

SOUTH AFRICA / JUDGMENT

Batau Ba-Nkwana Traditional Authority and Another v Premier of the Limpopo Provincial Government and Others (7181/2021) [2024] ZALMPPHC 58 (11 June 2024)

[2024] ZALMPPHC 58

COURT

Limpopo High Court, Polokwane

BEFORE

M V Semenya

CASE / FILE NUMBER

7181/2021

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, POLOKWANE

REPORTABLE:

YES/NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED

DATE:

10/06/2024

MV

SEMENYA DJP

CASE

NO. 7181/2021

In

the matter between:

BATAU
BA-NKWANA TRADITIONAL
FIRST
APPLICANT
AUTHORITY
IDA
MODIKISHENG NKWANE
SECOND
APPLICANT
and
THE
PREMIER OF THE LIMPOPO
FIRST
RESPONDENT
PROVINCIAL
GOVERNMENT
THE
CHAIRPERSON OF THE LIMPOPO
SECOND
RESPONDENT
PROVINCIAL
COMMITTEE ON
TRADITIONAL
LEADERSHIP DISPUTES
AND
CLAIMS
MEMBER
OF THE EXECUTIVE
THIRD
RESPONDENT
COUNCIL
FOR CO-OPERATIVE
GOVERNANCE
AND HUMAN
SETTLEMENT
AND TRADITIONAL
AFFAIRS
LIMPOPO PROVINCE
BAPEDI
BA-DIKWANYANE TRIBAL
FOURTH
RESPONDENT
AUTHORITY
REGISTRAR
OF DEEDS: POLOKWANE
FIFTH
RESPONDENT

JUDGMENT

SEMENYA DJP.

- [1] The issue in this application is whether this court has jurisdiction to review and set aside the decision of the erstwhile Lebowa Government, to transfer the property known as The Farm California 228 KT, measuring 5396.2886 hectares (the Farm) to the manner in which the property was transferred to the fourth respondent in this application.
- [2] It is common cause that the dispute regarding the question as to who the rightful traditional leader of the Farm is, that existed between the applicants and the fourth respondent, has since been resolved by the second respondent. The second respondent concluded that the traditional leadership of the Farm lies with the applicants. The fourth respondent has not challenged that decision, and, in accordance with the principle laid down in *Oudekraal Estates (Pty) Ltd v The City of Cape Town and Others*[1], the decision remains valid and stands.
- [3] Notwithstanding the fact that the issue of traditional leadership has been resolved in their favour, the applicants are unable to rule over the community of the Farm on the basis that it is still registered in the names of the fourth respondent. It is on account of this remaining issue that the second and third respondents could not finalise the appointments of the applicants as traditional leaders of the Farm. The fourth respondent's entitlement over the Farm stems from the Deed of Transfer number T30[...]. It is not in dispute that the Farm was transferred to the fourth respondent by the then Lebowa Government in 1994 by way of a grant.
- [4] The applicants contend that the reason (causa) for the transfer as it appears on the Deed of Transfer and the condition for transfer are questionable and do not accord with the legislation under which the transfer was done.
- [5] The fourth respondent is the only party that opposes the application and has raised a point in limine that this court has no jurisdiction to entertain the issues between the parties. The fourth respondent submits that it is the Land Claims Court that has exclusive jurisdiction to hear the matter.
- [6] The fourth respondent contends that Bapedi Ba-Dinkwanyane have been in occupation of the land since 1956 and have possessed it openly as the owner and/or as if they are the owner thereof. The fourth respondent submits that the erstwhile Lebowa Government made a Grant to them in terms of section 20(1) and 20(2) of the Upgrading of Land Tenure Rights Act, 112 of 1991. In the alternative, the fourth respondent argue that it has acquired the Farm by acquisitive prescription in terms of section 1 of the Prescription Act 68 of 1969.

[7] The fourth respondent relies on the Constitution of the Republic of South Africa, 1996 (the Constitution, the Restitution of Land Rights Act[2] (the Restitution Act), among other legislation, in support of its point in limine. Section 25(7) of the Constitution provides as follows:

"A person or community dispossessed of property after the 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress."

[8] The Restitution Act was promulgated to give effect to section 25 of the Constitution. Its long title states that it is enacted to provide for the restitution of rights in land to persons or communities dispossessed of such rights after 1913, as a result of past racially discriminatory laws or practices, to establish a Commission on Restitution of Land Rights as well as the Land Claims Court. The Function of the Commission is to process restitution claims and that any claim that the Commission is unable to resolve may be referred to the Land Claims Court.

[9] Section 22 (1) of the Restitution Act provides for the establishment of Land Claims Court which shall have the power to determine a right to restitution of any right in land to the exclusion of any court contemplated in section 166 (c) of the Constitution.

[10] At first glance, one may think that the legislation referred to above is not applicable to the facts of this case in that they refer to land which has been dispossessed due to racially discriminatory laws, which may appear not to be the case in this matter. However, the position is not that simple. The applicant relies on the report of the second respondent which is annexed to the founding affidavit.

[11] In paragraph 1 of the report, which deals with the background of the applicant's claim, the following is stated:

"The Batau ba Ga-Nkwana (the applicants) was the first to occupy Leboeng (California 228 KT) and Nooitgedacht 227 KT) during 1879 as senior traditional leaders. Their senior traditional leadership was lost in 1956 when Kgoshigadi Dinkwanyane Victoria was relocated to Sterkspruit farm from Boomplaats in Lydenburg. Sterkspruit is the farm adjacent to Californiafarm of Nkwana. Two years after such relocation, in 1958, Dinkwanyane was recognized by the apartheid government as the only Kgoshi of the whole area., including Nkwane's California and Nooitgedacht..."

[12] On paragraph 8.7, the second respondent states that it has noted that in Sekhukhune District, sharing of jurisdiction on one land by two or more traditional leaders is not uncommon and that kgoshi Nkwana was chastised by the apartheid government for supporting kgoshikgolo Sekhukhune's resistance to apartheid rule.

[13] The information in the report of the second respondent clearly shows that the issue of land is closely related to the policies of the apartheid government. The Lebowa Government is not the first government to dispossess the applicant of their right California

farm. It started with the apartheid government. In any event, the Lebowa Government was a product of the apartheid policies. It was its creature.

[14] I agree with the fourth respondent that it is the Commission on Restitution of Land Rights which is best suited to deal with the applicants' claim. Furthermore, in terms of section 36 of the Restitution Act, it is the Land Claims Court which is clothed with the jurisdiction to review the decision of the Commission, the Minister or any functionary acting in terms of the Act. This court's jurisdiction on matters of this nature has been expressly excluded by section 22 of the Restitution Act.

[15] On costs, I find no reason to deviate from the general rule that the winner is entitled to costs. The fourth respondent is entitled to costs of the application.

[16] In the result I make the following order:

The fourth respondent's point in limine of lack of jurisdiction Is upheld with costs.

M V SEMENYA

DEPUTY JUDGE PRESIDENT

LIMPOPO DIVISION.

APPEARANCES For the applicants: Adv George Diamond Instructed by: Diamond Inc For the respondent: Adv B F Gededger Instructed by: Mmala Attorneys.

Heard on 06 March 2024

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives via email and release to SAFLII. The date and time of hand-down is deemed to be the 11 June 2024 at 11:00

[1] 2010

(1) SA 333 (SCA)

[2] 22 of 1994

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Prepared on 12 October 2026 · Esheria