

SOUTH AFRICA / JUDGMENT

Huma v Huma and Others (Appeal) (CIV APP MG 26/2024) [2025] ZANWHC 125 (23 July 2025) [2025] ZANWHC 125

COURT

North West High Court, Mafikeng

BEFORE

Hendricks, Wessels

CASE / FILE NUMBER

CIV APP MG 26/2024

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Policy**IN THE HIGH COURT OF****SOUTH AFRICA****NORTH WEST DIVISION,****MAHIKENG****CASE NUMBER: CIV APP MG****26/2024****Reportable:**

NO

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to Judges: NO

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In the matter between:

MINAH
MASISA HUMA
APPELLANT
and
LERATO
HUMA
FIRST
RESPONDENT
THAPELO
HUMA
SECOND
RESPONDENT
THATO
HUMA
THIRD
RESPONDENT

Coram:

HENDRICKS JP et
WESSELS AJ
Date: 23 July 2025
ORDER

i.
The first ground of appeal is upheld.
ii.
The second and third grounds of appeal are dismissed.
iii.
The order of the Magistrate's Court for the district of
Tlhabane, held at Tlhabane
is set aside and substituted with the

following:

'1. The
respondents are the rightful occupiers of the house situated at
E[...] Photosaneng Village, Bojanala.
2. No order as to
costs'
iv.
No order as to costs is made in relation to this appeal.

JUDGMENT

Introduction

[1] This is an appeal against an order of the Tlhabane Magistrate's

Court for the district of Rustenburg, held at Tlhabane where the Magistrate's Court, sitting as a Tribal Appeal Court, upheld an appeal from the Tribal Court of the Royal Bafokeng Nation ('the Tribal Court') in favour of the respondents. The appeal primarily concerns the jurisdiction of a tribal court to order an eviction from tribal land and the right to occupy a house situated on tribal land.

Point in limine

- [2] The respondent raised the point in limine that the notice of set down was filed outside the timeframe permitted for the set down of the matter, as specified in the notice of allocation. Although filing at the Office of the Registrar was done timely, service of it on the respondents' attorneys was out of time.
- [3] The notice of allocation of the date for the hearing of the appeal, pertinently reads: 'Failure to file the notice of set down on the stipulated date will result in the Judge President not allocating the appeal to the Judges, and the automatic forfeiture of the date.'
- [4] The above provision contained in the notice of allocation does not impair the Judge President's discretion to allocate this matter to judges for hearing, which discretion the Judge President exercised despite the late service of the notice of set down. Counsel for the respondents conceded this point, and this Court need not be detained any further on this point.
- [5] Consequently, the point in limine is dismissed.

Background

- [6] The matter involves a family dispute over the right to occupy a house situated on tribal land, known as E[...] Photosaneng Village in Bojanala, near the town of Rustenburg (the stand).
- [7] The history of the ownership of the stand can be summarised as follows. The stand originally belonged to Abednigo Huma, the patriarch of the Huma clan. Abenigo Huma's son, Herbert Huma, was awarded the stand after his death in accordance with customary law. Herbert Huma was married to Mphoro Rosina Huma ('Rosina Huma'). From this marriage, nine children were born. All nine children were raised in the house on the stand ('the ancestral house').
- [8]
- [8] One of the nine children born from this marriage was a son named Daniel Llota Huma (the deceased). Although the deceased married, he did not leave the ancestral home and continued living there with his first wife and his mother, Rosina Huma. From the marriage between the deceased and his first wife, three children were born. They are the respondents in this appeal.
- [9] The deceased initially lived with his first wife and the respondents in an extension to the ancestral house. In 1988, Rosina Huma informally partitioned the stand. She gave permission to the deceased to build his own house ('the house') on the stand, which he did, together with his first wife (the mother of the respondents).

[10] The deceased resided in the house with the respondents and his first wife until their divorce in 1993. After the divorce, the deceased's first wife continued to reside in the house but eventually

relocated to her paternal home. Despite the departure of the first wife of the deceased, the respondents continued to reside in the house with the deceased.

[11] In 2001, the deceased purchased the stand from Rosina Huma for an amount of R50,000, which amount was payable on request. It is worth noting that there are two houses built on the stand: the ancestral house in which the deceased grew up, and the house that the deceased constructed later for his first wife and the respondents.

[12] After the departure of the deceased's first wife, he met the appellant, whom he married in 2003 out of community of property. The appellant moved into the house. From the marriage between

the deceased and appellant, two children were born. The respondents initially resided with the deceased and the appellant in the house.

[13] Following his marriage to the appellant, Rosina Huma instructed the deceased to build a house for his second marriage (to the appellant), which he did. This house was built on a separate erf at stand

9[...], Mogwase, Rustenburg. The appellant continued to reside in the house.

[14] Due to differences between the respondents and the appellant, the respondents left the house where they had been residing with the deceased up to that point and relocated elsewhere.

[15] When Rosina Huma passed away, she bequeathed to the deceased the outstanding balance payable in terms of the sale of the stand in terms of a written will. Adeline Sesi Huma ('Adeline Huma'), a sister of the deceased, was granted the right to occupy the ancestral house in a family meeting held after the death of Rosina Huma.

[16] In 2013, the deceased passed away, and the appellant remained in occupation of the house with her two children born from the second marriage. The deceased left his entire estate (which includes the house) to the Phore II Trust. Adeline Huma together with an attorney of Rustenburg were appointed as trustees of the Phore II Trust and as executors of the deceased's estate.

[17] During 2016, Adeline Huma addressed a letter to the Tribal Council of

the Royal Bafokeng Nation ('the Tribal Council') to obtain clarification on the respondents' right to occupy the house.

[18] The Tribal Council provided a directive in a series of written replies to Adeline Huma's enquiry, wherein it enunciated the customary law principle of a separate house for each wife. In the context of this dispute, the Tribal Council stated that when a divorced male

remarries, the house of his first marriage remains intact, and another house must be acquired for each subsequent wife. The house in dispute is the house of the proverbial first marriage of the deceased. The effect of the directive of the Tribal Council is that the respondents, as the children born from the first marriage, are the rightful occupiers of the house.

[19] Since the deceased's death, the appellant has prohibited the respondents from occupying the house. The last time the respondents visited the house was in 2014, to unclad the mourning clothes following the death of the deceased. Although it does not form part of the dispute before this Court, it should be noted that the appellant had also prohibited the siblings of the deceased from visiting the ancestral house.

[20] Based on the directive of the Tribal Council, the respondents issued a statement of claim in the Tribal Court in which the respondents claimed the following:

‘1. That Respondent or any such person occupying the property through

association with him/her, on their own, be ordered to vacate stand No:E[...], Photsaneng Village, Rustenburg within a period of Fourteen

(14) days from the date of the order, or such other time frame the above Honourable Court may deem just and equitable.

2. Failing that the Royal Bafokeng Protection Services and/or their

successor in title, be authorised to remove the Respondent or any such person occupying the property through association with her from the said property immediately after the expiry of the period mentioned hereinabove.

3. Granting the applicants further and / or alternative relief.’

[21] The Tribal Court made the following ruling in favour of the respondents:

‘– The applicants to enter the house forthwith

– The respondent to vacate the house in question in favour of the applicant as the house belonged to the earlier marriage in respect of which the applicants are children.

– Argument about applicants not having been chased away from site by respondent cannot stand.’

[22] This order was taken on appeal by the appellant to the Magistrate’s Court for the district of Rustenburg held at Tlhabane (the court a quo), sitting as a special court of appeal in terms of the provisions of s 9(2) of the Bophuthatswana Traditional Courts Act[1]. The court a quo dismissed the appeal. Dissatisfied with the order of the Magistrate’s Court, the appellant appealed to this Court.

[23] The notice of appeal contains a myriad of facts that precede the grounds of appeal, which are mostly intertwined and do not relate to the issues at hand. The appellant assails the order of the court a quo on the following grounds as stated in the notice of appeal:

9. Based on the abovementioned facts, it is evident that the Honourable Court a quo erred in its finding in that:

9.1 The Bophuthatswana Traditional Courts Act does not provide for the eviction of the spouse and her children after the death of another;

9.2 The Appellant's deceased spouse resided in the house which he did with his first wife and has not at any stage indicated that he seek for an alternative stand for the second marriage;

9.3 The court a quo erred in the application of the Intestate Succession Act 81 of 1987 section (1) (i) to the facts of this matter by disregarding the rights to property and inheritance of the Appellant and her two children from the deceased spouse's estate.'

Eviction proceedings

[24] The Tribal Court's order evicts the appellant from the house. The order states that the respondents are to enter the house "forthwith". On no construction of the order of the Tribal Court can it be said that it does not constitute an eviction order.

[25] Section 26(3) of the Constitution provides for eviction only upon the order of a court as follows:

'No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary eviction.'

[26] Eviction proceedings are governed by the Prevention of Illegal Eviction and Unlawful Occupation of Land Act[2] (PIE Act). Section 1(iii) of the PIE Act defines a "Court" as:

'any division of the High Court or the magistrate's court in whose area of jurisdiction the land in question is situated.'

[27] The PIE Act does not confer any jurisdiction on a Tribal Court to hear eviction matters. It axiomatically follows that any eviction order granted by a Tribal Court offends the right to housing

entrenched in 26 of the Constitution.

[28] The definitive answer on the jurisdiction of a Tribal Court in eviction proceedings pertaining to tribal land is to be found in the Full Bench judgment of this Court in Angelinah Mathuloe v Naniki Rasogo[3]. Therein, it was found that a Tribal Court does not have jurisdiction in eviction proceedings. The crux of the judgment reads:

[22] Since PIE is relevant to this matter, it envisages that "no one may be deprived of property except in terms of law of general application." The law of general application applicable to this matter is PIE and no other law, including the Act. In terms of PIE, the only courts vested with jurisdiction to consider applications for an eviction order are any division of the High Court or the Magistrate's court in whose area of jurisdiction the land in question is situated.

[23] More telling is that section 2 of PIE provides that it applies in respect of all land throughout the Republic. Section 11(3) of PIE further provides that any law in force in parts of the Republic which formerly constituted, inter alia, the national territory of the erstwhile Bophuthatswana, is repealed to the extent that such law is inconsistent with or deals with any matter dealt with by this Act. On section 11(3) of PIE alone the jurisdiction of the tribal courts has been ousted since 5 June 1998.'

[29] This judgment is definitive and does not require further consideration by this Court on this point.

[30] The Tribal Court lacked the necessary jurisdiction to evict the appellant from the house. The court a quo erred in dismissing this ground of appeal.

[31] In the result, the first ground of appeal stands to be upheld.

Right to occupy

[32] The second ground of appeal relates to the appellant's right to occupy the house. The court a quo correctly identified this issue on appeal before it, as to 'whether the Appellant has the right to occupy the first marriage house.'

[33] As the house forms part of the deceased's estate, it has been bequeathed to the Phore II Trust ('the trust') along with the whole of the deceased's estate. As the trust was created to administer the assets of the deceased estate, the bequest does not afford any specific proprietary right to either the appellant or the respondents.

[34] The right to occupy the house is an informal right to land. In terms of s 1 of the Interim Protection of Informal Land Rights Act[4], an informal right to land is defined as:

"informal right to land" means—

- (a) the use of, occupation of, or access to land in terms of—
 - (i) any tribal, customary or indigenous law or practice of a tribe;
 - (ii) the custom, usage or administrative practice in a particular area or community, where the land in question at any time vested in—
 - (aa) the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act 18 of 1936);

- (bb) the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act 21 of 1971); or
- (cc) the governments of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei;
- (b) the right or interest in land of a beneficiary under a trust arrangement in terms of which the trustee is a body or functionary established or appointed by or under an Act of Parliament or the holder of a public office;
- (c) beneficial occupation of land for a continuous period of not less than five years prior to 31 December 1997; or
- (d) the use or occupation by any person of an erf as if he or she is, in respect of that erf, the holder of a right mentioned in Schedule 1 or 2 of the Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991), although he or she is not formally recorded in a register of land rights as the holder of the right in question,

(emphasis added)

[35] The point of departure in the process of adjudication of a customary law dispute is found in the Constitutional Court decision of *Alexkor Ltd and Another v Richtersveld Community and Others*[5], wherein the Court warned of the dangers of looking at indigenous law through a common law prism as follows:

[56] ...The two systems of law developed in different situations, under different cultures and in response to different conditions. In this regard we are in agreement with the observations of the Privy Council in *Amodu Tijani v The Secretary, Southern Nigeria*:- "Their Lordships make the preliminary observation that in interpreting the native title to land, not only in Southern Nigeria, but other parts of the British Empire, much caution is essential. There is a tendency, operating at times unconsciously, to render that title conceptually in terms which are appropriate only to systems which have grown up under English law. But this tendency has to be held in check closely... The title, such as it is, may not be that of the individual, as in this country it nearly always is in some form, but may be that of a community... To ascertain how far this latter development of right has progressed involves the study of the history of the particular community and its usages in each case. Abstract principles fashioned a priori are of but little assistance, and are as often as not misleading."

[57] The determination of the real character of indigenous title to land therefore "involves the study of the history of a particular community and its usages."- So does the determination of its content.'

[36] Customary law is recognised as a source of law. Clearly, then, customary law should not be measured against common law or legislation but only against the Constitution. This approach has been followed by the Constitutional Court in *Bhe and Others v Khayelitsha Magistrate and Others*[6]

‘Quite clearly the Constitution itself envisages a place for customary law in our legal system. Certain provisions of the Constitution put it beyond doubt that our basic law specifically requires that customary law should be accommodated, not merely tolerated, as part of South African law, provided the particular rules or provisions are not in conflict with the Constitution. Sections 30 and 31 of the Constitution entrench respect for cultural diversity. Further, section 39(2) specifically requires a court interpreting customary law to promote the spirit, purport and objects of the Bill of Rights. In similar vein, section 39(3) states that the Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by customary law as long as they are consistent with the Bill of Rights. Finally, section 211 protects those institutions that are unique to customary law. It follows from this that customary law must be interpreted by the courts, as first and foremost answering to the contents of the Constitution. It is protected by and subject to the Constitution in its own right.’

[37] The approach in Bhe[7] is in keeping with the spirit of international principles of customary law as is found in Article 29 of the African (Banjul) Charter on Human and Peoples' Rights[8] to which South Africa is a party, on account of its membership of the African Union which reads:

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;

[38] Courts should refrain from imposing common law principles on customary law to resolve the challenges faced under customary law. Instead, it should apply customary law parallel with common law, allowing it to be interpreted in its own setting, enabling it to grow in its own right and thus, to adapt itself to changing circumstances. It should be the traditional courts and cultural experts that play an active role in bringing customary law in line with the Constitution within its own independent setting.[9]

[39] Customary law is not a uniform system of laws. The versions of customary law differ from community to community. A key feature of customary law is its flexibility and ability to adapt to the evolving socio-economic environment in which it operates. Its defining characteristic is not fixed. Instead, it has the unique quality of flexibility, allowing it to develop in line with the daily practices of the community it serves. In addressing the dynamic nature of customary law, the Constitutional Court stated in *Shilubana and Others v Nwamitwa*[10]

‘Customary law must be permitted to develop, and the enquiry must be rooted in the contemporary practice of the community in question. Section 211(2) of the Constitution requires this. The legal status of customary law norms cannot depend simply on their having been consistently applied in the past, because that is a test which any new development must

necessarily fail. Development implies some departure from past practice. A rule that requires absolute consistency with past practice before a court will recognise the existence of a customary norm would therefore prevent the recognition of new developments as customary law. This would result in the courts applying laws which communities themselves no longer follow, and would stifle the recognition of the new rules adopted by the communities in response to the changing face of South African society. This result would be contrary to the Constitution and cannot be accepted.'

[40] As an interpretive tool in the assessment of a customary law dispute, the Constitutional Court in *Shilubana*[11] held:

'To sum up: where there is a dispute over the legal position under customary law, a court must consider both the traditions and the present practice of the community. If development happens within the community, the court must strive to recognise and give effect to that development, to the extent consistent with adequately upholding the protection of rights. In addition, the imperative of section 39(2) must be acted on when necessary, and deference should be paid to the development by a customary community of its own laws and customs where this is possible, consistent with the continuing effective operation of the law.'

(own emphasis)

[41] Section 211(3) of the Constitution provides for the application of customary law when customary law is applicable, subject to the Constitution and any other legislation that specifically deals with customary law. In *Shilubana* [12] the Constitutional Court confirmed the principle that a community has the right to develop customary law. Moreover, the Court

emphasised the tension between the flexibility of customary law and legal certainty as follows:

'Thirdly, courts must be cognisant of the fact that customary law, like any other law, regulates the lives of people. The need for flexibility and the imperative to facilitate development must be balanced against the value of legal certainty, respect for vested rights, and the protection of constitutional rights. In *Bhe* the majority of this Court held that it could not leave the customary law of succession to develop in a piecemeal and sometimes slow fashion, since this would provide inadequate protection to women and children. The possibility for parties to reach agreement on the devolution of an estate was explicitly left open in order to facilitate the development of customary law so far as possible, consistent with protecting rights. The outcome of this balancing act will depend on the facts of each case. Relevant factors in this enquiry will include, but are not limited to, the nature of the law in question, in particular the implications of change for constitutional and other legal rights; the process by which the alleged change has occurred or is occurring; and the vulnerability of parties affected by the law.'

- [42] It is a customary practice to call a family meeting after the death of a family member. The reason for calling such a meeting is to facilitate the determination of the distribution of the estate among the deceased's heirs and beneficiaries[13]. The Constitutional Court in *Shibi v Sithole and Others*[14] spoke to the importance of a family meeting as a mediation process to foster co-operation between family members as follows:
- [45] The positive aspects of customary law have long been neglected. The inherent flexibility of the system is but one of its constructive facets. Customary law places much store in consensus-seeking and naturally provides for family and clan meetings which offer excellent opportunities for the prevention and resolution of disputes and disagreements. Nor are these aspects useful only in the area of disputes. They provide a setting which contributes to the unity of family structures and the fostering of co-operation, a sense of responsibility in and of belonging to its members, as well as the nurturing of healthy communitarian traditions such as ubuntu. These valuable aspects of customary law more than justify its protection by the Constitution.
- [43] After the death of the deceased, a family meeting was called. It is common cause that the appellant did not attend this meeting. The family meeting marked the initial step in determining the right to occupy the house. Notwithstanding the appellant's failure to attend the family meeting, she remained in occupation of the house.
- [44] Centrally, the court a quo applied the principle that a husband has the obligation to build a house for each of his wives. The notion of different houses for each spouse originated in the principle of polygyny, a well-known principle of customary law that allows a man to marry as many wives as he wishes or can afford.[15] With each new marriage, the wife and her children establish a new house. According to Benett[16], the principle of separate property of these houses must be strictly observed.
- [45] Although the deceased was not involved in a polygamist union, the tradition of the establishment of a subsequent house for each spouse forms the basis of the process of determining the right to occupy the house. This principle underpins the directive of the Tribal Authority. This directive is reflective of the present practice of the Bafokeng and has been applied by the Tribal Court and confirmed by the court a quo.
- [46] The appellant argues that she is entitled to the house by virtue of the fact that she resided there with the deceased. The appellant's argument overlooks the principle of a separate house for spouses and disregards the established custom that a house is typically allocated to each wife. The appellant bases her argument on her evidence before the Tribal Court, wherein she testified that she built the Mogwase house. The Tribal Court made a finding that the deceased built the Mogwase house for the appellant as the house of the second marriage. This factual finding was correctly confirmed by the court a quo.
- [47] Due to the dynamic nature of customary law, this Court is mindful of,

and must guard against, the unintended outcomes that could arise if common law considerations influence this principle of customary law. Customary law, as an independent source of law, must be respected. The directive given by the Tribal Council mirrors the contemporary practice of the Bafokeng in determining the lawful right to occupy the house.

[48] The appellant argues, in the alternative, that her youngest son, born from the marriage between her and the deceased, is the rightful heir to the house. The principle is that the right to occupy a house will be inherited by the children of that house and, more specifically, the youngest son of that house. This principle is based on the obligation placed on the youngest son to take care of his parents until their demise.[17]

[49] With this argument, the appellant loses sight of the fact that the Tribal Council distinguishes between the houses of the respective marriages. If the principle is applied, the youngest son of the

appellant born from the marriage between the appellant and the deceased will necessarily be the heir to the house of the second

marriage, in this case, the Mogwase house.

[50] In conclusion, regarding the right to occupy the house, the court a quo's order, which upheld the Tribal Court's decision, stated that 'the respondents are to enter the house'. Unlike applying the rule of male primogeniture, the court a quo awarded the right to occupy the house to all the respondents, who are siblings of both genders, without discriminating on the basis of their gender.

[51] In *Bhe and Others v Khayelitsha Magistrate and Others*[18] the inequalities brought about by following the rule of male primogeniture were outlined as follows:

'It was contended that these exclusions constitute unfair discrimination on the basis of gender and birth and are part of a scheme underpinned by male domination'.

[52] By including both genders in its order, the court a quo (and the Tribal Court) interpreted and applied the customary law, in terms of s 211(3) of the Constitution. In awarding the right of occupation to both genders, the customary law was interpreted and applied by giving effect to s 9(3) of the Constitution, which protects against discrimination on, inter alia, gender.

[53] In the result, the second ground of appeal stands to be dismissed.

The application of the Intestate Succession Act 81 of 1987

[54] In this ground of appeal, the appellant refers to what she believes to be the erroneous application of s 1 (i) of the Intestate Succession Act[19] ('the Intestate Succession Act'). Section 1 of thereof reads:

'(1) If after the commencement of this Act a person (hereinafter referred to as the "deceased") dies intestate, either wholly or in part, and—

- (a) is survived by a spouse, but not by a descendant, such spouse shall inherit the intestate estate;
- (b) is survived by a descendant, but not by a spouse, such descendant shall inherit the intestate estate;
- (c) is survived by a spouse as well as a descendant—
 - (i) such spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice by notice in the Gazette, whichever is the greater; ...'

(emphasis added)

[55] This ground was, with good reason, not argued before this Court. Firstly, the court a quo did not apply or consider the application of the Intestate Succession Act. Secondly, the dispute that this Court had to adjudicate does not concern the intestate succession of the deceased's estate. In fact, it is a common cause on the record before this Court that the deceased left a will in terms whereof his entire estate was bequeathed to the trust.

[56] It therefore follows that the third ground of appeal stands to be dismissed.

Costs

[57] The determination of costs demands a discretionary approach. The trite position is set out in *Intercontinental Exports (Pty) Ltd v Fowles*[20] where this discretion had been defined as follows:

'The basic rule is that, statutory limitations apart, all costs awards are in the discretion of the court (*Kruger Bros & Wasserman v Ruskin* 1918 AD 63 at 69, a decision which has consistently been followed). The court's discretion is a wide, unfettered and equitable one. It is a facet of the court's control over the proceedings before it. It is to be exercised judicially with due regard to all relevant

considerations. These would include the nature of the litigation being conducted before it and the conduct of the parties (or their

representatives).

[58] Although the discretion of this Court should be exercised judicially, fairness thereof is implied. None of the parties had substantial success in the appeal, and awarding costs to either of the parties under this rubric would be unjust. Another factor this Court takes into consideration in deciding the issue of costs is that a cost order against any of the parties has the propensity to cause further disruption in the already strained family structure of the Huma clan.

[59] In the result, no order as to costs should be made.

Order

[60] Resultantly, the following order is made:

M WESSELS

ACTING JUDGE OF THE HIGH COURT

I agree

RD HENDRICKS

JUDGE PRESIDENT OF THE HIGH COURT

Date of hearing : 22 November 2024

Date of judgment : 23 July 2025

APPEARANCES

Counsel for Appellant : Adv Ramutlwa

Instructed by

: Raikane Attorneys

Rustenburg

c/o Kgomo Attorneys

Mahikeng

Counsel for Respondent : Adv Rakola

Instructed by

: Pule Attorneys

[1] Bophuthatswana Traditional Courts Act 29 of 1979

[2] Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998

[3] Angelinah Mathuloe v Naniki Rasogo, CIV APP MG 17/23 handed down on 4 March 2024

[4] Interim Protection of Informal Land Rights Act 31 of 1996

[5] Alexkor Ltd and Another v Richtersveld Community and Others (CCT19/03)

[2003] ZACC 18; 2004(5) SA 460 (CC); 2003 (12) BCLR 1301 (CC) (14 October 2003) paras 56 and 57

[6] Bhe and Others v Khayelitsha Magistrate and Others (CCT 49/03)

[2004] ZACC 17; 2005 (1) SA 580 (CC) para 41

[7] Ibid, fn 6

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- [8] Article 29 (1) of the African (Banjul) Charter on Human and Peoples' Rights adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), promulgated on 21 October 1986
- [9] Maunatlala 'Effects of the eradication of the rule of male primogeniture on the customary law of succession' 2023 De Jure Law Journal 386-404 <http://dx.doi.org/10.17159/2225-7160/2023/v56a24>
- [10] Shilubana and Others v Nwamitwa (CCT 03/07) [2008] ZACC 9; 2008 (9) BCLR 914 (CC); 2009 (2) SA 66 (CC) para 55
- [11] Ibid, fn 10 para 49
- [12] Ibid, fn10 para 47
- [13] Himonga et al African Customary Law in South Africa (2021) at 165 to 166
- [14] Shibi v Sithole and Others (CCT 50/03, CCT 69/03, CCT 49/03) [2004] ZACC 18; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October 2004) para 45
- [15] Bennett et al Customary Law in South Africa (2004) at 243
- [16] Ibid, fn11 at 244
- [17] Himonga et al African Customary Law in South Africa (2021) at 165
- [18] Bhe and Others v Khayelitsha Magistrate and Others (CCT 49/03) [2004] ZACC 17 para 88
- [19] Intestate Succession Act 81 of 1987
- [20] Intercontinental Exports (Pty) Ltd v Fowles 1999 (2) SA 1045 (SCA) para 25
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