

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NUMBER: 3124/2025

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
.....	
.....	
DATE 12 November 2025	SIGNATURE.....

In the matter between:

MATLI LESIBA LUCAS

**1ST APPLICANT / 1ST RESPONDENT
IN MAIN APPLICATION**

SEKOBONYANE ABEL SONNYBOY

**2ND APPLICANT / 2ND RESPONDENT
IN MAIN APPLICATION**

MOTLHAKE PHILLIP

**3RD APPLICANT / 3RD RESPONDENT
IN MAIN APPLICATION**

-and-

**INTERNATIONAL PENTECOST HOLINESS
CHURCH (THABAZIMBI BRANCH)**

**1ST RESPONDENT / APPLICANT IN
MAIN APPLICATION**

MINISTER OF POLICE

2ND RESPONDENT

**STATION COMMANDER (THABAZIMBI POLICE
STATION**

3RD RESPONDENT

FREDERICK LEONARD MODISE

4TH RESPONDENT

Delivered : 12 November 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **12 November 2025 at 10:00 am.**

Date heard : 5 November 2025

Coram : Bresler AJ

**JUDGMENT -
(LEAVE TO APPEAL)**

BRESLER AJ:

Introduction:

- [1] The Applicants (1st to 3rd Respondents in the Main Application) applies for Leave to Appeal against the judgment and order handed down by this Court on the 25th of September 2025 (and consequently the revised judgment handed down on the 2nd of October 2025) in terms whereof the 1st Respondent (Applicant in the Main

Application)'s spoliation application was granted with ancillary relief. The grounds as per the Application for Leave to Appeal are briefly the following:

- 1.1 The Court erred in finding that the deponent to the Founding affidavit had the requisite authority to represent the 1st Respondent having acknowledged that there are factions within the 1st Respondent and that the factions respectively contest the authority of individuals premised on this internal conflict.
- 1.2 The Court erred in failing to appreciate that this dispute between the factions are *lis pendens* and the spoliation application cannot be determined until such time as the prevailing dispute has been resolved.
- 1.3 The Court consequently erred in finding that the 1st Respondent was in peaceful and undisturbed possession having regard to this prevailing dispute.

[2] During the hearing of the matter, counsel for the Applicants also argued that it was not the Applicants that spoliated the 1st Respondent – it was the SAPS. The Court thus erroneously accepted that the Applicants are to blame for the course of events. This aspect will be addressed herein after.

Applicable legal principles:

- [3] An application for leave to appeal is governed by section 17(1) of the **Superior Courts Act**, Act 10 of 2013 which provides:

'17 Leave to appeal

Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

- (a)(i) the appeal would have a reasonable prospect of success; or*
- (ii) there is some other compelling reason why the appeal should be heard including conflicting judgments on the matter under consideration,*
- (b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a), and*
- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.'*

- [4] In **MEC Health, Eastern Cape v Mkhitha**¹ the Supreme Court of Appeal said the following (reference to other authorities omitted):

'[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear

¹ **MEC Health, Eastern Cape v Mkhitha** (1221/15) [2016] ZASCA 176 (25 November 2016)

that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

[5] As to the finding that the deponent to the Founding affidavit has the required authority to represent the 1st Respondent, I already provided substantial reasons in my *ex tempore* judgment as to why this objection was not upheld. It is common cause that there are factions in the 1st Respondent. This does not mean that neither one of the factions can prevail themselves of the remedy of spoliation in circumstances such as transpired *in casu*. I therefore specifically found that having regard to the merits of this matter, I have no doubt that the deponent represented the faction that was spoliated.

[6] As previously stated, the Applicant argued at length that the papers before court clearly showed that it was not the Applicants that spoliated the 1st Respondent but rather the SAPS. First and foremost, it bears mention that this was not raised as a ground of appeal in the Application for Leave to Appeal. It therefore need not be considered as a formal ground of appeal. The Court merely entertained the

argument on the basis that counsel submitted that this may constitute a compelling reason why the appeal should be heard.

[7] Even if I am wrong not to formally entertain this issue, I am of the view that it does not predicate any prospect of success on appeal, nor does it constitute a compelling reason for the appeal to be heard. Parties must stand and fall by what was submitted in their affidavits filed on record. The Applicants, by implication, admitted that they were the instrumental in taking the keys from the representative of the 1st Respondent. It might have been with the assistance of the SAPS, but it was at their behest that possession was given to them.

[8] Leave to appeal can consequently not be granted as the Court is not convinced that the appeal has a reasonable prospect of success, nor is there any compelling reason for the appeal to be heard.

Order:

[9] **In the result the following order is made:**

9.1 Leave to appeal is refused with costs including costs to counsel on Scale B.



M BRESLER AJ

**ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

APPEARANCES:

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