outstanding*," to use the Minister's term, were those who ought to have paid as per their liability by virtue of their properties being rateable. The appellant's two properties were not rateable two years before 2014. In essence the letter attached cannot be held to refer to appellant.

[23] Even respondent appreciated that the correspondence by the Honourable Minister did not refer to the appellant. If in respondent's mind it were so, respondent would have claimed rates from 2012 as per the Honourable Minister's letter and not 2007 as it did.

[24] *En passé,* not even accommodation of the members of the clergy who fall directly under the powers and supervision of the appellant can render the two properties rateable by reason that members of the clergy are not defined as staff or employees as per the judgment, the **Church of the Province of Southern Africa Diocese of Cape Town v Commissioner for Conciliation Mediation and Arbitration and Others (C619/2000) [2001] ZALXC 141 (7th September, 2001)**. Those who fall under ecclesiastical fraternity are not staff. They draw no salary as they took a vow to poverty and chastity just like appellant.

[25] In the final analysis, I enter as follows:

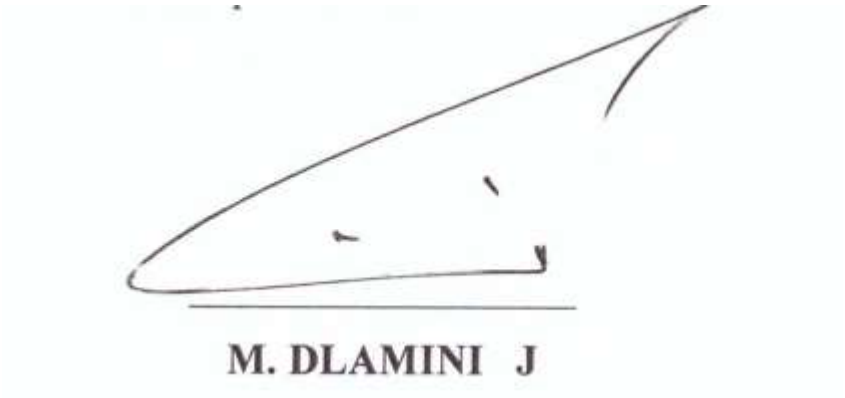
25.1 The appeal is upheld;

25.2 The orders of the court *a quo* are hereby set aside and substituted with the following orders;

24.2.1 The applicant's applications under case Nos. 1990/2018 and 1991/2018 are hereby dismissed,

24.2.2 The applicant is ordered to pay cost of suit;

25.3 Costs to follow the event.



M. DLAMINI J

For Appellant : **M.M. DLAMINI of Robinson Bertram Attorneys**

For the Respondent: **M. TSAMBOKHULU of Warring Attorneys**