

SOUTH AFRICA / JUDGMENT

Nawa v International Pentacostal Holiness Church (2021/14237) [2023] ZAGPJHC 400 (3 May 2023) [2023] ZAGPJHC 400

COURT

South Gauteng High Court, Johannesburg

BEFORE

Moorcroft

CASE / FILE NUMBER

2021/14237

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF

SOUTH AFRICA,

GAUTENG DIVISION,

JOHANNESBURG

CASE NO: 2021/14237

NOT REPORTABLE

NOT OF INTEREST TO OTHER

JUDGES

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
	4th
	Respondent
	PHASHA,
	TSHENOLO
	5th
	Respondent
	CHIEF KABELO NAWA
	6th
	Respondent
	OCCUPANTS OF THE
	IPHC CHURCH IN LEBOTLOANE
	7th
	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 2023[1] 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 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.
- [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

[1] International Pentacostal Holiness Church (IPHC) v Minister of Police and Others

[2023] ZAGPJHC 82, 2023 JDR 0290 (GJ), [2023] JOL 57679 (GJ).

[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.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPJHC/2023/400.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/nawa-v-international-unknown-topic-agpjhc-2023>

Prepared on 14 October 2026 · Esheria