

STATEMENT ON THE OUTCOME OF THE COURT CASE IN SOUTH AFRICA

Members of six congregations in the Transvaal Conference and two congregations in the Cape Conference respectively, commenced litigation against the Southern Africa Union Conference (SAU) and Southern Africa Indian Ocean Division (SID). Their action sought to overturn the business session decision of the SAU to restructure and realign conference territories pursuant to the provisions in the General Conference Working Policy B65 05. The law suit was recently heard before Honourable Justice Van der Merwe in the Free State High Court, Bloemfontein. This litigation has now concluded and judgment delivered by the Court. It is important to note that the Cape Conference Plaintiffs withdrew from the Court action at the start of the proceedings and although they withdrew, this judgment confirms that organization of the new Cape Conference.

This communiqué provides information on the outcome of this court case and the implications of the judgment.

DECISION SOUGHT BY THE PLAINTIFFS

In summary, the Plaintiffs (six churches in the Transvaal Conference and six individual members belonging to those churches) requested the Court to:-

1. Declare that the Transvaal and Cape Conferences continued to be in existence (emanating from the consideration that the decision to restructure or realign the territories of these conferences could not have been made unilaterally by the SAU without allowing the conferences to dissolve themselves in terms of their own constitutions); and
2. Declare that the decision of the SAU and SID of November 2005 adopting the Traditional Model of the Restructuring in terms of the General Conference Working Policy B65 05 was *ultra vires* (outside of the powers of the SAU or not authorized or improper or irregular - given that the decision was obtained for an ulterior purpose to merge Conferences against their will and also because the decision sought to undermine or disregard the existing Constitutions of the Conferences which require that Conferences dissolve themselves in terms of their own Constitutions).

ARGUMENTS BEFORE COURT & COURT DECISION

The SID and SAU Argued that the churches that brought the law suit did not have authority to bring legal action against the SAU or SID because they were not legal entities (legal persona) capable of bringing action on their own behalf in that among other things they did not have authority to own landed property. It was further argued that the churches did not have a constitution to grant them any standing in order to take legal action as they did. It was also argued that the Church Manual prohibited church entities from taking matters of internal governance to Civil Courts.

The Court ruled against the position of the SAU that the churches could be regarded as having a legal personality status which would allow them to institute legal proceedings on their own behalf. This finding by the Court was based on the reasoning that the church has and operates its own bank accounts; it is able to enter into contracts such as rental agreements; it can purchase its own movable and immovable property although admittedly the immovable property (land) is held in trust by SEDCOM on behalf of the church. The Court further ruled that the churches had a sufficient legal interest to approach the Court where they felt that the decision of the church was contrary to acceptable principles. In view of these considerations, the Court ruled that the churches could institute legal action against the SAU or SID.

Having decided that the churches could bring the action they did, the Court then moved to decide the main issue, whether the SAU and SID had the authority to carry out the restructuring/realignment process as they did in terms of General Conference Working Policy B65 05. The Court agreed with the position of the SAU and SID that they had the authority to carry out a restructuring process of the territories of its local conferences as they had desired to do. The Court went further to rule that it found no improper motive on the part of the SAU and SID and that there was no evidence to substantiate the argument raised by the Applicants that the SAU and SID acted *ultra vires*.

The other argument advanced by the Applicants was that the Court should make an order declaring that the Transvaal Conference and Trans-Orange Conference continued to be in existence. The Court ruled that such an order could not be granted because it confirmed the obvious that these Conferences were in existence subject to a process of realignment which was to proceed were it not for this litigation.

Having provided all of his reason, the Judge then proceeded to dismiss the action of the Plaintiffs.

COSTS

The Court chose not to make any order about costs leaving each party to bear its own costs. It is clear from the reasoning given by the Honourable Justice Van der Merwe that his decision was influenced by the need to reconcile the parties in that they still need to work together after this litigation and also because the judge felt that the wording of the decision to restructure the Conferences in terms of B65 05 created sufficient confusion on the Applicants to have led them to Court.

IMPLICATIONS OF THE COURT RULING

The effect of this ruling means that the authority of the church with regards the restructuring process followed by the higher organization was within the policy parameters of the church and the Church organizations could therefore not be faulted for having followed policy. What this means is that the local conferences do not have to dissolve themselves before restructuring is implemented as envisaged in B65 05. This judgment also means that the process of forming the new Northern Conference on the basis of B65 05 may proceed as it is within the authority of the Higher Organization to pursue this.

CONCLUSION

It is unfortunate that this matter ended up in Court and affected the image of the Church and what it stands for. The Honourable Justice Van der Merwe recognized the need for this matter to be resolved outside the judicial system and stated at the onset of the trial: 'I see seated before me, men of God who are God fearing and I think you should go and see if you cannot resolve this matter without me having to rule on it. If however you feel that you cannot resolve this matter by yourselves, I will be forced to rule one or the other way'. The church attempted to find an amicable solution to the matter, however the parties were not able to arrive at an agreed upon solution, necessitating the further involvement of the court.

Substantial financial resources were expended, resources which could have been used in advancing the mission of the Church.

We recognize the Honourable Judge Van der Merwe's reference to the wording of the resolution that led to the plaintiff's action. We further acknowledge his comments that the parties will in future have to work together in reconciliation, trust and brotherhood, particularly in order to implement the resolution. Church unity, Church growth as well as cost-efficiency in running our organizations is what we believe are the noble goals of this action towards organizational changes in Southern Africa. Let us commit ourselves to put behind us the issues which divided us and move forward united together in accomplishing the mission we have been entrusted with.

We thank you for all your prayers and messages of support and wish God's richest blessings.

SAU & SID Presidents