THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case No: 957/2018

In the matter between:

MDUDUZI SHEMBE	**FIRST APPELLANT**
NKOSI MQOQI NGCOBO	**SECOND APPELLANT**
MBONGWA FRIEND NZAMA	**THIRD APPELLANT**

and

NTOMBIFIKILE PRIMROSE SHEMBE NO	**RESPONDENT**

and

VUKILE VUKUKHULE SHEMBE	***AMICUS CURIAE***

Neutral citation: *M Shembe v N Shembe NO* (957/2018) [2019] ZASCA 172 (2 December 2019)

Coram: Petse DP, Plasket and Mbatha JJA, Tsoka and Gorven AJJA

Heard: 7 November 2019

Delivered: 2 December 2019

Summary: Appeal – factual findings of trial court – test restated – no basis for interference unless finding vitiated by material – no material misdirections in findings of trial court – appeal dismissed.

ORDER

On appeal from: KwaZulu-Natal Division of the High Court, Pietermaritzburg (Madondo DJP, Mnguni and Poyo Dlwati JJ sitting as court of appeal):
The appeal is dismissed with costs, such costs to include those occasioned by the employment of two counsel.

JUDGMENT

Gorven AJA (Petse DP, Plasket and Mbatha JJA and Tsoka AJA concurring):

[1] This appeal concerns leadership succession in the Nazareth Baptist Church. The previous leader was Vimbeni Shembe (the late leader). He died at his home at Ebuhleni on 28 March 2011. The leader chooses his successor. His choice is not made known during his lifetime. If it was, the chosen successor may well be killed. The appeal in no way involves religious beliefs or doctrinal issues. It turns purely on the facts. The crisp issue is who the late leader chose to succeed him.

[2] The appellants initially contended that the sole choice of the late leader was his son, the first appellant. He expressed that choice orally. They also initially contended that the signature on a written nomination of Mr Vela Shembe, his nephew, was a forgery. The appellants now accept that it was indeed signed by the late leader. Their case on appeal is that the late leader nominated both his son and his nephew.

[3] Vela Shembe applied for an order declaring him to be the leader. This spawned a number of other applications. Most were interlocutory but one claimed

that the first appellant was in contempt of an order granted in another of these applications. Nothing more need be said about the contempt application since this has been finally decided.

[4] Jappie JP heard oral evidence in the KwaZulu-Natal Division of the High Court, Durban (the trial court). Twelve factual disputes were identified in the consolidated applications. The trial court distilled those to the single issue of succession. It held that the late leader chose Vela Shembe, alone, to be his successor. The substantive order that was granted reads:

'That effect be given to the Deed of Nomination wherein the late leader Mbusi Vimbeni Shembe nominated Vela Muhle Shembe as the appointed titular head of the Nazareth Baptist Church at Ebuhleni.'

In respect of all but the main application, the trial court declined to make costs orders.

[5] The trial court granted the appellants leave to appeal to the full court of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the full court). Two members (Mnguni and Poyo Dlwati JJ) upheld the judgment of the trial court on the main issue. They ruled that the trial court should have granted the first appellant costs in the contempt application and granted an order to that effect. There is no appeal against this costs order. A minority judgment (Madondo DJP) concluded that the late leader chose both Vela Shembe and the first appellant. The appeal comes before us with the special leave of this court.

[6] Before the judgment of the full court was handed down, Vela Shembe died. For convenience sake, I shall refer to Vela Shembe as Vela and to the first appellant, Mr Mduduzi Shembe, as Mduduzi. After initially identifying witnesses, I shall refer to them by their surnames for the same reason. No disrespect is intended by this. The respondent has been substituted for Vela in her

capacity as the executrix of his estate. Mr Vukile Vukukhule Shembe, was given leave before the hearing to intervene as *amicus curiae*.

[7] Some brief background to the dispute is necessary. The founder of the church was Isaiah Shembe. He died on 2 May 1935. The church he founded was based at Ekuphakameni. He was succeeded as leader by a son, Johannes Galilee Shembe. Another son, Isaack (as spelt in the trust deed mentioned below), was appointed by the founder as his heir. In 1935, this son formed the Church of Nazareth Ecclesiastical Endowment Trust to hold the founder's many immovable properties. The leader of the church was the sole trustee. The trust deed also dealt with other matters, including succession issues in the church.

[8] When Johannes Galilee Shembe died, bloody conflict arose over who should succeed him. The contestants were his brother and third son of Isaiah Shembe, Amos K Shembe, and the son of Johannes Galilee Shembe, Londa Shembe. This has not been resolved and ultimately led to splits in the church. Each grouping appears to claim that it is the true expression of the church founded by Isaiah Shembe. One grouping, led by Amos K Shembe, ended up at Ebuhleni. There is ongoing litigation on a number of issues arising from the above. Some of these are the subject of pending litigation in the KwaZulu-Natal Division of the High Court.

[9] The present succession dispute concerns the Ebuhleni grouping and this grouping alone. Unless it is necessary to distinguish it from other groupings, I shall simply refer to this grouping as the church. Nothing in this, or previous judgments in this matter, must be construed as pronouncing on anything other than who the late leader chose as his successor. This includes the brief history set out above.

[10] As mentioned, the trial court was asked to resolve factual disputes. The approach on appeal is that factual findings of a trial court bind an appeal court unless it can be shown that they are vitiated by material misdirection.[1] Neither judgment of the full court appears to have adopted this approach. Both unfortunately strayed from the proper terrain of an appeal court. The full court was simply called upon to decide whether any of the factual findings of the trial court could and should be interfered with on appeal.

[11] The trial court made two foundational factual findings in arriving at its conclusion. First, it found that the constitution of the church (the constitution) governed the question of succession in the church. It found that the trust deed did not apply to this issue. Secondly, and based on the first finding, it found that the late leader had nominated Vela as the sole appointed leader of the church. I shall deal with each in turn.

[12] The trust deed was executed in 1935. It governed all matters concerning the church as it existed then, including succession to the leader. Clause 8 is the relevant one:

'Upon the office of Titular Head of the Church of Nazareth becoming vacant the Executive and Advisory Committee shall elect a successor from amongst the pastors of the Church of Nazareth and such successor may be one of the members of the said Executive and Advisory Committee, provided that if the office should be rendered vacant by death and the deceased Titular Head shall have recommended certain names from whom his successor is to be appointed then the choice of a successor shall be confined to the choice of one of those persons whose names have been recommended by the deceased Titular Head.'

In 1999, after the split, it is common ground that the church, led by the late leader, adopted the constitution. Clause 10.1 of the constitution dealt with succession:

'The Head and Leadership of the church shall during his lifetime nominate and appoint his successor in office.'

[1] *R v Dhlumayo & another* 1948 (2) SA 677 (A) at 705-706.

[13] It can thus be seen that in both instruments, the leader nominates. In the trust deed, there is a provision for the leader to nominate more than one potential successor. In such a case, a body called the Executive and Advisory Committee decides between the nominees, but is obliged to appoint one of them. The leader does not appoint. In the constitution, on the other hand, the leader both nominates and appoints. The nomination by the leader becomes operative as an appointment on his death. No other body or procedure is involved. Also, the leader nominates and appoints 'his successor'. This connotes a single person. Two people cannot be appointed as successor. It thus squares with the nomination amounting to an appointment after the death of the leader. It is accordingly of some moment as to which of these instruments governed the succession in the present matter.

[14] The trial court found as follows:

'[T]he provisions of the trust deed insofar as the succession of leadership and titular head of the church is concerned applies only to the church which had its headquarters at Ekuphakameni. There was no evidence led before me that the trust deed was ever adopted or used or applied at the church which has its headquarters [at] Ebuhleni.'

From the first sentence, it is clear that the second sentence relates only to the succession issue. The first sentence is obviously only intended to support the conclusion that the trust deed did not apply to the church. The trial court found:

'[T]he document that has to be given effect to in this dispute is the Constitution.'

Of course, this does not mean that the trust deed does not apply at all to the church. It means only that the constitution is the only document which regulates 'this dispute' as to succession.

[15] The appellants were asked to submit whether this finding was in any way vitiated by misdirection on the part of the trial court. They were unable to do so. Only one submission was proffered in response. This was that the terms of the

written nomination show that it was made pursuant to the trust deed. The substantive part of the nomination was as follows:

'DEED OF NOMINATION OF TRUSTEE & TITULAR HEAD OF THE NAZARETH BAPTIST CHURCH

I, the undersigned, MBUSI VIMBENI SHEMBE, in my capacity as the Titular Head of the Nazareth Baptist Church and sole Trustee of the Church of Nazareth Ecclesiastical Endowment Trust, do hereby nominate and recommend VELA MUHLE SHEMBE (I.D. NO. 620224 5835 08 3) for appointment as Titular Head of the Church and sole Trustee of the Trust after my death.

I specifically direct that the nomination which I have made herein should be publicly announced on the date of my funeral so as to avoid any dispute regarding the leadership of the Church.'

The nomination nowhere states that it is made under the trust deed. It certainly mentions leadership and trusteeship. The leader of the church has always functioned as the sole trustee of the trust. Regardless of any disputes with other groupings which emerged from the mother church on the trusteeship issue, it is accepted as regards the present dispute that the new leader will be the new trustee. It is therefore hardly surprising that the late leader mentioned both offices. He regarded himself as both leader and trustee. His reference to both does not mean that the trust deed applies to leadership succession.

[16] The trial court took into account the evidence of Mr Sibisi in this regard. He was the secretary general of the church under the late leader as well as his predecessor. The late leader had granted him a general power of attorney over his affairs. He stated clearly that the late leader wanted a constitution to govern leadership and other matters of church administration. The constitution had been adopted after a number of gatherings of the church membership. No issues had ever been raised which questioned whether the constitution applied in the life of the church. Clause 8 of the constitution provides that the leader and his committees must carry out the provisions of the constitution. The trial court found

that: '. . . no evidence was led showing that the trust deed was ever adopted or used or applied at the church.' In argument before us, no evidence was pointed to in the record which gainsaid this finding.

[17] The minority judgment misconstrued the findings of the trial court. It held that:

'The court *a quo* held that the Trust Deed only finds application to the church situated at Ekuphakameni.'

In fact, as set out above, the finding was:

'[T]he provisions of the trust deed insofar as the succession of leadership and titular head of the church is concerned applies only to the church which had its headquarters at Ekuphakameni.'

The words 'insofar as the succession of leadership and titular head of the church is concerned' are omitted from the minority judgment but are intrinsic to the approach of the trial court. It did not hold that the trust deed did not apply at all, only that it did not apply to the succession of leadership in the church.

[18] The minority judgment of the full court went on to hold that only the trust deed applied to the succession issue. It found that:

'[A]ll the positions of the Church of Nazareth created by and held in terms of the Trust Deed are governed and regulated by its provisions to the exclusion of the Constitution of the Nazareth Baptist Church adopted in 1999.'

It based this conclusion on its view that the constitution did not make provision for succession to the position of sole trustee. There are difficulties with this approach. As has been mentioned, the trial court found as a fact that succession and other administrative issues in the church had been solely regulated by the constitution. This was partly based on the evidence of Sibisi, who testified that the constitution 'became the operating document of the Church'. It was not challenged that the constitution was proposed by the late leader, accepted by the church and never questioned. The factual position is as was found by the trial

court. On the question of succession, its provisions differ from those of the trust deed as demonstrated above. Where a later document is adopted, the parts of an earlier document that are inconsistent with it are regarded as having been varied. This applies to the present dispute. Thirdly, the trust makes it clear that the leadership of the church and the trusteeship go hand in glove. The trust deed appointed:

'JOHANNES GALILEE SHEMBE . . . the recognized Titular Head of the Church of Nazareth, (hereinafter with his successors in office as Titular Head of the Church of Nazareth referred to as the TRUSTEE) to be the TRUSTEE to carry out the terms of this Trust.'

The adoption of a different instrument for choosing the leader does not change this. His duties as trustee are governed by the trust deed, as also other areas not dealt with by the constitution.

[19] The minority judgment arrived at its finding without pointing to any material misdirection of the trial court. This is impermissible. Apart from the reasoning set out above, the full court was bound by the finding of the trial court. It was not open to it to arrive at the conclusion that the trust deed applied to the succession issue. The majority judgment did not deal squarely with this issue. It appears to have accepted the minority finding in this regard:

'We are in agreement with the interpretation of the provisions of both the Trust Deed Protocol 293/1935 and the Constitution of the Nazareth Baptist Church and their applicability in these proceedings.'

It did so without analysing the reasoning of the trial court. This finding of the majority thus stands or falls by the correctness of that of the minority judgment. It must accordingly suffer the same fate. The factual finding of the trial court that the constitution applied to the leadership succession issue must accordingly stand. This is also consistent with the order of the majority upholding the order of the trial court on the succession issue.

[20] It may be thought that the debate as to which instrument governed the succession is a sterile one. Not so. As mentioned above, if the constitution applies, the choice of the late leader amounted to both a nomination and the appointment of the leader on his death. No other body or procedure was necessary for the leader to be appointed and thus to be entitled to exercise the leadership functions of the church.

[21] The next factual finding of the trial court is that the late leader nominated Vela as his sole successor. The majority of the full court agreed. The minority judgment accepted that the late leader nominated Vela in writing, but held that he also nominated Mduduzi orally. Attention must now turn to the way in which the minority judgment dealt with this factual finding.

[22] Much of the evidence concerning the written nomination was given by Mr Buthelezi. He was the only attorney used by the late leader and the church. The trial court, in approaching the issue, said:

'[T]here is not a scintilla of evidence which casts the slightest doubt on the character and integrity of Mr Buthelezi.'

The appellants did not even attempt to attack this assessment. The trial court held that his evidence should be accepted. This finding bears strongly on the issue of whether Mduduzi was also nominated.

[23] The chronology of events tells a story. Buthelezi first met the late leader during 1995 when he was briefed to represent him in a court case challenging his leadership. It will be remembered that the constitution, allowing for a single nomination and appointment by the leader, was adopted in 1999. During late January 2000, the late leader told Buthelezi that he wanted to avoid another succession battle after his death. In order to do so, he asked Buthelezi to draft a document nominating his successor. He ensured that Buthelezi included the full

names and identity number of the nominee. Buthelezi drafted the document and sent it to the late leader. The signed document was returned to Buthelezi dated 11 February 2000. It was witnessed by Sibisi and one other person. Buthelezi kept it in his safe until the death of the late leader. Though the content of the nomination has been set out earlier in this judgment, the last paragraph of that document bears repetition:

'I specifically direct that the nomination which I have made herein should be publicly announced on the date of my funeral *so as to avoid any dispute regarding the leadership of the Church*.' (My emphasis)

[24] Nothing more was communicated to Buthelezi on this score until, on 16 March 2011, he received a letter addressed to him written in isiZulu and signed by the late leader. It was also initially claimed by the appellants that this was a forgery, but this contention has been abandoned in the light of expert evidence to the contrary. The letter was delivered by Sibisi. Buthelezi's secretary left a note to phone Sibisi which he did. Sibisi told him that the late leader had directed the delivery of the letter and had requested that Buthelezi read it. He told Sibisi to convey to the late leader that he had done so. In translation, the body of this document read:

'Sir,

I am not well. I want to remind you of my brother whom I brought to your office with his ID. Should I die, please introduce him to the church during my funeral as the leader of the Nazareth Church. That man is Vela Shembe. You will ask to address the church before my burial.

Thank you.'

Sibisi confirmed this aspect of Buthelezi's evidence.

[25] This evidence is significant. A bloody succession battle eventually led to the mother church splitting. The succession struggle involving the late leader included recourse to the courts. The late leader made it clear that he wanted to avoid any repetition of this on his death. He took careful steps to further this

objective. He promoted a constitution which provided that the leader nominated and appointed a single successor so that no other body or procedure was involved. He had his choice reduced to writing and signed it. He nominated one person. He ensured the inclusion of the full names and identity number of his nominee. When he was close to death, he reminded Buthelezi in writing of his instruction to announce Vela as the leader at his funeral. The reminder was sent on 16 March 2011, twelve days before his death. This date was, on any version, the last claimed communication of his choice. The desire to avoid leadership disputes after his death runs like a golden thread through these actions of the late leader. He aimed for a seamless transition in the leadership of the church, without any disputes.

[26] All of this was further buttressed by the evidence of Dr Roberts, who attended on the late leader. He had been diagnosed with liver cancer in January 2011. On 21 February 2011 and 8 March 2011, respectively, Roberts spoke to him about the issue of succession. The late leader told him that this was being taken care of by his lawyer who 'will announce what's appropriate at the right time'. He made no mention that anyone else would make such a communication.

[27] The cogency of this evidence was contrasted by the trial court with the evidence led in favour of a second, oral nomination. The main witness who testified in support of this was the second appellant, Inkosi Ngcobo. He is the chief within the amaQadi tribe in whose area the late leader resided and where the church is situated. It is worth referring in some detail to the tenor of this evidence. The second appellant, in the papers and in evidence, averred that the late leader told him on four occasions that he had chosen Mduduzi. The first was on 2 September 2010 at Ladysmith. The next was on 10 January 2011, when he was in the company of Inkosi Qwabe. The third was either on 17 or 18 February 2011. The last was on 5 March 2011. This last occasion was 23 days

before the late leader died. During these communications, the late leader made no mention of his nomination of Vela.

[28] Of significance in evaluating this evidence is what took place at the funeral of the late leader, on 3 April 2011, and in the lead up to it. The second appellant became aware that Buthelezi was to announce the successor at the funeral. He phoned Buthelezi and asked him who had been chosen. Buthelezi would not disclose this, saying only that the late leader had told him to announce it at his funeral. On the day of the funeral, Buthelezi met the amakhosi. Here the second appellant attempted to persuade him not to make the announcement. Buthelezi gave a similar response: he would comply with the wishes of the late leader and make the announcement. On neither of these occasions did the second appellant disclose that the late leader had made an oral nomination to him at all, let alone that he had chosen Mduduzi.

[29] The funeral organising committee was told that Buthelezi was to announce the successor. It decided to put this at the end of the programme. No indication had been given to the committee that the second appellant was to make such an announcement. At the funeral, the second appellant took the programme director by surprise. Not only was he not scheduled to speak at that point, he was also not scheduled to say anything about succession. He did not say that the late leader had told him who was to succeed him. Instead, in a rambling address, the following emerged.

[30] In the context of his saying that he had heard that someone was going to announce the successor, he said:

‘The holy prophet was given a piece of land by the king of the AmaQadi, namely Mzonjani Ngcobo. Don’t point and show us the person. I’m not scared of appointing the person. It is all within my right. I have all the right to appoint a person . . .’.

He went on to claim that any writing to the contrary was forged. He then said:

'Do not announce anything, Mr . . . [inaudible], I know that you are present here. Do not do your announcement, Mr . . . [inaudible], I know that you are here, I know that you are listening and I know that you have something against me here at Ebuhleni . . . . I want to say to the children that the person who is going to make the announcement is myself. Nobody else is going to make the announcement. The name where it is claimed that the holy prophet wrote, that document or that paper could be brought. However, I am the one who is going to do the announcing.'

He also said:

'Now, let me repeat this once more before you, maNazaretha, I say I will do what my father, iNkosi AmaQadi, did during iNyanga YeZulu's era in 1976 when he had descended from the top of Nhlangakazi, the holy mountain, iNkosi said take this staff . . . and lead these people, which he did, that is iNyanga YeZulu, in other words, he was installed or appointed by the iNkosi AmaQadi Mzonjani, my father, as the titular head of the church.'

And finally:

'Your leader comes from the house or branch of iNyanga YeZulu, not from outside thereof, do not be confused, I have all the rights as iNkosi of the tribe, I am in charge, your leader, maNazaretha, is Mduduzi Shembe.'

It was only after this announcement had been made that Buthelezi was able to make his announcement that the late leader had appointed Vela. One can only imagined the confusion that was created.

[31] It seems highly unlikely that, knowing that Buthelezi was going to announce Vela as the new leader, the second appellant would not tell Buthelezi of the additional nomination. This is all the more so since he indicated that the reason he approached Buthelezi was to avoid potential conflict. It is further unlikely that he would not inform the organising committee or the programme director that he was to make an announcement on succession. It is also unlikely that, if the late leader had nominated Mduduzi, the second appellant would not have said so at the funeral rather than purporting to make the choice himself. His evidence goes against the avowed intent of the late leader to avoid disputes as to leadership succession upon his death. In that light, it is highly improbable that the

late leader would have made a second nomination. It is even less probable that he would have made an oral nomination when he was clearly aware that he had made a written one already. It is inconceivable that, having communicated this to the second appellant for the fourth time, he would tell his doctor three days later that his attorney alone was to deal with succession. It totally beggars belief that he would send a written request to Buthelezi eleven days after the last of his communications to the second appellant confirming a single choice of Vela without any mention of his having made a second, contrary, nomination.

[32] The minority judgment incorrectly held that the trial court 'merely measured the credibility of the second appellant against his omission to expressly state at the funeral that he was mandated by the late leader to make an announcement as to who the new leader was.' The trial court's rejection of the evidence of the second appellant went far further. The minority judgment criticised the trial court for failing to weigh the evidence in its totality and to distinguish probabilities and inferences from conjecture or speculation, but is itself subject to those shortcomings. In any event, I do not believe that it can be said that the trial court was guilty of any material misdirections.

[33] I can find no material misdirections by the trial court in its evaluation of the evidence as a whole. It is now accepted by the appellants that the only written nomination of the late leader was of Vela. It is also now accepted that the letter delivered to Buthelezi on 16 March 2011 was written and signed by the late leader. This reiterated his appointment of Vela wanting him introduced 'as the leader of the Nazareth Church', not only the nominee. The late leader twice told his doctor that Buthelezi would deal with succession. The last of these occasions was three days after the second appellant claimed that the late leader told him that he had chosen Mduduzi as his successor, not as a mere possibility but the only choice. The letter was sent some eleven days after the last alleged communication to the second appellant.

[34] For all of the above reasons, and others which need not be canvassed, it cannot be said that the trial court misdirected itself in the finding that the only choice of successor was Vela. In my view, that conclusion is unassailable. No actual misdirections were identified. The full court was accordingly bound by this second finding, as is this court.

[35] The contribution of the *amicus curiae* must be weighed. It is now established that an *amicus* must be able to make a contribution to the actual issue between the parties. In *National Treasury & others v Opposition to Urban Tolling Alliance & others*,[2] the Constitutional Court held:

'It is sufficient to observe that an amicus must make submissions that will be useful to the court, and which differ from those of the parties. In other words, the submissions must be directed at assisting the court to arrive at a proper and just outcome in a matter in which the friend of the court does not have a direct or substantial interest as a party or litigant.'[3]

This approach was later approved and summarised:[4]

'The principles governing the admission of a party as an amicus curiae are now well settled. An applicant for admission as an amicus curiae must: *(a)* advance relevant, useful and new contentions going beyond those of the litigants; *(b)* not adopt a partisan stance "better suited to a litigant than a friend of the court"; and *(c)* advance submissions aimed at assisting the court to reach a just outcome.'

[36] In the present matter, the *amicus* does not seek to assist in arriving at a proper and just outcome in the appeal, only to attempt to correct certain *dicta* of the full court, particularly in the minority judgment. In his heads of argument he goes so far as to say,:

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[2] *National Treasury & others v Opposition to Urban Tolling Alliance & others* [2012] ZACC 18; 2012 (6) SA 223 (CC).
[3] Paragraph 13. (References omitted).
[4] *Maledu & others v Itereleng Bakgatla Mineral Resources (Pty) Ltd & another* [2018] ZACC 41; 2019 (2) SA 1 (CC) para 33. (References omitted).

'The amicus has no interest in the decision of whether it is Vela Shembe or Mduduzi Shembe who succeeded Inkosi Vimbeni Mbusi Shembe as leader of the Nazareth Baptist Church, Ebuhleni. Rather, his interest in the proceedings is to correct the approach of the Full Bench (sic) which led to it making findings which go beyond the leadership contest between Vela Shembe and Mduduzi Shembe . . .'.

It is correct that certain *dicta* of both judgments of the full court strayed beyond the specific issue confronting it. The *amicus* accepted that this could not be said of the trial court. From the accepted test for the contribution of an *amicus*, however, this is no basis on which to appear in a matter. The *amicus* was of no assistance in arriving at a decision on the issues before us. I therefore do not regard it as necessary to deal with any of the points raised by the *amicus* in support of his avowed interest.

[37] The final set of submissions of the appellants was that the trial court erred in failing to make costs orders in the various applications spawned by the main one. It is so that the trial court did not fully motivate why it came to the decision not to make any costs orders. The effect of this is that each party pays its own costs. However, it seems clear from the approach of the trial court as a whole that it felt that the appellants prevailed in some applications and the respondent in others. It can also be said that in matters such as these, where two factions which belong to the same body are at loggerheads, further costs orders may well unnecessarily add fuel to any resentment caused by the main order. I see no reason why the discretion of the trial court in this regard warrants interference on appeal.

[38] In the result, the following order is made:

The appeal is dismissed with costs, such costs to include those occasioned by the employment of two counsel.

T R Gorven

Acting Judge of Appeal

APPEARANCES:

For Appellants:	RG Choudree SC (with him M Xulu) Instructed by: Govender, Mchunu & Associates, Durban Honey Attorneys, Bloemfontein
For Respondent:	A Findlay SC (with him R Ungerer) Instructed by: Trevor Nkosi Attorneys, Durban Matsepes, Bloemfontein
For the *Amicus Curiae*:	M Du Plessis SC (with him T Palmer) Instructed by: Lee Attorneys, Durban Webbers, Bloemfontein