

REPUBLIC OF SOUTH AFRICA




IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 30485/19

Case No: 30486/19



IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED.
DATE	<u>17 Sept 2019</u>
SIGNATURE	

Case no: 30485/2019

Case no: 30486/2019

In the following matter between:

**REVEREND TEBOHO GORDON KLAAS  
A.M.E CHURCH: ROBINSON TEMPLE  
(VOSLOORUS)**

**1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT**

And

**19<sup>TH</sup> EPISCOPAL DISTRICT:  
A.M.E CHURCH  
THE EAST ANNUAL CONFERENCE  
BISHOP: PAULO JONES MULENGA KAWIMBE  
JUDICIAL COMMITTEE: EAST ANNUAL CONFERENCE  
REVEREND LUKE BIG-BOY DLAMINI**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT  
5<sup>TH</sup> RESPONDENT**

**REVEREND JAPHTA VICTOR MALEFETSE  
A.M.E CHURCH: BETHEL TEMPLE  
(KUTLOANONG)**

**1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT**

And

**19<sup>TH</sup> EPISCOPAL DISTRICT:**

**A.M.E CHURCH  
THE ORANGIA ANNUAL CONFERENCE  
BISHOP: PAUL JONES MULENGA KAWIMBE  
JUDICIAL COMMITTEE: ORANGIA  
ANNUAL CONFERENCE  
REVEREND SEFAKO SAMUEL MABOE**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT  
5<sup>TH</sup> RESPONDENT**

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## JUDGMENT

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MTATI AJ

### Introduction

[1] The two applications are identical in terms of the relief sought. The applicants seek a relief to suspend their suspension and subsequent expulsion from the first respondent pending an outcome of a review application. The two applications arise out of a similar incident although slightly different on the origin of the actions leading to the expulsion of the applicants as Pastors of the first respondent. The legal issues to be determined are exactly the same and these relate to the procedure that was followed leading to their ultimate expulsion. As a result, the Court has decided to provide one judgment to address all the legal issues in dispute. I will refer to the individual applicants and/or respondents where necessary.

[2] It should be immediately pointed out that Counsel for the respondents conceded that the procedure followed in expelling the applicants was flawed and as a result, I will not dwell much on this aspect in this judgment. The only issue that remains in dispute, is whether the pending suspension which preceded the applicants' expulsion is extant. The argument on behalf of the applicants is that, the very suspension was as a result of an incorrect procedure followed by the respondents and as a result, it falls to be set aside. On the other hand, it is argued on behalf of the respondents that the suspension was ratified by the Judicial Council of the respondents and as such cannot be a subject of this application.

### Background

[3] Both applicants were Pastors of the first respondent before their expulsion. The first respondent is the 19<sup>th</sup> Episcopal District of the African Methodist Episcopal Church. The African Methodist Episcopal Church (AME Church) is incorporated as a legal entity under the laws of the United States of America and is a voluntary religious organisation. The AME Church comprises of 20 Episcopal Districts in five continents. Each of the Episcopal Districts comprises of several subordinate local churches or congregations.

[4] The two applicants before Court were expelled from the AME Church as Pastors and members of the church without being afforded an opportunity to be heard as required by the "Church statutes" contained in their code of discipline adopted in 2016. I will later revert to the provisions of the relevant clause of the disciplinary code as alluded to by the applicants as far as applicable in the matter before Court.

[5] The first applicant in case number 30485/19 (Reverend Klaas) was never served with a charge sheet nor copies of witness statements before the hearing and the ultimate finding of expulsion. A similar situation prevailed for the first applicant under case number 30486/19 (Reverend Malefetse), he was also not served with a charge sheet nor witness statements although he was aware of the date of the hearing. Reverend Malefetse, was booked off ill on the day of the hearing and the necessary medical certificate was presented to the Court as proof of his illness. As indicated above, it was conceded that the procedure leading to the expulsions were flawed and as such I do not need to stay much on this aspect.

[6] The relationship between the applicants and the respondents is regulated in accordance with the provisions of the 2016 Book of Doctrine and Discipline of the AME Church (The Discipline 2016), containing the Bill of Rights governing the members of

the church and the clergy. The Discipline 2016 is explicit regarding the manner in which the affairs of the church are to be regulated including issues of discipline within the church.

[7] It seems to me that the genesis of the problem between the applicants and the respondents, in particular the third respondent, began when applicants made enquiries about their pension benefits. There were a number of Pastors that made enquiries about the payment of premiums to the service provider that led to some Pastors approaching the Pension Fund Adjudicator and even the police. There was also a march by the clergy on or about 15 July 2017 concerning the Pastors pension contributions which was reported in the print media. The police investigation is seemingly still in progress. The third respondent is the presiding prelate of the 19<sup>th</sup> Episcopal District of the AME Church bearing responsibility for all affairs of the District.

[8] It was during the 2018 East and Orangia Annual Conferences where the applicants' names were called out at the two different conferences and they were informed that there were certain allegations made against them and as a result they were being suspended for a period of 12 months. Both applicants were not informed of the allegations levelled against them nor were they given any opportunity to be heard. Upon a request from other members in attendance at the conferences that the issues relating to the suspensions be deliberated, these requests were ignored.

[9] In December 2018, the Council of Bishops in the United States of America, learned of the suspensions of a number of Pastors including applicants and directed that all the affected Pastors should forward their appeals to the Judicial Council if they so wished. As a result of this directive, the applicants duly noted their appeals.

[10] The Judicial Council responded to Reverend Klaas on 17 May 2019 and on 27 April 2019 in respect of Reverend Malefetse. The outcome of the appeal was to confirm that the decisions to suspend without a benefit of a trial or judicial process violated the rights of the applicants. However, the Judicial Council also found that the suspension of the applicants shall continue pending the decision of the Judicial Committee unless rescinded by the presiding prelate or an authorised body.

[11] The applicants, accordingly, claim that their rights to participate in the activities of the AME Church have been infringed by the conduct of the respondents. It is also the case of the applicants that the third, fourth and fifth respondents have already formed a view and took decisions against them and as a result they cannot reverse their findings, alternatively, they have become *functus officio*.

#### **Issues for determination**

[11] In my view, the only issue for determination, having considered the concession made on behalf of the respondents, is whether the suspension of the applicants still stands if the expulsion was admitted to be flawed.

#### **The Suspension of Applicants**

[12] The Judicial Council recognised and pronounced upon the procedural defects that led to the suspension of the applicants and stated that “...it is important to point out that due process is a right, indeed an entitlement. As such, one does not need to deserve it nor to earn it”.<sup>1</sup> They also found that some of the conclusions regarding gross disobedience, insubordination and heresy were not supported by underlying facts. This is obviously so because there was no hearing afforded to the applicants

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<sup>1</sup> Footnote 1 at page 148 of the paginated bundle

nor were they apprised of the exact complaints against them. The Judicial Council further recognised that, whilst suspension may be appropriate pending investigations or judicial process, "*...a blanket one-year suspension is seemingly punitive and at a minimum requires due process, and or notice of the offense and a meaningful opportunity to be heard by an appropriate judicial body, as provided for by the Discipline.*"

*Rev Klaas rightly complains that the Annual Conference may have voted without knowing the Committee's rationale for its recommendations and in that regard, Bishop Kawimbe, as the presiding prelate, erred in imposing the recommended penalty of a suspension for a period of one year, without instituting the appropriate judicial process."*

[13] The deliberations and the ultimate conclusion of the Judicial Council are clear in demonstrating that the rights of the applicants were violated leading to the suspension. In other words, the Judicial Council confirmed that the act of suspension was unlawful based on the failure by the respondents to follow the prescribed processes of the Discipline. Notwithstanding this realisation and finding, the Judicial Council still extended the suspension.

### **The legal position**

[14] Section 2 of our Constitution<sup>2</sup> provides that the constitution is the supreme law of the Republic; law or conduct inconsistent therewith is invalid, and the obligations imposed by it must be fulfilled.

[15] The decision taken by the third respondent was a final decision and it was couched as such by determining the period of suspension. The decision of the third respondent was not pending any investigations or a disciplinary enquiry. That being the case, the third respondent was, at the least expected to apprise applicants of the charges levelled against them, provide them an opportunity to be heard and only after the hearing come to a determination, as fully set by the Discipline. All these requirements were not met.

[16] It was argued on behalf of the respondents that the suspension was still intact even after conceding that the expulsions were procedurally unfair. I do not agree with this contention. The applicants approached the Court with information that they have been expelled and this is the impugned decision. They were entitled to believe that the suspensions have been overtaken by events and as such focus on the final decision of expulsion. Furthermore, and with respect, it does not make sense to me how it can be argued that if the main hearing was procedurally flawed, the suspension should stand, especially in the light of the finding made by the Judicial Council. At any rate, as I have already indicated above, the Judicial Council also found that the procedure in suspending the applicants was flawed. The third respondent, on realising the outcome of the Judicial Council, sought to rectify his mistake by hurriedly convening the disciplinary enquiry, again acting contrary to the Discipline.

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<sup>2</sup> Act 108 of 1996



[17] The 2016 Discipline prescribes the procedure to be followed before a suspension or a disciplinary enquiry can be convened. The Court was referred to the Discipline by both Counsel. Part XVI of the Discipline deals with "Judicial Administration". Paragraph A. of Section I. thereof pertains to a "Conciliation" process and reads:

*"It is the clear intent and purpose of the African Methodist Episcopal Church to encourage, create and stimulate peace and goodwill among all of its members, societies, local churches, auxiliaries, departments and commissions. Accordingly, before any charge may be filed, introduced or conveyed for consideration, all parties to any difference, dispute, claim or controversy shall submit the matters of contention to the Conciliation Committee. If, however, the charge is that of sexual misconduct, the charge shall be received, processed and resolved in accordance with Section X: Sexual Misconduct."* (My emphasis)

[18] Counsel for the respondents argued, correctly in my view, that the conciliation process is not one sided but reciprocal. I agree with this argument but add that, it is a prerequisite to a disciplinary enquiry subject to the proviso relating to sexual misconduct. The third respondent called the applicants to a conciliation meeting but before the date of the meeting had arrived, proceeded to expel them. The third respondent's conduct suggests that he went out of his way to ensure that the applicants are expelled.

[19] I am convinced and I find that the procedure followed by the respondents was also flawed and this should entitle the applicants to the order sought.

[20] Counsel for the respondents also argued that the second applicants in both cases have no *locus standi* in these proceedings. In response, Counsel for the applicants

argued that the second applicants were members of the AME Church and were acting in support of the first applicants. In respect of Reverend Malefetse, there is also a supporting affidavit filed by Ms. Rebecca Khoza who is the Secretary of the second applicant. Section 38 of our Constitution provides a direction on who or what category of persons may approach a Court to enforce a right that has been infringed. The section reads:

*“Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are—*

*(a) anyone acting in their own interest;*

*(b) anyone acting on behalf of another person who cannot act in their own name;*

*(c) anyone acting as a member of, or in the interest of, a group or class of persons;*

*(d) anyone acting in the public interest; and*

*(e) an association acting in the interest of its members.”*

[21] In my view, the congregants of the AME Church fall within sub-paragraph (c), in the alternative sub-paragraph (e) of section 38. I find that the second applicants in both matters have the necessary *locus standi* to join these proceedings.<sup>3</sup>

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<sup>3</sup> See also section 31 of the Constitution

### **Urgency**

[22] Reverend Klaas stated that he was informed of his expulsion on the 15<sup>th</sup> of August 2019, both as a member and a Pastor of the AME Church. The following day he informed the Board of the second applicant. The board of the second applicant formally informed the congregation of the decision to expel Reverend Klaas on 18 August 2019 and the congregation took a resolution to support him as an interested party and in the interests of justice. On the 22 August 2019 consultation took place with his legal representative together with Counsel.

[23] Reverend Klaas stated further that, on 23 August 2019, members of the second applicant attended the Annual Convention of the East Conference in Middleburg where members of the second applicant were not allowed to vote in the election of the Executive Board. There are other conventions scheduled for the month of September 2019 and their continued disbarment will cause them irreparable harm as members in good standing of the AME Church.

[24] Reverend Malefetse, on the other hand, received a letter expelling him from the AME Church as a Pastor and member on 27 August 2019. The second applicants in his matter also decided to support him in the interest of justice. He states that this matter is urgent in that he will suffer irreparable harm since his licence as a Pastor will be revoked. In argument by Counsel, on his behalf, it also appears as though there are pending conventions taking place during September 2019, and that if this matter is not heard on urgent basis, he falls to suffer irreparable harm.

[25] In taking into account the requirements of urgency, the applicants have approached the Court in time, they have demonstrated that they fall to suffer irreparable harm if this matter is not heard in an urgent Court. Furthermore, the

balance of convenience favour the applicants. In fact, I cannot find any inconvenience on the part of the respondents if these matters are determined on urgent basis.

### Costs

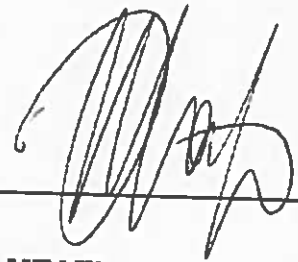
[18] Ordinarily, costs follow the cause but it is still at the discretion of the Court to deviate from the norm. This case involves a church which generates its income largely through contributions from the congregants. It seems to me, whatever decision to be made on the issues of costs, same shall ultimately be borne by the church. I do not believe that it is in the interests of justice that costs be borne by either of the parties unless, as argued on behalf of the applicants, a punitive cost order is given against the third respondent in his personal capacity. An order of that nature presupposes that there was a deliberate attempt on the part of the third respondent not to follow the processes laid down by the Discipline; deliberate disregard of the Court processes and findings of deceit on the part of the third respondent. I could not find this on the papers filed of record. A feud between the parties may be in existence but this does not necessarily warrant a punitive cost order against the third respondent. It will be preferable that whatever conflict between the parties be resolved within the church structure at the appropriate level.

[19] In the circumstances and having heard Counsel for the applicants and Counsel for the respondents, I make the following order:

#### *Order*

- 1. The forms and service as provided for in the Uniform Rules of Court are hereby dispensed with and these applications are to be heard on urgent basis in terms of Rule 6(12);*

2. *The decision to suspend and expel the applicants from the 19<sup>th</sup> Episcopal District of the African Methodist Episcopal Church are stayed pending the finalisation of the review application;*
3. *The respondents are interdicted and restrained from excluding the applicants in participating in all structures and activities of the AME Church, including their pastoral duties subject to paragraph 4 of this order;*
4. *The applicants are directed to institute the review applications within 30 (thirty) days from the date of this order, failure of which this order shall lapse;*
5. *Each party shall bear his/her own costs*



**V.T. MTATI**

**Acting Judge of the High Court**

**Gauteng Division, Johannesburg**

**APPEARANCES**

Date of hearing:	05 September 2019
Date of judgment:	17 September 2019
For the Applicant:	Adv Mmusi
Instructed by:	Mathopo Attorneys Inc.
For the Respondent:	Adv J Lubber
Instructed by:	Sarlie & Ismail Attorneys Inc.