

SOUTH AFRICA / JUDGMENT

Kgoete v Kgoete and Others (3597/2023) [2024] ZALMPPHC 115 (12 September 2024) [2024] ZALMPPHC 115

COURT

Limpopo High Court, Polokwane

BEFORE

N Gaisa

CASE / FILE NUMBER

3597/2023

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REPUBLIC OF SOUTH
AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA
LIMPOPO

DIVISION, POLOKWANE

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED.

DATE

12/9/2024

CASE

NO: 3597/2023

In

the matter between:

KGOSHI
MAMPHAHLANE RALPH KGOETE
Applicant
And
NTHAREDI
JOYCE KGOETE & OTHERS
Respondents

JUDGMENT

GAISA AJ

INTRODUCTION

[1] This is an application for a final interdict brought by Kgoshi Mamphahlane Ralph Kgoete ("the Applicant") against Ntharedi Joyce Kgoete and other members of the royal family ("the Respondents") of the Baroka-Ba- Mamphahlane Traditional Community. The Applicant seeks to restrain the Respondents from interfering with his role and functions as the Senior Traditional Leader of the community.

BACKGROUND

- [2] The Applicant is the recognized Senior Traditional Leader of the Baroka-Ba-Mamphahlane Traditional Community, having been appointed and recognized in terms of the Limpopo Traditional Leadership and Institutions Act 6 of 2005. The First Respondent is the Applicant's estranged wife and "candle wife" of the community. The other Respondents are members of the royal family.
- [3] The Applicant alleges that the Respondents have been interfering with his role as Senior Traditional Leader by holding unauthorized meetings, making decisions on behalf of the community, and generally undermining his authority. He seeks an interdict to prohibit this conduct.
- [4] The Respondents deny interfering with the Applicant's role. They contend that the Applicant has abandoned his duties by residing in Polokwane rather than with the community, and that they are merely fulfilling necessary leadership functions in his absence.

ISSUES

FOR DETERMINATION

- [5] The key issues to be determined are:
- 5.1 Whether the Applicant has the necessary locus standi to bring this application.
 - 5.2 Whether the Applicant's attorneys are properly authorized to institute these proceedings.
 - 5.3 Whether the Applicant has established the requirements for a final interdict.
 - 5.4 Whether the conduct of the Respondents amounts to unlawful interference with the Applicant's role as Senior Traditional Leader.
 - 5.5 Whether the application constitutes an abuse of court process.

ANALYSIS

[6] Locus Standi

6.1 The Respondents challenge the Applicant's locus standi on the basis that he has not provided a valid resolution from the Traditional Council authorizing this litigation. However, I find that the Applicant does have the necessary standing to bring this application in his personal capacity as the recognized Senior Traditional Leader.

6.2 The Supreme Court of Appeal, in *Firm-O-Seal CC v Prinsloo & Van Eeden Inc and Another*[1] held that standing is a question of substance concerning the sufficiency of a litigant's interest in the proceedings. The real inquiry is whether the events constitute a wrong against the litigant.

6.3 In this case, the Applicant, as the recognized Senior Traditional Leader, has a direct and substantial interest in protecting his position and authority. Any interference with his role as Senior Traditional Leader constitutes a wrong against him personally. Therefore, he has sufficient locus standi to bring this application in his personal capacity, regardless of whether the Traditional Council has authorized the litigation.

[7] Authorization of Legal Representation

7.1 The Respondents also challenge the authorization of the Applicant's attorneys to institute these proceedings. However, based on the common cause facts presented, it is clear that the Applicant consented to and authorized the institution of these proceedings by his legal representatives. As held in *Firm-OSeal CC supra*, this is sufficient to establish proper authorization.

[8] Requirements for Final Interdict

To obtain a final interdict, the Applicant must establish:

8.1 A clear right

8.2 An injury actually committed or reasonably apprehended

8.3 The absence of an alternative remedy

8.4 Clear Right

The Applicant has established a clear right by virtue of his position as the recognized Senior Traditional Leader of the community. This position is confirmed by his certificate of recognition and confers specific powers and functions on him under the applicable legislation. Mr Makofane who appeared for the respondents wisely conceded this point.

8.5 Injury Committed or Apprehended

8.5.1. The evidence indicates that the Respondents have held meetings and made decisions on behalf of the community without the Applicant's authority. While some of their actions may have been well-intentioned given the Applicant's absence from the community, they nevertheless infringe on the Applicant's exclusive authority as Senior Traditional Leader. There is a reasonable apprehension of ongoing interference if not restrained.

8.5.2. The Applicant has also demonstrated that the Respondents actions potentially violate his constitutional rights, including the right to equality (section 9), freedom and security of person (section 12), and access to courts (section 34).

8.6 No Alternative Remedy

While there are dispute resolution mechanisms available under the relevant legislation, these are not suitable alternatives in this case given the ongoing nature of the interference and the need for urgent relief to clarify the roles and authority within the community leadership structure.

[9] Unlawful Interference

9.1 The applicable legislation clearly delineates the roles and functions of Senior Traditional Leaders, royal families, and Traditional Councils. The royal family's role is primarily in the identification and appointment of traditional leaders, not in the day-to-day administration of community affairs. By holding unauthorized meetings and purporting to make decisions on behalf of the community, the Respondents have exceeded their authority and infringed on the exclusive powers of the Senior Traditional Leader.

9.2 However, the Applicant's prolonged absence from the community is concerning and contrary to the spirit and intent of the relevant legislation. While his safety concerns are understandable, alternative arrangements should have been made to ensure the proper functioning of community leadership structures in his physical absence.

[10] Abuse of Court Process

10.1 The Respondents argue that this application constitutes an abuse of court process as there are ongoing discussions between the Applicant and the Royal Family, as well as engagements with the Premier's Office regarding the Applicant's position and functions.

10.2 While it is true that there are ongoing processes, the court finds that the application is not frivolous or vexatious. The Applicant has a legitimate interest in protecting his position and authority, and the application seeks to address ongoing conduct that he perceives as undermining his role. Therefore, it does not amount to an abuse of court process.

CONCLUSION

[11] The Applicant has established the requirements for a final interdict.

However, the interests of justice and the community require that any order take into account the complexities of the situation and the need for functional leadership structures

ORDER

1. The Respondents are interdicted and restrained from:
 - a) Holding themselves out as having the authority of the Senior Traditional Leader;
 - b) Holding unauthorized meetings in the name of the Traditional Council or community leadership;
 - c) Making decisions or taking actions that fall within the exclusive authority of the Senior Traditional Leader or Traditional Council.
2. Each party shall bear their own costs.

N GAISA

Acting Judge

High Court of South Africa

Limpopo Division, Polokwane

APPEARANCES

For the applicant: Instructed by: Email: For the respondents: Instructed by: Email: Date of hearing: Date of judgement: Adv J Mohoto (Heads of argument by Adv K Mokwena) MS Moloto inc msmolotoinc@gmail.com Adv VL Makofane Ramokone Selepe Attorneys ramokone.selepe@gmail.com 10 September 2024 12 September 2024

This judgment is handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 12 SEPTEMBER 2024 at 10:00.

[1] [2023] ZASCA 107

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