

**THE COMPANIES TRIBUNAL OF SOUTH AFRICA**

Case: CT00900ADJ2022

In the matter between:

**INTERNATIONAL PENTECOSTAL CHURCH CHOIR NPC**

2019/249232/08

Applicant

and

**TSHEPISO SAMUEL MOGOLO NTSHELE MODISE**

First Respondent

**INTERNATIONAL PENTECOSTAL HOLINESS CHURCH NPC**

2003/003109/08

Second Respondent

**IPC RECORDS CC**

2000/055401/23

Third Respondent

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DECISION RE RESCISSION OF ORDER CT00447ADJ2020

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1. Applicant applies to have the order by the Companies Tribunal in case CT00447ADJ2021 rescinded and set aside in terms of

Regulation 142 of the Companies Act Regulations, published in terms of the Companies Act, At 71 of 2008 (“the Companies Act”).

2. The Applicant’s founding affidavit is deposed to by a Priest Mr Vusi Soli Ndala, who, attaches to his affidavit two resolutions empowering him to act on applicant’s behalf in this application.
3. The first resolution is on a letterhead reflecting the name “International Pentecost Holiness Church” with the word “church” beneath it, in its heading. It does not cite a company number. It is not cited as a party to these proceedings. This resolution is signed by Priest Olebogeng N Morabe, Secretary of the Council, on behalf of the Council. He explains that the “church” is an association and has various registered companies which are vehicles of the “church”. It is not clear which companies are vehicles of the ‘church’. It is my concern that the second respondent is also a vehicle of the “church”. It is noted that in the default application the Applicant is cited in his personal capacity and the defendant cited as International Pentecostal Church Choir NPC number 2019/249232/08.
4. Attached to the deponent’s founding affidavit is also a disclosure certificate from CIPC dated 21 July 2020 of International Pentecost Holiness Church NPO 2003/003109. It is noted that this

is the same number as the second defendant and I conclude that the name of the second defendant in above citation of the parties should read “International **Pentecost** Holiness Church NPO 2003/003109 and not “International **Pentecostal** Holiness Church NPO 2003/003109 (highlight added)

5. The second resolution attached to his affidavit, is on a letterhead marked “International Pentecostal Church choir NPC which is the name of the applicant in this matter, (no registration number). The Applicant does not attach its CIPC disclosure Certificate to his papers. However Counsel for the Applicant, kindly handed the CIPC disclosure Certificate up from the bar, which was read into the record marked annexure “A” and “B” respectively.
6. Annexure A is dated 14 June 2019, in respect of the International Pentecostal Church Choir NPC number 2019/249232/08. It is noted that the deponent is not one of the Directors. It is noted that the registered office of the Applicant is cited as 430 Heinrich Avenue Karen Park AKASIA Gauteng and **not 1<sup>st</sup> Floor 430** Heinrich Ave Karen Park AKASIA Gauteng. (highlights added)
7. Annexure B is dated 8 April 2022 International Pentecostal Church Choir NPC number 2019/249232/08 and reflects the same

registered address 430 Heinrich Avenue Karen Park AKASIA Gauteng.

8. Furthermore Annexure "B" reflects that the applicant's name has been changed to its number. In small print the following is stated: "CIPC Internal data management; order of Companies Tribunal case no CT00447 ADJ2020". It is noted that applicant applies in the case before me for a rescission of the order directing applicant to change its name. It is noted that the name has already been changed on the CIPC records to its number. Counsel for the applicant advises from the bar that it is his instructions that the Applicant did not change its name with CIPC.
9. I have attempted to establish who the parties are in this application before me and have decided that I will focus on the parties in the Default application, being the first respondent in his personal capacity, and the applicant in this matter before me.

## **FACTS**

10. The gist of this application for rescission of a Tribunal's Default order, revolves around the sheriff's return of service.
11. The sheriff's return of service reads as follows: "Case CT00447ADJ2020 The CTR142 (notice of motion) and founding

affidavit this matter which service address is 430 Heinrich Avenue Karen Park, Akasia, Gauteng 0118 is returned herewith on this 25 September 2020 at 09:46 as notice of motion and founding affidavit could **not be served** as there are salons and doors, that are always locked at 430 Heinrich Avenue.” (highlights added)

12. The registered office of the applicant, as reflected on annexure A and B handed up from the bar, reflects its registered office as 430 Heinrich Ave, Karen Park Akasia Gauteng.
13. The Deponent to the founding affidavit avers that the Church and all its legal vehicles associated with it operate on the entire first floor of the building to the knowledge of the first respondent and the mere fact that this was not disclosed by the first respondent is a deliberate attempt to mislead the Tribunal for purposes of deceiving the Tribunal into granting the order against the Applicant in its absence and without notice.
14. Further he avers that the first respondent's legal representative, submitted that service could not be effected at this address because the company details of applicant, were incorrect, and in contravention of section 23 of the Companies Act; and therefore the applicant did not enter an answering affidavit to the name dispute application, and therefore the presiding Member of

the Tribunal was satisfied that applicant had not deemed it necessary to defend the application.

### **APPLICABLE LAW**

15. Part C of the Companies Act, Transparency accountability and integrity of companies Section 23. (3)(b)...a company, by providing the required information on its Notice of Incorporation .and subsequently by filing a notice of change of registered office, together with the prescribed fee...
16. The Constitution of the Republic of South Africa 1996 Chapter 2 of the Bill of Rights Access to courts S 34 Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or where appropriate, another independent and impartial tribunal or forum.

### **REASONS AND DECISION**

17. It is my view that the Applicant was required to file a notice of change of its registered office in that its registered office's principle place of business stating that the registered office is **1<sup>st</sup> Floor 430** Heinrich Ave Karen Park AKASIA Gauteng The registered office address of the Applicant does not state that it is on the first floor its

states that it is at 430 Heinrich Ave Karen Park AKASIA Gauteng. .

It is my view that the Sheriff had no cause to go looking on the first floor for the registered office as it did not reflect that it was on the first floor.

18. It is my view that the allegations made by the deponent on behalf of the applicant are not correct and beyond bizarre, that the respondent had knowledge that the 'church' and all its legal vehicles associated with it operate on the entire first floor of the building and the first respondent did not inform the sheriff nor inform his attorney that the applicant's registered address was on the first floor, and thereby deliberately misleading the Tribunal for purpose of deceiving the Tribunal into granting the order against the applicant.

19. It is my view that Part C of the Companies Act, "Transparency accountability and integrity of companies and Section 23(3)(b) requires a company, to provide the required information on its Notice of Incorporation and subsequently by filing a notice of change of registered office, together with the prescribed fee. The Applicant did not change its address to reflect that it was on the First Floor, 430 Heinrich Avenue Karen Park AKASIA Gauteng and thus was the cause of the Sheriff not serving the documents on the Applicant. The Applicant was required to file a notice of change of its registered office to reflect that it's principle place of business reflects that it's

registered address is on First Floor, 430 Heinrich Avenue Karen Park AKASIA Gauteng and not on the Ground floor. The registered office address of the Applicant does not state that it is on the first floor. It is my view that the Sheriff had no cause to go looking on the first floor, if the registered office did not reflect that it was on the first floor.

20. Further it is my view that the respondent was to serve on the address registered with CIPC, 430 Heinrich Avenue Karen Park AKASIA Gauteng, which was the ground floor and not speculate in order to serve documents.

21. It is further my view that the respondent is not responsible to advise the sheriff that the applicant's registered address is wrong and that the applicant's registered address is on the first floor. In this instance the applicant erred in not changing its registered address to First Floor, 430 Heinrich Avenue Karen Park AKASIA Gauteng.

22. It is my view that applicant has a constitutional right to have its dispute heard by the Companies Tribunal, in terms of the Constitution of the Republic of South Africa, Chapter 2 of the Bill of Rights Access to courts 34; " Everyone has the right to have any dispute that can be resolved by the application of law decided in a

fair public hearing before a court or where appropriate, another independent and impartial tribunal or forum”

23. This constitutional right of the applicant is to be weighed up against the rights of the respondent that he is entitled to serve documents on the registered address reflected at CIPC and in terms of Section 23 of the Companies Part C of the Companies Act. Thus it is the duty of the applicant to be transparent and accountable in terms the companies Act Section 23. (3)(b). Thus the applicant had a duty towards the respondent to provide the correct information of its registered address.

24. It is my view that if the sheriff did affix the application papers for a default order to one of the doors or salons, located on the ground floor which is the registered office, of the applicant, and issued a return of service stating so, this may not have come to the attention of the applicant as a nosey pedestrian passing by may have ripped it off and could had perused confidential information. However a salon owner may have seen the papers attached to its entrance door and knowing that the offices were on the first floor, taken them up to the first floor. This may have been inappropriate if one of the tenants of the applicant got to read a dispute between its landlord who are priests and churches. However it is my view that

if the sheriff had affixed a hard copy of the application to the doors or salons, it may have had more value than not leaving the document affixed to the door at all, as in some cases it could effectuate a valid return of service.

25. I am to contemplate the duty of the applicant when it is at fault in not complying with Section 23 of the companies Act, in respect of transparency and accountability in not reflecting the correct address first floor 430 Heinrich Avenue Karen Park Akasia at the CIPC, to the detriment of the respondent and the applicant's rights to be heard in terms of the Constitution of South Africa.

26. The Constitution of South Africa is the supreme law of the land. No other law or government action can supersede the provisions of the constitution. South Africa's Constitution is one of the most progressive in the world and enjoys high acclaim internationally. In terms of The Constitution of the Republic of South Africa, Chapter 2 of the Bill of Rights Access to courts 34; everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or where appropriate, another independent and impartial tribunal or forum. I believe the applicant has the right to have its version of the dispute of names, resolved before an impartial tribunal in this instance the Companies tribunal.

27. In furtherance to the Constitution, I am of the view that the “audi alteram partem” rule, the Latin phrase for “listen to the other side” or “let the other side be heard as well”, is to apply to this application before me. It is a principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against it.

## **ORDER**

I proceed to make the following order:

- a) CIPC is directed to change Applicant’s name back to its original name being INTERNATIONAL PENTECOSTAL CHURCH CHOIR NPC 2019/249232/08 within 10 days of this order.
  
- b) The Applicant is directed to change its registered address with CIPC to First Floor, 430 Heinrich Avenue Karen Park AKASIA Gauteng within 10 days of this order.

c) The Tribunal's Order, in case CT00447ADJ2021 is rescinded and set aside in terms of Regulation 142 of the Companies Act Regulations, published in terms of the Companies Act, At 71 of 2008 ("the Companies Act).

d) Each party is to pay its own legal costs.

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LUCIA GLASS

COMPANIES TRIBUNAL MEMBER

DATED 16<sup>th</sup> June 2022