



COMPANIES TRIBUNAL OF SOUTH AFRICA

Case/File Number: CT004OCT2016

In the matter between:

MORIANS EPISCOPAL APOSTOLIC CHURCH IN ZION

Applicant

and

**MORIANS FIRST APOSTOLIC CHURCH IN ZION
(2016/241760/08)**

Respondent

Presiding Member : Khashane La M. Manamela (Mr.)

Date of Decision : 30 December 2016

DECISION (Reasons and an Order)

Khashane La M. Manamela

[1] The applicant and respondent are religious organisations or churches based in the North-West Province of South Africa.¹ This application is for determination of a name dispute between the two organisations or companies.

[2] It is submitted by the applicant in terms of this application that the respondent's name does not meet or satisfy the requirements of the Companies Act 71 of 2008 (the Companies Act). The applicant requests that the respondent be directed to choose a new name compliant with provisions of the Companies Act in substitution of its current name.

[3] With respect, the submissions made in terms of this application are quite frugal. But, as would become clear below, there isn't really much to say or required to be said regarding the names of the parties in contention. The determination sought is in the form of a request for default order contemplated in terms of regulation 153 of the Companies Regulations, 2011.² The respondent did not file an answer despite service of the application on 17 October 2016.³ I am satisfied that the application was adequately served.⁴

¹ See indexed pp 7 and 15 of the application.

² Regulation 153 reads as follows: “**153. Default orders** (1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order, as applied for, issued against that person by the Tribunal. (2) On an application in terms of sub-regulation (1), the Tribunal may make an appropriate order— (a) after it has heard any required evidence concerning the motion; and (b) if it is satisfied that the notice or application was adequately served. (3) Upon an order being made in terms of sub-regulation (2), the recording officer must serve the order on the person described in subsection (1) and on every other party.”. The Companies Regulations were published by the Minister of Trade and Industry in terms of section 223 of the Companies Act 71 of 2008 under GN R351 in Government Gazette 34239 of 26 April 2011.

³ See indexed p 50 together with pp 7-8 of the application.

⁴ See footnote 2 above for a reading of regulation 153(2)(b).

[4] Although there is no indication of a specific provision of the Companies Act on which this application is based, the following submissions are made with regard to the respondent's name: firstly, that both parties are religious organisations operating from the same geographic area and secondly, that there is no link between the two organisations. Therefore, from the submissions made above it is, in my view, clear that the application is in terms of sections 11(2)(b) and (c) of the Companies Act. These provisions read as follows in the material part:

“11. Criteria for names of companies

(1) ...

(2) The name of a company must-

(a) ...

(b) not be confusingly similar to a name, trade mark, mark, word or expression contemplated in paragraph (a) unless -

(i) in the case of names referred to in paragraph (a)(i), each company bearing any such similar name is a member of the same group of companies;

(ii) in the case of a company name similar to a defensive name or to a business name referred to in paragraph (a)(ii), the company, or a person who controls the company, is the registered owner of that defensive name or business name;

(iii) in the case of a name similar to a trade mark or mark referred to in paragraph (a)(iii), the company is the registered owner of the business name, trade mark or mark, or is authorised by the registered owner to use it; or

(iv) in the case of a name similar to a mark, word or expression referred to in paragraph (a)(iv), the use of that mark, word or expression by the company is permitted by or in terms of the Merchandise Marks Act, 1941;

(c) not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company-

(i) is part of, or associated with, any other person or entity...”

[5] I have had the benefit of authoring a decision involving the same applicant with almost identical facts.⁵ The decision was with regard to the company name “MORIANS EPISCOPAL APOSTOLIC CHURCH OF SOUTH AFRICA”. I extensively dealt therein with the “MORIANS” part of the applicant’s name, which is also adopted by the respondent herein.⁶ I also dealt extensively in the aforesaid decision with other aspects of the applicant’s name. Therefore, there is no need to repeat herein what I have said in the aforesaid decision. Suffice to state that I still find solace in my views expressed in the aforesaid decision.

[6] The respondent’s name only differs with the applicant’s name in respect of the word “EPISCOPAL” in the applicant’s name and “FIRST” in the respondent’s name. Although these two words have different meanings, I do not consider same to be sufficiently distinguishing the two names from each other. These names are made up of six words or elements. Therefore, in my view, the respondent’s name is both confusingly similar to the applicant’s name and incorrectly denotes an association between the two organisations or churches. These cannot be countenanced even in respect of religious bodies.⁷

⁵ See the unreported decision of this Tribunal dated 30 July 2013 in the matter of *Morians Episcopal Apostolic Church in Zion NPC v Morians Episcopal Apostolic of South Africa (Pty) Ltd*, case/file number: CTR006/05/2013.

⁶ See pars 26-28 of the decision of *Morians Episcopal Apostolic Church in Zion NPC v Morians Episcopal Apostolic of South Africa (Pty) Ltd*.

⁷ See *African Methodist Episcopal Church (Africa) and Others v African Methodist Episcopal Church (C OF A (CIV) NO. 17/2006)* or [2007] LSHC 37.

[7] The applicant has since the previous decision referred to above,⁸ actually went and registered a trademark over the element or word “MORIANS” on 25 March 2014.⁹ This can only solidify its position further from the protection offered in respect of its company name.

[8] Therefore, I make the following order:

- a) the respondent’s registered company name “**MORIANS FIRST APOSTOLIC CHURCH IN ZION**” does not satisfy the requirements of the Companies Act 71 of 2008;
- b) the respondent is directed to choose a new name and file a notice of amendment to its Memorandum of Incorporation;
- c) the respondent is directed to complete the activities ordered in b) hereof within three (03) months of service of this order upon the respondent in terms of regulation 153(3) of the Companies Regulations, 2011.

Khashane La M. Manamela
Member, Companies Tribunal
30 December 2016

⁸ See par 5 and its footnote 5 above for details on the previous decision.

⁹ See annexure “F” on indexed p 21.