

IN THE HIGH COURT OF SWAZILAND

In the matter between:

MOSES NKAMBULE N.O. AND PAUL NXUMALO      APPLICANTS

Vs

CAIPHUS MSIBI, PETROS MSIBI, P.L. MAGAGULA      RESPONDENTS

Civ. Case No. 1166/1992

Coram      S. W. Sapire

For Applicants

For Defendants

JUDGMENT

(11/04/97)

The applicants seek the following relief against the respondents:-

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1. They require an order declaring the respondents to be in contempt of an order of this Court issued on the 1st October 1993 which was confirmed on the 29th of October, 1993.
2. They require an order directing the respondents to hand over to the applicants all the bank books, financial statements and assets of Pentecoastal Assemblies of Africa Church.
3. They wish to be awarded the costs of this application.

This application is entirely misconceived from the outset. As far as the first applicant is concerned he alleges that he is the executor in the estate of the late John Phenduka Khumalo who was the applicant in case No. 1166/92 and the Chairman of the Pentecostal Assemblies of Africa Church. In this representative capacity he has no locus standi whatsoever to present this application. Whatever rights the late John Phenduka Khumalo had in relation to the affairs of the church these ceased on his death and is not the duty of the executor to carry on in the office of the deceased person whose estate he administers. As far as he is concerned therefore the application will have to be dismissed. I will also direct that Moses Nkambule in his personal capacity pay the costs of the respondent in regard to this application.

As far as Paul Nxumalo the 2nd applicant is concerned, the application is basically defective.

In the first place the church itself has a vital interest in these proceedings. In fact the 2nd applicant has no rights independent of the church in relation to the relief which he seeks. The church is not a party to these proceedings. The 2nd applicant himself has no locus standi whatsoever.

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In so far as the contempt proceedings are concerned the order of Court does not require the respondents to refrain from doing anything which they have been shown to have done. In other words there is no evidence whatsoever that they are in fact in breach of the Court Order.

In so far as relief claimed relates to the delivery of all the bank books, financial statements and the assets of the Pentecostal Assemblies of Africa Church is concerned it is clearly without substance or merit. The assets claimed are the property of the church and there is no basis on which the respondents can be ordered to deliver these items to the 2nd applicant. For these reasons the application is dismissed with costs. Such costs as are payable by the 1st applicant are to be paid de bonis propriis and are not recoverable from the estate of the late John Phenduka Khumalo.

S.W. SAPIRE,

ACTING CHIEF JUSTICE