



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2021/14237

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

3/5/2023
DATE

J Moorcroft
SIGNATURE

In the application for leave to appeal by

CHIEF KABELO NAWA

Applicant

And

**INTERNATIONAL PENTACOSTAL HOLINESS CHURCH
(IPHC)**

Respondent

In re the matter between:

**INTERNATIONAL PENTACOSTAL HOLINESS CHURCH
(IPHC)**

Applicant

and

THE MINISTER OF POLICE

1st Respondent

**THE NATIONAL COMMISSIONER OF THE SOUTH
AFRICAN POLICE SERVICE**

2nd Respondent

THE PROVINCIAL COMMISSIONER, NORTH WEST

3rd Respondent

CAPTAIN LETSOKO	4 th Respondent
PHASHA, TSHENOLO	5 th Respondent
CHIEF KABELO NAWA	6 th Respondent
OCCUPANTS OF THE IPHC CHURCH IN LEBOTLOANE	7 th Respondent

Neutral Citation: *Chief Kabelo Nawa v International Pentacostal Holiness Church (OPHC)* (Case No. 2021/14237) [2023] ZAGPJHC 400) (3 May 2023)

JUDGMENT

MOORCROFT AJ:

Summary

Application for leave to appeal – dismissed – Costs reserved – Applicant passed away after application for leave but before argument – application moot

Order

[1] In this matter I make the following order:

1. *The application for leave to appeal is dismissed;*
2. *The costs of the application are reserved.*

[2] The reasons for the order follow below.

Introduction

[3] The parties are referred to as they were in the main application.

[4] This is an application for leave to appeal by the 6th respondent cited above. The “7th respondent” was also cited as an applicant in the application for leave to appeal but no names and personal details are reflected on the record. They are individuals who reside at the Church property that is the subject of the application and no order was granted against them. I pointed out in the judgment I handed down on 3 February 2023¹ that they have not been identified and are not properly before court, and despite pointing this out, it has still not been done and an application for leave to appeal is purportedly brought on their behalf. It is however not really apparent that any of them joined the 6th respondent in bringing this application and if they were co-applicants, no reason why they are not named in any affidavit. Whoever they are, they should also not be liable for any costs.

[5] The 6th respondent (Chief Nawa) was the only named respondent who opposed the main application and is now cited as the applicant in this application for leave to appeal.

[6] It is so that there are various warring factions within the Church and these disputes are being dealt with in the High Court. The authority of the deponent to the applicant’s affidavit was challenged but none of the members of other factions who are cited as respondents opposed the application. The only real opposition came from the 6th respondent who is not a representative of the Church and who does not speak on its behalf or on behalf of any faction.

[7] The 6th respondent’s counsel argued that because the applicant alleged ownership in the founding affidavit it placed substantive rights in issue. I dealt with this aspect in paragraphs 9 to 13 of the judgment sought to be appealed against. There is no merit in the submission. On this view, an owner who brings a spoliation application on the basis that it was deprived of possession, must refrain from stating in its affidavits that it is the

¹ *International Pentacostal Holiness Church (IPHC) v Minister of Police and Others* [2023] ZAGPJHC 82, 2023 JDR 0290 (GJ), [2023] JOL 57679 (GJ).

owner. This is a very artificial approach and is devoid of merit. The true question is whether the applicant claims substantive rights beyond spoliatory relief and in this instance it is clearly not the case. The application is a spoliation application pure and simple and no other relief is claimed. The court was not called upon to decide ownership.

[8] The actual dispute between the factions is however not ownership, but who the office holders of the Church are. This is again not a question to be decided in the spoliation application. All that the spoliation application was intended to achieve, was to restore the *status quo ante*.

[9] I dealt with the evidence, much of it undisputed, of what happened on 6 October 2020 in paragraphs 18 to 24 of the judgment. A case is clearly made out and another court would not come to a different conclusion.

[10] It was also argued that order I made prevents members of other factions from attending at the church and that this is a compelling reason why the appeal should be heard.² The order however does nothing of the sort. The doors of the Church are not closed to members and there is nothing in the order I made that prevents worshippers from worshipping at the Church.

[11] Mr Segal who appeared for the applicant with Mr Mthunzi informed me from the bar that his attorneys had seen newspaper reports stating that the 6th respondent passed away in March 2023. I allowed the matter to stand down and after the adjournment Mr Nxumalo for the 6th respondent confirmed that, unbeknownst to his attorney, the 6th respondent had indeed passed away.

² See section 17 of the Superior Courts Act, 10 of 2013 and Van Loggerenberg DE and Bertelsmann E *Erasmus: Superior Court Practice* 2022, RS 9, 2019, A2-53, and the authorities cited.

[12] The proposed appeal has become moot but I dealt with the merits of the application above because the judgment might be of interest to parties who abided the judgment.

[13] The application for leave to appeal must be dismissed but the question of costs must be reserved. It would seem that no executor has been appointed yet and a cost order against the estate would not be appropriate. At the same time the applicant's attorneys wish to investigate the circumstances under which the matter came before court after the death of the 6th respondent and they should be allowed this opportunity.

[14] I therefore make the order as set out above.



J MOORCROFT

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **3 May 2023**.

COUNSEL FOR THE APPLICANT:

N SEGAL

VJL MTHUNZI

INSTRUCTED BY:

S TWALA ATTORNEYS

COUNSEL FOR 6th AND 7th RESPONDENTS:

M NXUMALO

INSTRUCTED BY:

K J SELALA ATTORNEYS

DATE OF THE HEARING:

26 APRIL 2023

DATE OF JUDGMENT:

3 MAY 2023