



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

**CASE NO: 2021/14237**

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

In the matter between:

<b>INTERNATIONAL PENTACOSTAL HOLINESS CHURCH (IPHC)</b>	Applicant
and	
<b>THE MINISTER OF POLICE</b>	1 <sup>st</sup> Respondent
<b>THE NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE</b>	2 <sup>nd</sup> Respondent
<b>THE PROVINCIAL COMMISSIONER, NORTH WEST CAPTAIN LETSOKO</b>	3 <sup>rd</sup> Respondent
<b>PHASHA, TSHENOLO</b>	4 <sup>th</sup> Respondent
<b>CHIEF KABELO NAWA</b>	5 <sup>th</sup> Respondent
<b>OCCUPANTS OF THE IPHC CHURCH IN LEBOTLOANE</b>	6 <sup>th</sup> Respondent
	7 <sup>th</sup> Respondent

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## JUDGMENT

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### MOORCROFT AJ:

#### Summary

*Spoliation – applicant in undisturbed occupation of church premises when its occupation was disturbed and it was locked out of the premises – A persona iuris may occupy property through natural persons - Entitled to spoliation order*

#### Order

[1] In this matter I made the following order on 2 February 2023:

1. *Ordering the first, second, third, fifth, sixth and seventh respondents (“the above respondents”) to forthwith restore possession of the Church at Stand 6086 Lebotloane Village, referred to as Nazareth (“the Church”), to the applicant and its office-bearers and worshippers who were dispossessed of such Church on 6th October 2020 upon service of the above Honourable Court.*
2. *In the event that the above respondents should fail to restore the said persons to possession of the Church upon service of the order of the above Honourable Court, authorising and directing the Sheriff of the above Honourable Court to restore possession of the Church to the said persons.*
3. *Ordering the 1<sup>st</sup> and 6<sup>th</sup> respondents jointly and severally to pay the costs of the application including the costs of two counsel, the one paying the other to be absolved.*

[2] The reasons for the order follow below.

## Introduction

[3] This is a spoliation application. The applicant is the International Pentacostal Holiness Church (IPHC) represented by the head of the Church, designated the Spiritual Leader and the Comforter, whose name is MG Sandlana.

[4] The application is opposed only by the 6<sup>th</sup> respondent (Chief Nawa), and the occupiers of the Church property who are collectively cited as the "7<sup>th</sup> respondent."

4.1 The application was served on the 1<sup>st</sup> respondent but the 1<sup>st</sup> respondent chose not to oppose the application.

4.2 The 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> respondents are divisions or functionaries of the 1<sup>st</sup> respondent.

4.3 The 5<sup>th</sup> respondent does not oppose the application.

4.4 The answering affidavit ostensibly deposed to on behalf of the occupiers do not name them and their opposition is not properly before Court. The application is not concerned with the legality or otherwise of the occupation by anyone whose occupation of the premises might be subject to the Prevention of Illegal Evictions and Occupation of Land Act, 19 of 1998.

[5] There are disputes between factions of the Church as to control of the Church. These factions are referred to as the Zuurbekom, Nazareth and Jerusalem factions, and the deponent to the main founding affidavit associates himself with the Jerusalem faction.

[6] The premises were used by the faithful to gather twice weekly for religious activities. When the alleged spoliation took place the deponent (though not present personally) and members of the Church were in *de facto* control of the Church premises. The disputes relating to the control and management of the Church need not be decided in this application.

[7] I am advised on behalf of the 6<sup>th</sup> respondent (who himself does not claim any office in the Church but who states that he allocated the property to the late Founder of the Church in 1983 and who recognises the son of the Founder as the rightful occupier of the Church premises) that the dispute between the factions is being case managed in the Gauteng Division, Pretoria, and has in fact been under case management since 2020.

[8] I am indebted to the applicant's counsel, Mr Segal and Mr Mthunzi, and to the 6<sup>th</sup> respondent's counsel, Mr Nxumalo, for their helpful argument.

[9] Mr Nxumalo referred me to the decision of the Supreme Court of Appeal in *Street Pole Ads Durban (Pty) Ltd and Another v Ethekwini Municipality*<sup>1</sup> in support of the contention that where the applicant goes beyond the requirements of the mandament van spolie and place substantive rights in issue, the respondent may answer such additional claim of right and may seek to demonstrate that the applicant does not have the right to possession that it claims to have.

[10] In the *Street Pole* matter the applicant went beyond the mandament van spolie and claimed additional interdictory relief. The respondent brought a counter - application. Cameron JA said in paragraph 15:

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<sup>1</sup> *Street Pole Ads Durban (Pty) Ltd and Another v Ethekwini Municipality* 2008 (5) SA 290 (SCA).

*“This argument<sup>2</sup> invokes the principle that an offending respondent in a spoliation application is generally not allowed to contest the spoliated applicant's title to the property. That is because good title is irrelevant: the claim to spoliatory relief arises solely from an unprocedural deprivation of possession. There is a qualification, however, if the applicant goes further and claims a substantive right to possession, whether based on title of ownership or on contract. In that case ‘the respondent may answer such additional claim of right and may demonstrate, if he can, that applicant does not have the right to possession which it claims’. This is because such an applicant in effect forces an investigation of the issues relevant to the further relief he claims. Once he does this, the respondent's defence in regard thereto has to be considered.”<sup>3</sup>*

[11] The relief sought meant that the door was open to the respondent to deal with the merits of an underlying dispute and to bring a counter-application.

[12] Similarly, in *Xolitshe Trading Enterprise (Pty) Ltd v Blairvest CC*<sup>4</sup> the applicants alleged and approached the Court on the basis of lease agreements. In one of the two cases before Court, Davis J found<sup>5</sup> that the lease agreements relied on had been terminated, and in the other that the applicant was never in possession.

[13] These matters are clearly distinguishable from the matter now before Court. In the present matter the applicant relies for relief on its actual occupation of the premises from which it alleges it has been unprocedurally evicted. The applicant is of course a *persona iuris* and acts (and occupies premises) also through individuals, and these individuals were unprocedurally evicted on 6 October 2020.

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<sup>2</sup> Namely that the Court should not engage with the respondent's counter – application in a spoliation application.

<sup>3</sup> Paragraph 15 of the *Street Pole* judgment. Footnotes omitted.

<sup>4</sup> *Xolitshe Trading Enterprise (Pty) Ltd v Blairvest CC* 2021 JDR 2282 (GP).

<sup>5</sup> Paragraph 6 of the *Xolitshe* judgment.

### Jurisdiction

[14] The 6<sup>th</sup> respondent disputes the jurisdiction of the Gauteng Division of the High Court in Johannesburg. The Court in Johannesburg is the local seat of the Gauteng Division in Pretoria and has concurrent jurisdiction with the main division in Pretoria.<sup>6</sup>

[15] The 1<sup>st</sup> respondent as a department of Government has its head office in Pretoria, the administrative capital. The National Commissioner of the South African Police Service (cited as the 2<sup>nd</sup> respondent) also has its head office in Pretoria. The 5<sup>th</sup> respondent resides in Mabopane in the geographical area of Pretoria (Tshwane). It follows that this Court does have jurisdiction over the dispute.<sup>7</sup>

[16] There was a dispute at the hearing of the matter as to whether Lebotloane was situated in Pretoria (i.e. in Gauteng) or in the North West Province. It is not necessary to resolve this dispute.

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<sup>6</sup> Notice 30, GG 39601 of 15 January 2016.

<sup>7</sup> Section 21(2) of the Superior Courts Act, 10 of 2013.

### The spoliation

[17] The spoliation application was not launched immediately. It was brought in March 2021 – five months after the events described below – and after approaches to the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL) had not borne fruit. The applicant may perhaps be criticised for the delay but it did take the steps that it believed necessary and did not acquiesce in the spoliation.

[18] The deponent to the founding affidavit states<sup>8</sup> that on 6 October 2020 heavily armed members of the South African Police Intelligence Special Task Force arrived at the Church together with members of the Bedwang Police Station. Security personnel at the Church were arrested. There was a serious police presence involving no less than five unmarked police vehicles and a vehicle carrying police markings.

[19] The attending Priest, Priest Matlhare, and others were ordered out of the Church building and the building was locked. Priest Matlhare deposed to an answering affidavit meriting the inference that he was the officer of the Church who was the most senior person at the premises at the time, and thus alleging that he was spoliated of possession.

[20] The explanation given by the Police was that a report had been received that there were illegal firearms on the premises. Security guards were arrested and their firearms were confiscated. The arrested guards were later released and the charges of illegal possession of firearms were dropped.<sup>9</sup>

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<sup>8</sup> His evidence is supported by that of the Priest who was present on the day, A M Matlhare, and TJ Legodi Jnr, and TJ Legodi Snr who deposed to confirmatory affidavits.

<sup>9</sup> The deponent confirms that the security guards did have firearms but these were licenced firearms carried by them when on duty.

[21] This evidence is not disputed by or on behalf of the 6<sup>th</sup> respondent who's states that the allegations are not within his knowledge. It is common cause however that the 6<sup>th</sup> respondent arrived at the Church and the police officers gave the key to the premises to him.

[22] Two days later, on 8 October 2020 it was explained to Mr Legodi that the police raid had taken place because a report had been received that there were *'people who wished to attack the Church.'*

[23] The only inference is that the applicant and its office bearers, and by extension the faithful using the Church premises for religious practices, were unprocedurally deprived of their undisturbed possession and use of the premises.<sup>10</sup>

[24] It is not the case for the applicant that it is entitled to occupation that excludes the use of the premises by other Church members, and it is not contentious that the Church premises should be open to all Church members for purposes of worship.

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

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

***Electronically submitted***

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<sup>10</sup> See Van Loggerenberg & Bertelsmann *Erasmus: Superior Court Practice* RS 18, 2022, D7-1 et seq for a discussion of the applicable principles.



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 FEBRUARY 2023**.

COUNSEL FOR THE APPLICANT:	N SEGAL VJL MTHUNZI
INSTRUCTED BY:	S TWALA ATTORNEYS
COUNSEL FOR 6 <sup>th</sup> AND 7 <sup>th</sup> RESPONDENTS:	M NXUMALO
INSTRUCTED BY:	K J SELALA ATTORNEYS
DATE OF THE HEARING:	26 JANUARY 2023
DATE OF ORDER:	2 FEBRUARY 2023
DATE OF JUDGMENT:	3 FEBRUARY 2023