



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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*Hendricks v The Church of the Province of Southern Africa, Diocese of Free State (108/2021) [2022]
ZASCA 95 (20 June 2022)*

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing, with costs, an appeal against the decision of the Free State Division of the High Court, Bloemfontein

This appeal concerned a decision of the respondent, the Church of the Province of Southern Africa, Diocese of Free State to revoke the appellant's licence to practise as a priest. The decision to revoke his licence was taken as a consequence of the appellant's refusal to move to an alternative parish when requested to do so by the Bishop. The appellant appealed the Bishop's decision to the Archbishop. The Archbishop confirmed the Bishop's decision.

The relevant Canons of the respondent were relied upon by the majority and minority judgment in arriving at the decision.

Canon 26 provides that if the Bishop of the Diocese considers that for pastoral reasons the work of God in a Pastoral Charge demands that there should be a change of a cleric, the Bishop shall (failing the consent of the cleric to the change) take counsel with...three priests of the Diocese, and if the majority of them agree, after giving the said cleric an opportunity to be heard, the Bishop shall offer the cleric another ministry in the Diocese. 'However, if it appears to the Bishop, either before embarking on this process or during the process, that the reason for the need for a change relates to matters which could constitute charges or accusations in terms of Canon 37.1, then in the absence of any charge under Canon 37.1, . . . the Bishop shall proceed in terms of Canon 39, in respect of those matters and, in respect of any balance of issues that remain, may continue with the search should that be appropriate.'

Canon 25(7) provides that If the cleric refuses to accept another ministry offered, the Bishop, upon being satisfied after pastoral ministrations that no other course is possible, shall have the right upon notice to the cleric to revoke, upon the expiration of three months' notice, the licence, of the cleric, subject to the right to appeal to the Archbishop.

Canon 37 provides for judicial proceedings. It sets out a list of the charges or accusations upon which any priest may be presented for trial. These include, inter alia, financial mismanagement. Canon 39

provides for the procedures to be followed once Canon 37 comes into operation. In 2017, aspersions were cast against the appellant in relation to his dealings with the respondent and financial mismanagement issues. As far as the Respondent was concerned, those charges had been dealt with. Thus no trial was contemplated.

In 2018, the Bishop informed the appellant that he was considering moving some of the priests and that the Bishop's office intended to move him from St Margaret's with effect from November/December 2018. He was invited to engage with the Bishop's office in this regard. The appellant refused to consent to the move. He stated the Bishop had failed to provide reasons for placement at another parish. The appellant refused to visit the other parishes suggested, meet with structures of the respondent, or accept the Bishop's decision. He was thus informed that the Bishop's office had no alternative other than to invoke Canon 25(6) of the Constitution. On several occasions the appellant was given reasons for the move. There were certain aspersions made against the appellant, which the Respondent failed to deal with adequately. Thus, there was disharmony amongst parishioners. It was thought that a fresh start would be a positive move for both the appellant and the parish. The appellant was not satisfied with the reasons given by the Bishop.

The Bishop's office informed the appellant that the matter was being referred to the Bishop's Council in terms of Canon 25(6). On 6 December 2018, the Respondent informed the appellant that, at the sitting of the Bishop's Council meeting the Council unanimously gave their support to the Bishop's office to invoke Canon 25(6) against him. This meant that the Bishop's office was empowered to revoke the appellant's licence within the Diocese of the Free State. As a result of his continued challenge of its decision, his deliberate and wilful ignorance of its directives, and his deliberate and wilful failure to meet with the Bishop to discuss his future in the Diocese of the Free State, the respondent had taken a decision to officially revoke his licence in the Diocese of the Free State.

The majority judgment found that the respondent had followed the prescripts of the Canons. The Bishop had followed all the requisite procedural steps in making his decision to move the appellant and in deciding to revoke the appellant's licence. Procedural fairness in line with the rules and regulations of the Respondent was complied with. He was given the opportunity to be heard, and to engage with the relevant structures. He refused these invitations. It was not necessary, in the circumstances for the respondent to have invoked Canons 37(1) and 39.

In a dissenting judgment, it was found that the proper procedures were not followed. The charges relating to financial mismanagement were the reasons for the respondent's decision. The dissenting judges stated that financial management issues were the reason for the move and were matters which *'could constitute charges or accusations in terms of Canon 37.1*. They referred to Canon 25(6) which stated that *'... in the absence of any charge under Canon 37.1, the Bishop shall proceed in terms of Canon 39, in respect of those matters and, in respect of any balance of issues that remain, may continue with the search should that be appropriate'*

The minority judgment found that the decision to change the appellant's placement was because of the financial mismanagement issues. It found that there was a total disregard of fundamental principles of fairness enunciated in the respondent's canons which warranted the high court's intervention by way of a review.

The minority judgment found that the undisputed evidence showed that the decision to change the appellant's placement was predicated exclusively on serious allegations, which called for the invocation for canon 39. It therefore found that the change in placement ought to have been deferred while the machinery in canon 39 was being set in motion. The minority judgment found that based on all the circumstances and a conspectus of all the relevant facts, the High Court should have reviewed and set aside the Bishop's decision as it was irrational. The minority judgment concluded that it would have upheld the appeal with costs, set aside the decision of the High Court and replaced it with an order reviewing and setting aside the Bishop's decision with costs, and remitting the matter back to the respondent for the holding of an enquiry envisaged in canon 39.