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(1) REPORTABLE: YES/NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED.

11/06/2020


SIGNATURE



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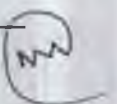
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO LOCAL DIVISION, THOHOYANDOU

CASE NUMBER: 750/2019

(UAAC) UNITED AFRICAN APOSTOLIC CHURCH	1 ST APPLICANT
NETSHITONGWE TSHIMANGAZO LESIE	2 ND APPLICANT
MURUDI TSHIWELA ELIZABERTH	3 RD APPLICANT
TSHILO MASHUDU SARAH	4 TH APPLICANT
MAKGELE TSHINAKAHO LEAH	5 TH APPLICANT
NELUFHANGANI NDANGANENI SOLOM	6 TH APPLICANT
NENZHELELE MBULAHENI ROLLET	7 TH APPLICANT
RAMUDULI EMANUEL	8 TH APPLICANT
TSHINDANE MOSES	9 TH APPLICANT
LONDANI DAVID	10 TH APPLICANT

AND

MURERI ALILWEI DAVID (personal capacity)	1 ST RESPONDENT
MURERI ROYAL COUNCIL	2 ND RESPONDENT



UNITED AFRICAN APOSTOLIC CHURCH NEW CABINET	3 RD RESPONDENT
CHIEF LIVHUWANI MATSILA (CHAIRPERSON)	4 TH RESPONDENT
MURERI AILWEI DAVID (CHAIRPERSON)	5 TH RESPONDENT
MURERI SAMSON (DEPUTY CHAIRPERSON)	6 TH RESPONDENT
MURIRI MANAGA ELISAN (DEPUTY SECRETARY)	7 TH RESPONDENT
PHASWANA DORIS (DEPUTY SECRETARY)	8 TH RESPONDENT
MULEYA LUKASI (TREASURY)	9 TH RESPONDENT
MURERI MISHACK (DEPUTY TREASURY)	10 TH RESPONDENT
MURIRI TSHIFHIWA (DEPUTY SECRETARY)	11 TH RESPONDENT
MURERI PAUL (COMMUNICATION MANAGER)	12 TH RESPONDENT
MURERI ISRAEL (EVENTS MANAGER)	13 TH RESPONDENT
MURERI LEAH (EVENTS MANAGER)	14 TH RESPONDENT
MULEYA SALPHY (ADVISOR)	15 TH RESPONDENT
MURERI MOSES (LEGAL ADVISOR)	16 TH RESPONDENT
MURERI ROBBERT (ADDITIONAL MEMBER)	17 TH RESPONDENT
MURERI PHILEMON (CHIEF WHIP)	18 TH RESPONDENT
UNITED AFRICAN APOSTOLIC CHURCH NEW REC	19 TH RESPONDENT
CHIEF LIVHUWANI MATSILA (CHAIRPERSON)	20 TH RESPONDENT
MATODZI THIZWILONDI WILSON (Deputy Chairperson)	21 ST RESPONDENT
NETSHISUMBEWA ALFRED (SECRETARY)	22 ND RESPONDENT
LESOKGA JOHANNA (DEPUTY SECRETARY)	23 RD RESPONDENT
LANGA SELINA (TREASURER)	24 TH RESPONDENT
THIDIELA ELISAH (ORGANISER)	25 TH RESPONDENT
ADVOCATE TSHAKASA SHUMANI (LEGAL ADVISOR)	26 TH RESPONDENT
MUNZHEDZI ZACHRIAH (CO-ORDINATOR)	27 TH RESPONDENT

MUDZANANI THIMOTHY (AUDITOR)	28 TH RESPONDENT
TSHIKORORO MASHUDU (COMMUNICATION MANAGER)	29 TH RESPONDENT
NEMAUNGANI AZWIHANGWISI SUZAN	30 TH RESPONDENT
MAKHANI RENDANI PHILLIP (EVENTS MANAGER)	31 ST RESPONDENT
MAFUSE JAN (COUNCILOR CO-ORDINATOR)	32 ND RESPONDENT
MANENZHE NDWELENI LACKSON (Councilor Coordinator)	33 RD RESPONDENT
MALEMA ELIJAH (Councilor coordinator)	34 TH RESPONDENT
STEVEN MATSHAVHALI (ADDITIONAL MEMBER)	35 TH RESPONDENT
NEMULALATE THILIVHALI (ADDITIONAL MEMBER)	36 TH RESPONDENT
LITSHANI ISRAEL (ADDITIONAL MEMBER)	37 TH RESPONDENT
NETSHIAVHA GOLDEN (ADDITIONAL MEMBER)	38 TH RESPONDENT
MATSHIAVHA GOLDEN (ADDITIONAL MEMBER)	39 TH RESPONDENT
RAMUYA JEREMIH (ADDITIONAL MEMBER)	40 TH RESPONDENT
NANGE MUSHE (ADDITIONAL MEMBER)	41 ST RESPONDENT
MUTHUDE MASINDI MARCUS (ADDITIONAL MEMBER)	42 ND RESPONDENT
MUHOMU FLORAH (ADDITIONAL MEMBER)	43 RD RESPONDENT
MURERI AILWEI DAVID (Chairperson of 2 nd Respondent)	44 TH RESPONDENT

JUDGEMENT

AML PHATUDI J

INTRODUCTION

*Do not go gentle into that- Good Night...Rage, rage against the dying of the light...*¹

[1] The death of Archbishop Muthuhadini Elias Mureri (Elias) of United African Apostolic Church (UAAC) split Mureri family on succession to the archbishopric. This prompted the applicants to approach this court on 27 December 2019 on an urgent basis. They sought, "... pending finalisation of the main application launched on ordinary basis, an order interdicting the respondents ..." in particular Ailwei David Mureri (David) and Mureri Royal Council including all other respondents from interfering with and disrupting the administration and management of UAAC.

[2] The matter was, by agreement between the parties, postponed to 14 January 2020. I granted the respondents leave to file their answering affidavit in respect of the urgent application. I mulcted the respondents with costs.

[3] On the 14 January 2020, the parties appeared before Kgomo J who stood the matter down to 15 January 2020 for hearing. On the day of the hearing, the parties handed up their deed of settlement for it to be made an order of court. The provisions agreed to states:

- 1.1 That for ease of reference and identification purposes and purposes of this Deed of settlement, the churches involved shall be without prejudice basis be referred to as the UAAC and UAACH.
- 1.2 That noncompliance with the Uniform rules and / or Practice directives of the above Honourable Court and requirements thereof and any other law, in regard to, inter alia, the prescribed time and hours(s), periods, form and manner and /or place of service and / or notice and recipient be condoned in terms of Rule 6(12) of the Uniform rules of Court and any other rule or law and that this application be heard on urgent basis.

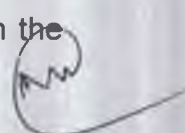
¹ Extract from: The Poems of Dylan Thomas- Do not go gentle into that good night



- 1.3 That pending finalization of the pending main application launched by the applicants under court case number 750/2019 of the Limpopo Local Division, Thohoyandou, amongst the same parties and the Respondents who are not opposing this urgent application and counter application launched by the Respondents therein the Court should grant interim relief in the following terms:
- 1.4 That the UAAC and members of the UAAC shall use the headquarters temple situated at stand number D 179, Tshitasini, Mungomani, ha Mavhunga, Nzhelele, Limpopo Province , RSA from **4 AM to 12 PM**. Provided that there shall be no drum beating and noise singing from 4 to 8 AM.
- 1.5 That the UAAC and members of the UAACH shall use the same headquarters temple situated at stand D 179 Tshitasini, Mungomani, ha Mavhunga, Nzhelele, Limpopo Province, RSA for their church services from **13 PM to 22 PM**
- 1.6 That the headquarters temple situated at stand number D 179 Tshitasini, Mungomani, ha Mavhunga, Nzhelele, Limpopo Province , RSA will be used by both churches in that manner which is consistent with the use of the said temple as on the 22 day of December 2018, being the date and day on which the late Dr Archbishop Mureri Muthuhadini Elias died.
- 1.7 That members of UAACH shall not in any manner whatsoever; either directly or indirectly and / or personally or through other person(s) interfere with the rendering of church services by UAAC, its members and / or organs.
- 1.8 That members of UAACH shall not in any manner whatsoever; either directly or indirectly and / or personally or through other person (s) interfere with the rendering of church services by UAACH, its members and / or organs.
- 1.9 That the UAAC and UAACH shall each provide 3 (three) qualified security officers / guard stand number D179 situated at Tshitasini, Mungomani, ha-Mavhunga, Nzhelele, Limpopo Province, RSA.
- 1.10 That security officers / guards posted at site shall not directly or indirectly and /or personally or through other person(s) interfere with the rendering of church services by the UAAC, its members and organs thereof and



UAACH, its members and organs thereof or carry out any act of human rights violation / violence against any occupant of stand number D179 situated at Tshitasini, Mungomani, ha – Mavhunga, Nzhelele, Limpopo Province, RSA.

- 1.11 The security offices / guards posted at the site shall always wear uniform and their nametags shall always be attached to their uniform in visible manner.
 - 1.12 The two churches shall upon deployment of security guards / officers to the site provide each other with the full names of the security guards / officers who are posted at the site with full names of the security guards / officers who are posted at the site with full names of their employers and contact details of their employers.
 - 1.13 The 1st, 2nd , 5th , 9th , 16th , 30th and 44th Respondents shall give the 2nd applicant access keys for all the gates , officers and the room from which water in stand number D179 situated at Tshitasini, Mungomani, Ha – Mavhunga, Nzhelele, Limpopo Province, RSA is pumped from, on the 15th day of January 2020.
 - 1.14 That main application will be set down for hearing on the 11th day of February 2020, a date that was arranged by the respondents' legal representatives with the registrar on the 14th day of January 2020.
 - 1.15 The applicant shall supplement their founding papers in the main application on or before the 27 January 2020.
 - 1.16 The applicant shall deliver their answering affidavit to the respondents counter application in the main application on or before the 27th day of January 2020.
 - 1.17 The respondents shall deliver their supplementary affidavit to their answering affidavit and replying affidavit to the applicants' answering affidavit to their counter application in the main Application on or before the 3rd day of February 2020.
 - 1.18 The application shall deliver their replying affidavit, if any, to the respondents' supplemented answering Affidavit I the main application on or before the 7th day of February 2020.
 - 1.19 The applicant shall index, paginate and collate the court records on the 8th day of February 2020 before 12PM.
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- 1.20 Save were the costs of this interlocutory application are already regulated by a court order they shall be costs in the main application.
- 1.21 All members of the aforesaid churches shall not directly or indirectly and / or personally or through other person(s) or any means carry out any act of violence at stand number D179 situated at Tshitasini, Mungomani, ha Mavhunga, Nzhelele, Limpopo Province, RSA.
- 1.22 The two churches shall not make media / public statements(s) / comments(s) and against each other or members of each other.
- 1.23 Neither church nor any of their members shall preach hatred against members of their other church involved herein or refer to any member of the other church involved by any name or position of that member or structure during church services.
- 1.24 Both churches shall use the temple situated at stand number D 179, Tshitasini, Mungomani, ha Mavhunga, Nzhelele, Limpopo Province, RSA in a reasonable manner and shall not cause damage to the structure or any contents thereof.
- 1.25 It shall be the responsibility of each church to clean the aforesaid temple immediately after using it.
- 1.26 Each church shall be responsible to made good any damaged caused by it to the aforesaid temple and contents thereof within 14 (fourteen) calendar days of the damage and its becoming aware thereof.
- 1.27 The security guard / officers who are on duty shall do an inventory of the contents of the temple and their condition before and after each church service.
- 1.28 Should any of the churches intend to use the temple situated at stand number D179 situated at Tshitasini, Mungomani, ha – Mavhunga, Nzhelele, Limpopo Province, and RSA such a church shall give a 20 (twenty) calendar days written notice to the other church.
- 1.29 That the costs for drawing this Deed of settlement shall form also be costs in the main application.
- 1.30 That this Deed of settlement be made a court order.



[4] Apart from making the parties' settlement an order of court, Kgomo J added further the following orders and postponed the matter to 11 February 2020.

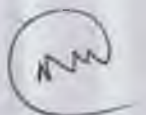
- a) That any bail conditions set by competent court of law against any of the parties herein or any members of church on both sides shall be so respected until they are amended and/ or cancelled by the court.
- b) Nothing bars any of the parties herein engaging in negotiations for the relaxation or cancellation nor amendment of such bail conditions.
- c) The parties are at liberty to approach this court at any time for purposes of specifically dealing with this aspect.

[5] On the 11 February 2020, following heated submissions blended with some emotions displayed by counsel for both the applicants and the represented respondents respectively, I delivered a ruling ex tempore. I find it apposite to include the abridged reasons for the ruling.

Ruling of 11 February 2020

[6.1] I appraised the parties of the challenges encountered that renders the matter not ready for hearing. However, the "urgency" of the matter was considered. A preferential date suitable to the parties and the court was found to be on 24 and 25 of March 2020 notwithstanding the court's tight schedule.

[6.2] Issues to be determined are (i) costs of the day or costs occasioned by postponement of the matter and (ii) whether the "interim order" has lapsed or not. Counsel for the respondents submits that costs occasioned by postponement should be on the applicant's doorstep and that the "interim order" be discharged.



[6.3] During the oral submissions, I noted some hostile attitude that ensued between counsel. It reminded me of the saying: "When two elephants fight, it is the grass that gets hurt".

Costs of the day/ Costs occasioned by the postponement

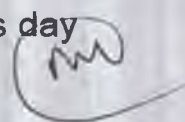
[6.4] On the 15 January 2020 parties agreed, as stipulated in the deed of settlement, that this application be prioritise urgently. It is further stipulated that "pending finalisation of the pending main application" under the case no 750/2019 of this court, the court should grant interim relief in the terms stipulated."

[6.5] The terms are set out in the "Deed of Settlement" that has been made an order of court (see paragraph [3] above). Among the agreed terms is that "the main application will be set down for hearing on the 11 February 2020". Unfortunately, due to challenges I appraised parties, the matter could not be heard.

[6.6] It is common cause that an order of a court of law is binding on parties until it is set aside. Parties are *ad idem* that the matter cannot be heard today (11 February 2020) and arrangement has already been made for the hearing of the main application on the 24 and 25 March 2020. The postponement of the matter is not occasioned by any party's doing but by the unforeseen circumstances parties appraised thereto. The costs falls to be costs in the main application.

[6.7] The critical issue to be determined is whether the "interim order has lapsed." The respondents submit in the positive and applicants in the negative.

[6.8] On perusal of the order of the 15 January 2020 holistically, it is clear that parties anticipated that the matter will be heard to finality on this day



11 February 2020 but for the challenges I alluded to. The matter has to be rescheduled for hearing. The date is set for 24 and 25 March 2020.

[6.9] The main matter has not been finalised as per court order. The order stipulates that "pending finalisation of the pending main application". This, in my view, dictates that the interim order should stand until a judgment in the main application is handed down. It is further my view that the terms of the Deed of Settlement are operative until the main application is finalised or until the order is set aside.

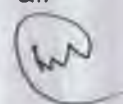
[6.10] Having said that, I find the application declaring the interim order to have lapsed falls to be dismissed.

[6.11] I then dismissed the respondents' application to declare the interim order to have lapsed and directed that the main application be set down for hearing on 24 and 25 March 2020. I further ordered that costs be costs in the main application.

Main Application

[7] In the main application, the applicants seek orders in the following terms:

- 1.1 That the formation of the 2nd, 3rd and 19th respondent as cited herein and / or under any other description, if any, be found to be illegal and/ or unlawful and /or unconstitutional and / or a nullity and / or null and void ab initio and / or invalid and / or invalid and/ or be declared to be as such.
- 1.2 That the alleged appointment of Chief Livhuwani Matsila as the chairperson of the first applicant be found to be illegal and /or unlawful and or unconstitutional and / or a nullity and / or null and void ab initio and / or invalid and / or invalid and/ or be declared to be as such.
- 1.3 That Chief Matsila Livhuwani, David Ailwei Mureri, Mureri royal council and the UAAC new national executive committee (being 2 institutions / formations formed on or about the 2nd day of February 2019) and all



members thereof,. Are interdicted from directly or indirectly or personally or through other person(s), getting involved in and/ or interfering with and/or disrupting the administration and running of the UAAC and conducting of its affairs by the UAAC structures / formations which were in existent on the 22nd day of December 2018 (i.e. the date of death of DR Archbishop Muthuhadini Elias Mureri).

- 1.4 That pending the appointment of the archbishop of the UAAC, the structure of the UAAC which were in force on the date of the death of the late Archbishop Muthuhadini Elias Mureri) i.e. the 22nd day of December 2018 shall remain in force, provided that no person shall carry out any church service / work which was personally the exclusive service / work designated for and to be rendered by the said late archbishop only.
- 1.5 That David Ailwei Mureri is interdicted from interfering and / or getting involved in and / disturbing the family matter / affairs of the late Archbishop Elias Mureri in any manner whatsoever, either directly or indirectly and / or personally or through other persons(s).
- 1.6 That the United African apostolic church new cabinet, David Ailwei Mureri, Chief Livhuwani Matsila, Mureri Royal council, UAAC new executive committee and any member of the aforesaid formations / structures are interdicted from hiring and / or causing hiring of any security company institution / firm to render security services at the UAAC headquarters, situated at stand number1 and / or stand NO 2, Tshitasi, ha- Mavhunga , Mungomani, Nzhelele where the 2nd, 3rd and 5th applicants reside and are with effect from the date of the granting of this court order, ordered to forthwith stop the rendering of such security services by any security services provider, including DRS, whom they have or any of them has bought about, at the costs and expenses of the Respondents.
- 1.7 That David Ailwei Mureri is interdicted from caring out and / or threatening to carry out and / or instigating any act of violence against the 2nd, 3rd, 4th , 5th , 8th, 9th and 10th Applicants and any other member of the 1st Applicant either directly or indirectly, personally or through other person(s), by any means.
- 1.8 That the challenged conduct of the Respondent in this matter is found to be inconsistent with the Constitution and invalid.

- 1.9 That David Ailwei Mureri is interdicted from entering into the homestead / place of residence of the 2nd, 3rd, 4th, and 5th Applicants.
- 1.10 That it is hereby ordered that no person shall be nominated and/or appointed as the archbishop and/or acting archbishop of UAAC until the lapse of the mourning period for the late DR Archbishop Muthuhadini Elias Mureri on 30th Day of December 2019.
- 1.11 That in the event that the respondent or any of the Respondents and/or any other person, causing or having caused and/or having appointed and/or nominated any person and/or causing any person to be nominated and /or appointed to be/ as the archbishop or acting archbishop of the UAAC such nomination and/or appointment be found to be illegal and/or unlawful and/or unconstitutional and/or a nullity and/or null and void ab initio and/or invalid and/or be declared to be as such, even it is carried out after the launching of this application.
- 1.12 That the costs of this application be paid by the Respondents if they oppose this application
- 1.13 Granting the applicants such further and/or alternative relief as the Honourable Court deems
- 1.14 That pending the appointment of the archbishop for the UAAC, David Ailwei Mureri be interdicted from attending church and/or any church service and/or conference and/or gathering of the UAAC and/or holding and/or causing and/or participating on/in any meeting and/or gathering of the UAAC and from phoning any member of the UAAC on any aspect/issue of the UAAC.

[8] The first respondent (David) opposes the application in his personal capacity and on behalf of the other respondents except the Third, Nineteenth and Twenty-sixth respondents (Respondents). The respondents countered. In their counter application, the respondents seek the following order:

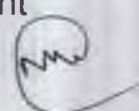


- 4.1 That the second and Third Applicants together with any other member or Director of UAAC United African Apostolic Church with registration number 2019/179109/08 (the newly registered Church) be restrained and interdicted from using the premises of the First Applicant at its headquarters for the activities of the newly registered church.
- 4.2 That the newly registered Church be Retrained and interdicted from using the abbreviations and the name of the First Applicant as its name.
- 4.3 That any party opposing this counter-application be ordered to pay the cost occasioned by the opposition.

[9] The respondents filed their supplementary answering affidavit just after settlement of their answering affidavit. The applicants appropriately replied to both answering affidavits. In the said replies, the applicants raises certain points *in limine*. The applicants raised twenty-six (26) *in limine* points in their reply to the respondents' supplementary answering affidavit and five (5) in their reply to the main answering affidavit. I find it prudent if not inevitable to first deal with the *in limine* points raised. Firstly, the ones raised in the replying affidavit in reply to the respondents' supplementary answering affidavit. I must mention that the respondents did not contest all *in limine* points. They did not even make any submissions to advance any contestation(s).

Lack of deponent's authority to act on behalf of the other respondents and the defective confirmatory affidavits deposed to by respondents in confirmatory to David's supplementary answering affidavit.

[10] The applicants challenge David's authority to act on behalf of all respondents when deposing to the supplementary answering affidavit. Counsel for the applicants submits that David mentioned, specifically in the main answering affidavit, that he deposed thereto in his personal capacity as the first respondent and "...on behalf of the other respondents except for respondents 3, 19 and 26..." He submits that the said averment



is not included in the supplementary answering affidavit. Counsel submits that David cannot just “attach” the supplementary affidavit without authority to do so by other respondents.

[11] Rule 7 of the Uniform Rules of this Court makes provision for the filing of a power of attorney. It provides that a party shall, ‘10 days after it has come to the notice of the other party that such a person is so acting, or, with the leave of the court on good cause shown at any time before judgment, be disputed, where after such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application’.²

² Rule 7(1) Subject to the provisions of sub rules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, where after such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.

(2) The registrar shall not set down any appeal at the instance of an attorney unless such attorney has filed with the registrar a power of attorney authorising him to appeal and such power of attorney shall be filed together with the application for a date of hearing.

(3) An attorney instructing an advocate to appear in an appeal on behalf of any party other than a party who has caused the appeal to be set down shall, before the hearing thereof, file with the registrar a power of attorney authorising him so to act.

(4) Every power of attorney filed by an attorney shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to law; provided that where a power of attorney is signed on behalf of the party giving it, proof of authority to sign on behalf of such party shall be produced to the registrar who shall note that fact on the said power.

(5) (a) No power of attorney shall be required to be filed by the State Attorney, any deputy state attorney or any professional assistant to the State Attorney or a deputy state attorney or any attorney instructed, in writing, or by telegram by or on behalf of the State Attorney or a deputy state attorney in any matter in which the State Attorney or a deputy state attorney is acting in his capacity as such by virtue of any provision of the State Attorney Act, 1957

[12] The respondents failed to satisfy the court that David is authorised to so act on behalf of all respondents who are opposing the application. In the absence of David's application for this court's leave to file such authority or power of attorney to so act, then David may no longer act for or on behalf of other respondents. Even though he may so act only in his personal capacity, the applicants still raise a point that the supplementary answering affidavit falls short of completeness and admissibility because certain crucial confirmatory affidavits of Joel Moloa, Obed Mureri and Betty Mureri are lacking to confirm the allegations he made.

[13] Let me digress and state in *obiter* that the rules in motion proceedings allow only three sets of affidavits. The filing of further affidavits is only allowed with leave of the court. In terms of Rule 6(5) (e) of the Uniform Rules of this Court, the court may in its discretion permit the filing of further affidavits ³ I am bringing this to the fore just to indicate that there is no application or leave sought to file further affidavit(s). The applicant seems not to have any quarrel with the filing of the "supplementary answering affidavit".

[14] Be that as it may, the applicants raises *in limine* points that the confirmatory affidavits David refers to in his supplementary answering affidavit are non-compliant with the regulations⁴ made in terms of section 10 of the Justices of the Peace and Commissioners of Oaths Act (Act 16 of 1963). The regulations stipulates that

³ Rule 6 (5) (d)(ii) provides that any person opposing the grant of an order sought in the notice of motion within fifteen days of notifying the applicant of his intention to oppose the application, deliver his answering affidavit, if any, together with any relevant documents.

Rule 6 (5) e) provides that Within 10 days of the service upon him of the affidavit and documents referred to in sub-paragraph (ii) of paragraph (d) of sub rule (5) the applicant may deliver a replying affidavit. The court may in its discretion permit the filing of further affidavits.

⁴ GN R1258 of 21 July 1972, amended by GN R1648 of August 1977, by GN R1428 of 11 July 1980 and by GN R774 of 23 April 1982

1(1) An oath is administered by causing the deponent to utter the following words: 'I swear that the contents of this declaration are true, so help me God.'

(2) An affirmation is administered by causing the deponent to utter the following words: 'I truly affirm that the contents of this declaration are true.'

2 (1) Before a commissioner of oaths administers to any person the oath or Affirmation prescribed by regulation 1 he shall ask the deponent-

(a) whether he knows and understands the contents of the declaration;

(b) whether he has any objection to taking the prescribed oath; and

(c) whether he considers the prescribed oath to be binding on his conscience.

(2) If the deponent acknowledges that he knows and understands the contents of the declaration and informs the commissioner of oaths that he does not have any objection to taking the oath and that he considers it to be binding on his conscience the commissioner of oaths shall administer the oath prescribed by regulation 1(1).

(3) If the deponent acknowledges that he knows and understands the contents of the declaration but objects to taking the oath or informs the commissioner of oaths that he does not consider the oath to be binding on his conscience the commissioner of oaths shall administer the affirmation prescribed by regulation 1 (2).

[15] The applicants demonstrated that confirmatory affidavit marked DMA 8; DMA 23 and DMA 34 are defective due to non-compliance with the regulations stipulated above in that.

15.1 A deponent to an affidavit cannot depose to a confirmatory affidavit confirming the contents of his/her own main affidavit. I agree.

15.2 One commissioner's certificate has been duplicated and used for other confirmatory affidavits. The commissioner's certificate in respect of DMA 8, DMA 23, and DMA 34 bears the same errors as in one another, casting doubt as to whether the deponents in the said confirmatory affidavits did indeed depose to the affidavit in the

presence of the commissioner of oaths as prescribed in regulation 3 (1)⁵.

[16] The respondents' lack of contestation to these averments leaves me with no option, but to accept that the said deponents did not depose to their confirmatory affidavits in the presence of the commissioner of oaths. The said confirmatory affidavits falls to be struck out.

[17] In paragraph 79 of the respondents' supplementary affidavit, David indicates that he attached DMA 35 and DMA 37 being confirmatory affidavits of Mureri family. Azwifaneli Mureri deposed to DMA 35 and Mashudu Godfrey Mureri to DMA 37 respectively. They confirm the contents of the supplementary answering affidavit deposed to by [David] "as both true and correct in so far as the same refers to me." Both deponents do not state that they depose on behalf of Mureri family duly authorised thereto. A Family is not a natural person. It cannot depose to an affidavit. At best, a natural person must depose on behalf of the family if duly authorised thereto. The confirmatory affidavits marked DMA 35 and DMA 37 lacks such averments and thus falls to be struck out.

Non-compliant with regulation 2(1) of the Regulations Governing the Administration of an Oath or Affirmation

[18] The kernel issue that puts the last crashing nail to render the supplementary affidavit not admissible is the non-compliant with regulation 2(1). For ease of reference, the regulation stipulates

2 (1) Before a commissioner of oaths administers to any person the oath or affirmation prescribed by regulation 1 he shall ask the deponent-

- (a) whether he/she knows and understands the contents of the declaration;
- (b) whether he/she has any objection to taking the prescribed oath; and

⁵ 3 (1) The deponent shall sign the declaration in the presence of the commissioner of oaths.

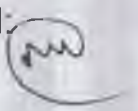
(c) whether he/she considers the prescribed oath to be binding on his/her conscience.

[19] In the supplementary affidavit, a question posed by the commissioner of oaths under (c) directed at the deponent stipulates:

'(c) Do you consider the prescribe oath as binding on my conscience'

[20] The applicants indicate that the commissioner committed a serious mistake in that he enquired from the deponent if the "oath is binding on the commissioner's conscience" and not that of the deponent. Counsel submits that this is fatal to the respondent's supplementary answering affidavit. I agree.

[21] The supplementary affidavit falls short of a core requirement stipulated in the regulation. Tipping the scale of non-admissibility of the affidavit is a fact that the deponent deposed to the affidavit in Polokwane whereas the commissioner commissioned at Siloam SAPS Community Service Centre. In *ABSA Bank Limited v Botha NO and Others 2013 (5) SA 563 (GNP)*, where an objection was lodged in terms of rule 30 of the Uniform Rules of Court, to the use of the incorrect pronoun "he or she" by a commissioner of oaths when attesting a founding affidavit in a summary judgment application. In that application, the applicant submitted that "specific provision is made in the affidavit for an election between "he/she". In the founding affidavit, the deponent specifically declared that she is an adult female whilst the attestation clause omits to identify the gender of the deponent. It was submitted that this omission casts serious doubt on whether or not the document was commissioned properly in the presence of a Commissioner of Oaths in compliance with the relevant legislation and regulations. Kathree-Setiloane J exercised her judicial discretion in refusing to allow the affidavit, which in her view, did not comply with the Regulations for Commissioners of Oaths. She penned:

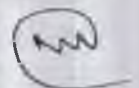


"...[S]ubject to whether there has been substantial compliance with the Regulations, the court has a discretion to refuse an affidavit, which does not comply with the Regulations. Should a commissioner of oaths not certify that the affidavit had been sworn to or affirmed by the deponent, the court will be reluctant to apply the maxim *omnia praesumuntur rite essa acta donec probetur in contrarium*, also known as the 'presumption of regularity'.

[22] In this matter, there is no substantial compliance with the regulations stipulated. Failure on the part of the deponent to indicate that the oath is binding on his conscience and his failure to attest before the commissioner at Siloam SAPS render the affidavit inadmissible. On this leg alone, the supplementary answering affidavit deposed to by David falls to be struck out. I now deal with *in limine* points raised in respect of the respondents' counter application to the applicants' main application.

The constitution annexed by respondents as DM2

[23] The applicants contest the validity of the constitution relied on by the respondents in their counter application annexed as DM2 as the constitution of UAAC. The applicants contend that DM2 which is dated 25 August 1967 is not the original UAAC's constitution as alleged by the respondents. The applicant alleges that the first constitution of UAAC is the one annexed to the applicants' papers marked "RJ2". The Department of Rural Relations and Development accepted RJ2 in 1970 or 1978 as the constitution of UAAC. The government's date stamp is not clear as to the year. It appears as either 1970 or 1978. Its authenticity can be inferred from its typing fonts. It is clear *ex facie* that the document is a product of a typewriter. Even the department at the time was still using the typewriters. He lastly submits that there were no computers in South Africa in 1960 or 1970's.



[24] Counsel for the applicants demonstrates that “DM2” is computer typed. The font that is on the document (DM2) is *ex facie* clear that it is computer typed. He opines that “DM2” has recently been fraudulently manufactured and backdated 25 August 1967. The respondents remain mum on these allegations. No submission was made to rebut the averments. I am persuaded to agree that the document purporting to be the constitution of UAAC marked “DM2”, is not the document that was signed on the 25 August 1967. The point in limine falls to be upheld.

Confirmatory affidavits attached to the main answering affidavit.

[25] The applicants contend that the deponent to the main answering affidavit barely attached confirmatory affidavits without any link to the answering affidavit. Counsel submits that it is not permissible for the deponent to attach confirmatory affidavits to the answering affidavit without alluding to them and their contents. I agree. In the absence of the respondents' contestation thereto, I am left with no option but to uphold the *in limine* point.

Documents served on the applicant are not a replica of documents filed.

[26] The applicants' counsel demonstrates that the answering affidavit, supplementary answering affidavit and some confirmatory affidavits served on them differs materially with those filed with the registrar. Counsel submits that the respondents' delivery of documents is non-compliant with the general accepted practice on delivery as defined by the Uniform Rules of this Court. In fact, the respondents failed to adhere to the definition of “delivery” as stipulated in the rules.

[27] The word “deliver” is defined in Rule 1 of the Uniform Rules to mean- “serve copies on all parties and file the original with the registrar”. In

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practice, delivery is effected when a party requires a receipt on a copy of documents that has been served to be acknowledged on the original by the opponent or recipient. The original is then filed with the registrar. The document filed should be a replica of the original filed. The original filed with the registrar must be a duplicate, word for word, error for error- with the one served on the opponent or recipient.

[28] The applicants demonstrates that the documents mentioned above differs materially with the court's file (the ones filed with the registrar). The rule on "delivery" as defined and described on how it should be effected has been faulted to the letter.

[29] Considering all *in limine* points raised, I am of the view that the respondents' supplementary answering affidavit, the answering affidavit and the counter claim falls to be struck out. The respondents' counsel seemed to concede that the respondents' answering affidavits are not at par with the acceptable rules of practice and may stand to be struck out. He however opines that the issue of costs be determined holistically when dealing with the main application. He further opines that I must deal with the matter as if unopposed. During oral submissions, he attacked the applicants' application as falling short of all requirements of an interdict, with more emphasis on lack of a clear right. This brings me to what the applicants seek in the main application and squarely on the applicants' evidence set out in their founding affidavit. The application is considered unopposed.

[30] The applicants seek orders as set out in the Notice of Motion. I mentioned the orders sought at paragraph [7] above. Let me indicate outright that the applicants abandons prayers 1.4; 1.10; 1.11 and 1.12 because the relief sought has been overtaken by events.



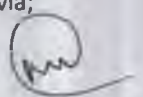
Factual background

[31] The United African Apostolic Church (UAAC) is a church founded in 1918 and managed by Mureri Family. It is situated at stand number 1 Tshitasi, Nzhelele, Limpopo Province. It has a constitution that regulates its activities and management. According to its constitution adopted and attested to on 24 September 2009, annexed to the papers as "J2", UAAC is "a body corporate with perpetual succession capable of entering into contractual relations and of suing and being sued in its own name". Elias was the Archbishop and leader of UAAC as at the time of his sudden death on 22 December 2018. The battle on his succession started immediately after his death and exacerbated by the Mureri Family's court proceedings.

[32] The second applicant deposed to the applicants' founding affidavit. She alleges to be the first of Elias' eight (8) wives. She resides at headquarters situated at no 2, Tshitasi, ha –Mavhunga, Mungomani, Nzhelele, Limpopo Province. Elias entrusted her with the management of Mureri's family affairs including the church. She is the mother of all members of UAAC. She is the manager of eight (8) residential houses built in the headquarters. The said houses have names⁶.

[33] She alleges that as a mother of all members of UAAC, she exercised power of archbishop in Elias's temporary absence. She exercised those powers "in consultation with the relevant organs of the UAAC, including the general Church Council, Senate, the NEC thereof and the Third, Fourth and Fifth applicants". She describes that as governance practice, protocol, or procedure that was in force under the tenure of Elias. To her

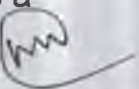
⁶ Winy Azwinndini Tshinanne; France Tshiawelo Munzhelele; Racheal Munzhedzi; Tshisikhawae Maemu Sylvia; Niani 1 district house; Balethavha house; Masakona House; Limbedzi District house.



surprise, immediately after Elias' death, David, (first respondent) established Mureri Royal Council, New UAAC National Executive committee and New UAAC cabinet (second, nineteenth and third respondents respectively)

[34] The formation of the 2, 3 and 19 respondents is not provided for by the constitution of UAAC. It is a vehicle established by David to take over the leadership of UAAC. She further alleges that the formation of the second respondent is unlawful and/or unconstitutional rendering their formation null and void ab initio. The applicants contend that all structures that were in place as at the death of Elias must continue to exist until the appointment of the new succeeding archbishop. The second applicant alleges that David prevented UAAC from holding a meeting and a conference at its headquarters scheduled for 10 and 23 March 2019 respectively. He, David, hired security guards from DRS Company to close and lock the main entrance of the headquarters. She reported the matter at Dzanani Police Station. The police told her that the matter is best suited for civil courts. The police did not assist her.

[35] The second applicant alleges that David approached her on 21 April 2019 and told her that he is going to "bring heavy duty graders and demolish all building structures in which people are residing at Tshitasi including her residential houses". David threatens all residents and occupants at the houses with eviction and to send back all those who originate from Zimbabwe because Elias is dead. She contends that David's threats are violating their rights as enshrined in the Constitution of the Republic of South Africa (Constitution). David's conduct is destructive to UAAC and may lead to the loss of property and lives of members of UAAC. The applicants contend that David's interference with the administration of UAAC is unconstitutional. His violent behaviour comes a



long way. It started during Elias' lifetime. Elias obtained a protection order against David to bar him from his intended threats. Having said that, I find it apposite to now deal with issues encapsulated in the applicants' prayers.

Prayers 1.1 and 1.2 of the notice of motion

[36] It is clear from the facts alluded that the second applicant, as the "mother of all members of the UAAC", was hands on the management of the church even prior to Elias' death. Status quo prevailed after Elias' death. She avers that she remains in charge until proper archbishop successor has been appointed or elected. The second (2), third (3) and nineteenth (19) respondents are creatures established by David and other respondents. The structures were not established in accordance with the provisions spelt out in the UAAC's constitution. The constitution does not make provision for Mureri Royal Council, UAAC New Cabinet and New National Executive Committee respectively. In my view, the formation of structures cited as 2, 3 and 19 respondents is declared unconstitutional of UAAC constitution and therefor invalid. I now turn to the interdicts sought by the applicant(s)

Prayers (1.3; 1.5; 1.7 and 1.9) of the Notice of Motion. (See paragraph [7] above).

[37] The applicants seek a final interdict predominantly against David and the structure he established within UAAC. The requirements for a final interdict are formulated in a classical case, *Setlogelo v Setlogelo*,⁷ as (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the lack of an adequate alternative remedy. (See *Masstores (Pty) LTD v Pick 'n Pay Retailers (Pty) LTD* [2016] ZACC 42)

⁷ 1914 AD 221

[38] Counsel for the respondents submits that the applicants do not have the locus standi in that they lack a “clear right” required for granting of an interdict. Counsel interchangeably used “lack of locus standi” and “clear right” in his quest to persuade this court not to grant an interdict. He refers this court to UAAC constitution (J2), in particular clause 3 sub-clause 1.1. The clause stipulates that “[t]he Arch-Bishop will be appointed from the descendants of Mureri Family by virtue of their consanguinity...” He submits that the second applicant is not a member of Mureri family by consanguinity, thus lacking *locus standi* and by virtue thereof, lacks a clear right. I do not agree. The second applicant does not seek an appointment as archbishop.

[39] The second applicant is one of Elias’ wives. She says she is the first of all Elias’s wives. Even though it is not clear from her founding affidavit when she got married to Elias, it is clear that she resided at stand No 2, Tshitasi with Elias since 1966. She is the mother of all members of UAAC and she managed the administration of the church even during the lifetime of Elias. The terminology “*locus standi in judicio*” simply means the capacity either to litigate, by being sued or to sue without assistance. The classical rule is that every natural person of full legal capacity has a right to sue or to be sued in a court of law.⁸ There is nothing that impedes the second applicant from instituting this motion. She is not mentally challenged.

[40] An applicant must show that he/she has a clear right by demonstrating the interest he /she has in the subject matter that he/she seeks to interdict. In instituting an interdict, the applicant must show that he/she has both the legal capacity to act and a clear right or legal

⁸ In certain instance, a natural person may be restricted e.g. youth, mentally challenged.

connection (nexus) between him/her as the applicant with interest in the subject matter he/she seeks to interdict.

[41] It is clear that the second to tenth applicants are natural persons with full legal standing. They are members of UAAC. The membership of others stretches from as early as 1966 to date. The constitution of the Republic of South Africa (Constitution) protects their rights entrenched in section 31. The section provides that a "person belonging to a religious community may not be denied the right, with other members of that community to practice their religion, to form and maintain religious associations with other organs of the Civil Society"⁹.

[42] In my view, the applicants have demonstrated their clear right to institute this interdict because David and other respondents are disrupting and interfering with the smooth management of UAAC and conducting its affairs through structures formed in accordance with UAAC constitution of which the second applicant is the manager. Interference and disruption of UAAC activities is a direct infringement of the applicant's rights enshrined in section 31 of the Constitution.

[43] David's threat to evict the applicants from their residence they have been staying at, infringes their constitutional rights entrenched in terms of section 21 of the Constitution¹⁰. The applicants have a right to freedom of movement and a right to reside anywhere in the Republic of South Africa.

⁹ 31(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community

(a) to enjoy the culture, practice their religion and use their language; and

(b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

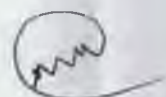
(2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

¹⁰ 21(1) Everyone has a right to freedom of movement.

(2) Everyone has a right to leave the republic.

(3) Every citizen has a right to enter, to remain in and to reside anywhere in, the Republic.

(4) Every citizen has the right to passport




It is further clear that David's interference with Mureri's family affairs, infringes on the applicant's rights. Protection orders sought by Elias during his lifetime and court orders granted against some of David's action is a demonstration of perpetuation of some of infringements of the applicants' rights.

[44] The evidence before this court demonstrates that David persecutes the applicants with threats of violence against the second, third, fourth, fifth, eighth, ninth and tenth applicants. David's threats of evicting the applicants from their home and houses they resided since 1966, fulfils "an injury actually committed or reasonably apprehended", being the second requirement for the granting of an interdict.

[45] What remedy do the applicants have in the circumstances? I am afraid there is none. The applicants are members of the UAAC. They contributed towards its growth. They nurtured the church even during the lifetime of Elias. They reside at the property and have since 1966 been residence thereat. What other remedy will they have if their houses are demolished or even evicted, worse still, being sent back to Zimbabwe? South Africa belongs to all who live in it. Of importance is the applicants' right entrenched in the Bill of Right enacted in the Constitution.

Costs

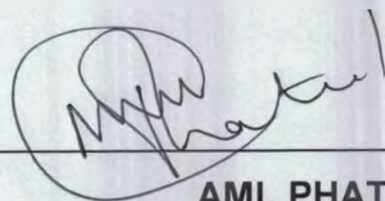
[46] It is trite law that costs follow the event. The applicants are substantially successfully with the entire application and thus entitled to costs. The applicants succeeds in all *in limine* points raised. The applicants are entitled to their costs. They further succeed with the main application. This result in the applicants being entitled to all costs that were ordered to have been costs in the main application.



[47] I, in the result, make the following order.

ORDER

1. All in limine points raised by the applicants are upheld with costs
2. The formation of the second, third and nineteenth respondents is declared invalid and set aside.
3. The appointment of Chief Livhuwani Matsila is declared invalid and is set aside.
4. Chief Matsila Livhuwani, David Ailwei Mureri, Mureri royal council and the UAAC new national executive committee and all members thereof, are interdicted directly or indirectly, personally or through other person(s), from interfering with and/or disrupting the administration and management of the UAAC, which were in existent as at 22 December 2019.
5. David Ailwei Mureri is interdicted from interfering with and / or disturbing the family matter / affairs of the late Archbishop Elias Mureri in any manner whatsoever, either directly or indirectly and / or through other person(s).
6. David Ailwei Mureri is interdicted from caring out and / or threatening to carry out and / or instigating any act of violence against the 2nd, 3rd, 4th , 5th , 8th, 9th and 10th applicants and any other member of UAAC either directly or indirectly, personally or through other person(s), by any means.
7. David Ailwei Mureri is interdicted from entering into the homestead / place of residence of the 2nd, 3rd, 4th, and 5th applicants.
8. The respondents are ordered to pay costs of suit including costs that were reserved or ordered to be costs in the main application.



AML PHATUDI

JUDGE OF THE HIGH COURT

Heard:

24 and 25 March 2020

Handed Down Electronically:

11 June 2020

For applicants:

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Mr. VM Netshipale

For Respondents:

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A handwritten signature in black ink, appearing to read 'VM Netshipale', enclosed within a circular scribble.