



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT01468ADJ2023

Ex parte application:

MAMELODI INTERNATIONAL ASSEMBLIES

OF GOD NPC

APPLICANT

Presiding Member:

Brian Jennings

Date of handing down of decision:

20 September 2023

DECISION

Introduction

- 1 The applicant is Mamelodi International Assemblies of God NPC (registration number: 2004/024734/08), represented by Pule Leona Emily Ndlala

(authorised by a resolution passed by the board of directors of the Applicant dated 18 July 2023).

- 2 The Applicant has requested the Companies Tribunal ("**Tribunal**") to exempt it from the requirement to have a social and ethics committee. The Applicant's main objects, as a non-profit company, are to –
 - 2.1 to encourage and approve all scriptural teachings, methods and conduct, and to disapprove unscriptural teachings, methods and conduct.
 - 2.2 to encourage and promote evangelism and missions;
 - 2.3 to provide a basis of fellowship and association among Christians of like faith and who accept the principles embraced by the company;
 - 2.4 to participate in community and social development programmes and outreach by utilizing its resources and capacities for the betterment of its members and the broader community;
 - 2.5 to have the right to own, hold in trust, use, sell, convey, mortgage, lease or otherwise dispose of, such property, real or chattel, as may be needed for the prosecution of its work. The MIAG Board shall be custodians and trustees of all immovable properties;
 - 2.6 to employ all properties and assets for the furtherance of its objectives as outlined in this Memorandum, the constitution and the Act; and
 - 2.7 to establish and maintain departments and support organisations or entities that may be necessary for the propagation of the gospel and the work of the ministry.

- 3 According to the memorandum of incorporation of the Applicant ("**MOI**"), the Applicant does not have a limit on the number of members. Furthermore, membership "is open to any individual who is born of Spirit in accordance with John 3:5 and living a consistent Christian life, who has been baptized in water" and who subscribes to the requirements of the MOI and who applies to the Applicant to be registered as a member, upon *inter alia* (a) agreeing to be bound by the MOI; and (b) the approval of the Senior Pastor and Board. At the time of the application, the Applicant had 1,293 members. By virtue of this fact alone, the Applicant's public interest score exceeds 500 by some margin.
- 4 The basis for the Applicant's revenue is solely voluntary offering and donations from its members and other donors.
- 5 The total current and non-current liabilities of the Applicant is an amount of R563,858, as set out in its annual financial statements for the financial year ended 31 December 2022.
- 6 The Applicant has 13 directors, but only 3 of which have employment contracts and receive remuneration as payment for the fulfilment of their duties as employees. Apart from the directors, the Applicant has 9 employees, consisting of 3 administrators, 4 cleaners, a driver and a gardener.
- 7 The funds of the Applicant are, by the structure of a non-profit company, warehoused for use to pursue the Applicant's main objects.

Applicable law

- 8 Section 72(4) of the Companies Act, No 71 of 2008 (as amended) ("**Companies Act**") empowers the responsible Minister to prescribe

regulations setting out, amongst other things, a category of companies required to have a social and ethics committee.

- 9 Regulation 43(1)(c) to the Companies Act ("**Regulations**") requires a company to have a appoint a social and ethics committee if it has, in any two of its previous five years, scored above 500 points in terms of Regulation 26(2).
- 10 Regulation 26(2) sets out the basis for calculating a company's public interest score. I do not find it necessary to repeat this test here.
- 11 Section 72(5) of the Companies Act entitles a company who is obliged to appoint a social and ethics committee, to apply to the Tribunal for an exemption from such requirement. In order for the Tribunal to be satisfied to grant such exemption, either –
 - 11.1 the company is required by some other legislation to have, and does have, some form of formal mechanism within its structures that substantially performs the function that would otherwise be performed by the social and ethics committee; or
 - 11.2 it is not reasonably necessary in the public interest to require the company to have a social and ethics committee, having regard to the nature and extent of the activities of the company.

Determination of the applicant's request for exemption

- 12 The Applicant has not provided its calculation of its public interest score, but from the evidence presented before the Tribunal, it is clear that its score exceeds 500 by virtue of its vast membership body and would have done so

in any of two of its previous five year. Therefore, it is obliged to appoint a social and ethics committee.

13 The Applicant has requested an exemption from the obligation to appoint a social and ethics committee in terms of both section 72(5)(a) and 72(5)(b).

14 I am satisfied that the Applicant meets the requirements of section 72(5)(b) for the reasons set out below.

14.1 The Applicant only exceeds the 500 point threshold by virtue of its membership. For context, it would only score 6 points from its turnover, 12 points from its employees and 1 point from its third party debt. Barring its membership, the Applicant is not the type of operation that would normally be caught in the net set out in Regulation 26(2). Moreover, of the Applicant's substantial membership, only 268 of its members have voting rights. The rest of the members would therefore be "passive" members, and not actively involved in the management or running of the Applicant.

14.2 All members of the Applicant have a right to information pertaining to reports of the Applicant. Included in these reports, all of which are provided at each annual general meeting of the shareholders is the annual financial statements of the Applicant, the secretarial and pastoral reports, and the reports of the various committees established by the Applicant (including the audit and risk committee, the finance committee, the remuneration committee and the human resources committee). There is therefore extensive and regular reporting to the members, who have a right in terms of the MOI to such reports and information.

14.3 The Applicant's activities mostly involve religious teachings and the establishment of a religious community. Outside of its immediate community, the Applicant also participates in social development programmes within the broader community. To this extent, the nature and extent of the Applicant's activities is not such that it is reasonably necessary within the public interest that it appoints a social and ethics committee.

15 As I am satisfied that the Applicant satisfies the requirements of section of section 72(5)(b), I do not find it necessary to consider the requirements of section 72(5)(a).

Order

16 The application for an exemption from the requirement to appoint a social and ethics committee is hereby granted in terms of section 72(5)(b) of the Companies Act, for a period of five years from the date hereof.

BRIAN JENNINGS
MEMBER OF THE COMPANIES TRIBUNAL