THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From:	The Registrar, Supreme Court of Appeal
Date:	29 September 2014
Status:	Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Ecclesia De Lange v The Presiding Bishop of the Methodist Church of Southern Africa (726/13) [2014] ZASCA 151 (29 September 2014)

The Supreme Court of Appeal handed down judgment today in an appeal from the Western Cape High Court, Cape Town. The appellant, the Reverend Ecclesia De Lange, had sought an order against the respondents, the Presiding Bishop and Executive Secretary of the Methodist Church of Southern Africa (the Church) setting aside an arbitration agreement between her and the Church, which had been concluded pursuant to the Laws and Discipline of the Church (the L&D). The dispute between the parties has its genesis in the decision of the Church to suspend the appellant.

The Church's decision to suspend and later discontinue the appellant as a minister arose as a result of her announcement to her congregation of her intention to marry her same-sex partner, and the later marriage itself. She was charged with contravening the L&D, and a disciplinary hearing before the Church's District Disciplinary Committee (DDC) ensued at which it was recommended that she be suspended as a minister until such time as the debate within the Church on the permissibility of same-sex marriages is resolved. On appeal by the appellant to the Connexional Disciplinary Committee the decision of the DDC was confirmed, and the sentence amended to the effect that she be discontinued from the Church's ministry. The effect of the appellant's discontinuation was that she remains an ordained

Minister but is precluded from exercising any ministerial functions, holding any station or receiving any emoluments.

With the appellant having referred the dispute to arbitration pursuant to the L&D, the Convener of the Connexional Arbitration Panel of the Church signed an agreement on behalf of the appellant which fleshed out the terms of, and the process that would govern, the arbitration. The Convener was empowered to do so by the L&D. The appellant then decided to institute an application against the Church for the relief outlined above. She asked the court to exercise its discretion, accorded by s 3(2) of the Arbitration Act 42 of 1965, not to enforce the arbitration agreement. In doing so, she was required to persuade the court that there is good cause for avoiding arbitration in the circumstances of the matter.

The high court concluded that the appellant's 'application is premature and that she should first submit to arbitration'. It accordingly dismissed the application with costs, but granted leave to the appellant to appeal to this court.

Before this court, it was noted that 'good cause' is a phrase of wide import that requires a court to consider each case on its merits in order to achieve a just and equitable result in the particular circumstances. The court approached the appellant's various grounds thus: Regarding her contention that there is no valid arbitration agreement, it was noted that the appellant accepted that the convener was entitled to sign on her behalf, thereby bringing a binding agreement into force. It follows that a valid arbitration agreement was concluded between the parties and that the appellant should be bound by its terms. Regarding her contention that the delay in concluding the arbitration agreement constitutes good cause for the court to order that the arbitration can be avoided, it was held that the delay was for the most part explicable, and is in addition attributable, at least in part, to the appellant herself. Regarding the appellant's argument that the arbitration agreement signed on her behalf by the convener is weighted heavily against her for various reasons, this court held that no such reasons are valid. As regards her contention that the arbitrator, as a member of the Church, acts at the behest of the Church and is thus biased or is reasonably perceived to be biased against her, the court noted that there is nothing objectionable in private associations seeking to exclude outsiders from disciplinary processes, and thus the appointment of the arbitrator in the instant matter was valid, and in any event no such argument is made out on the papers. Finally, the appellant contended that she should not be required to submit to the arbitration because it would be a futile process, which argument this court held to be unfounded as a

clear factual dispute exists between the parties which can necessarily be determined in arbitration proceedings. In the result none of the grounds advanced by the appellant for seeking to avoid the arbitration were held to pass muster.

Finally, the court noted that the clear advantages of arbitration as compared to court processes (including expedition, finality and cost-effectiveness) are compounded when one considers the nature of the particular dispute. Invoking the 'doctrine of entanglement', in terms of which the courts are reluctant to become entangled in disputes of a religious nature, becomes appropriate, particularly where the determination called for falls within the core of religious functions, such as in the instant matter. Such a dispute, as far as is possible, should be left to the Church to be determined domestically and without interference from a court. A court should only become involved in a dispute of this kind where it is strictly necessary for it to do so.

The appeal was accordingly dismissed. In arriving at that conclusion this court emphasised that the appellant had unequivocally disavowed 'a claim of unfair discrimination based on sexual orientation' and that it therefore could not decide the case on a basis that she disavowed.