

SOUTH AFRICA / JUDGMENT

Moropene and Others v Ga-seaphole Community Develeopment Committee and Others (5110/2019) [2021] ZALMPPHC 53 (26 August 2021) [2021] ZALMPPHC 53

COURT

Limpopo High Court, Polokwane

BEFORE

M V Semenya

CASE / FILE NUMBER

5110/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION; POLOKWANE.

CASE

NO:5110/2019

In

the matter between:

MICHAEL
MOROPENE
1ST
APPLICANT
MASILO
MOROPENE
2ND
APPLICANT
MODJADJI
ROYAL COUNCIL
3RD
APPLICANT
and
GA-SEAPHOLE
COMMUNITY
DEVELOPMENT
COMMITTEE
1ST
RESPONDENT

ADVOCATE
MATOME VICTOR
SEHUNANE
2ND
RESPONDENT
LEBEA
MOTLATSI EVANS
3RD
RESPONDENT
MAPULA
MERIAM RAKGWAHLA
4TH
RESPONDENT
EDDIE
MALATJI
5TH
RESPONDENT
SOLLY
MOROPENE
6TH
RESPONDENT
NAKAMPE
EMMANUEL RAKGWAHLA
7TH
RESPONDENT
MAMAROPENE
SELOWA
8TH
RESPONDENT
SEKEDI
MACHETE
9TH
RESPONDENT
ALBERT
LEBEA
10TH
RESPONDENT
NOMLINDA
LEBEPE
11TH
RESPONDENT
PART
OF COMMUNITY OF GA-SEAPOLE
WHO
ASSOCIATE THEMSELVES
12TH
RESPONDENT
WITH
THE 1ST TO 11TH RESPONDENTS
MINISTER
OF RURAL DEVELOPMENT

13TH
RESPONDENT
AND
LAND REFORM
LIMPOPO
MEC OF CO-OPERATE
14TH
RESPONDENT
GOVERNMENT
AND TRADITIONAL AFFAIRS
GREATER
LETABA MUNICIPALITY
15TH
RESPONDENT

JUDGMENT

SEMENYA DJP

[1] The applicants in this matter launched an application in which the following order is sought:

1. That the 1st to 11th respondents be interdicted and restrained to intimidate, incite violence or to interfere with the work of the 1st to 3rd applicants unless permitted by law to do so;
2. That the 1st to 9th respondents be interdicted and restrained from allocating any stands to members of Ga-Seaphole village unless they are permitted by law;
3. Directing any member of Ga-Seaphole who want stands to apply for stands in terms of the practice and regulations which would include the first to third applicants;
4. Declaring that the decision to suspend the 1st applicant and his tribal [traditional] council is invalid and unlawful;
5. Directing the 1st to 11th respondents to remove any fence, bricks or items which they have already put when allocating stands, failing which the sheriff is directed to do so at the expenses of the 1st to 11th respondents;
6. Declaring that allocation of stands has to be done through the 1st to 3rd applicants and their Tribal Council, who are entitled to actively participate in the development of the land at Ga-Seaphole village
together with the community;
7. Interdicting and restraining the 1st to 11th respondents from preventing, inciting violence or threatening any member of the community, when attending Kgoro at Ga-Seaphole village;
8. Interdicting and restraining the 1st to 11th respondents from assuming the powers of the first to third applicants unless permitted to do so by law;

9. Directing that service of the application to the 12th respondent be done by the sheriff by posting four copies of this application next to the entrance of Ga-Seaphole clinic;
10. Costs of the application to be paid on attorney and client scale by the first to twelfth respondents jointly and severally, one paying the other to be absolved.

No specific order is sought against the 13th to 15th respondents. As a result, reference to the respondents in this application will be in relation to the 1st to 12th respondents only.

- [2] The 1st applicant in this matter is the Headman of Ga-Seaphole traditional community falling under the Modjadji Traditional Council. He is recognised as such in terms of the Limpopo Traditional Leadership and Institutions Act 6 of 2005 (the Limpopo Act) read with Traditional Leadership and Governance Framework Act 41 of 2003. The third applicant is the Tribal [traditional] Council recognised as such in terms of the Limpopo Act. The second to eleventh respondents are all members of the community of Ga-Seaphole and form part of the first respondent.
- [3] The 1st applicant is the deponent to the founding affidavit on behalf of the applicants. He avers that in the year 2010, he presided over a meeting which approved the extension of the land occupied by Mohale Evans Maake, Simon Mawasha and many other villagers. During 2013, the 1st to 8th respondents formed an entity known as Ga-Seaphole Community Development Committee (the Committee). It is alleged that the Committee was organised specifically to challenge the decisions to extend the land inherited by Mohale Evans Maake (Mr Maake) and other people who were not residing in the village of Ga-Seaphole. The Committee expressed their desire to have Maake removed from an extended portion of land. This led to a series of litigation involving the applicants, Maake and the Committee.
- [4] On the 26 November 2014 members of the Committee addressed a letter to Maake in which they accused him of disrespecting them by remaining on their land which, according to Committee, was allotted to him illegally by the 1st applicant. On the 3 January 2015 members of the Committee approached 1st applicant and wanted to force him to sign a letter in which it was written that he, the 1st applicant, had at a meeting attended by the members of the Committee and the Modjadji tribal office, informed those who were present that he had never extended the land that Maake was occupying. He states that the 2nd respondent who is an Advocate of the High Court bullied and threatened him to sign the letter. He refused to succumb to the bullying. Pursuant to the refusal to sign the document, the Committee reported him to the Modjadji Royal Nation. The 1st applicant was suspended from performing his duties as headman of Ga-Seaphole village.
- [5] Following the 1st applicant's refusal to sign the letter which was intended to evict Maake, the 1st to the 9th respondents allegedly incited members of the community to protest by barricading Maake's farm. Maake obtained an interdict against members of the Committee. The 1st applicant aver that the 7th respondent delivered a letter marked Annexure "MM13" to the founding affidavit to the 2nd applicant who is a member of the traditional council tasked with the responsibilities of allocating stands to members of the community of Ga-

Seaphole. The 2nd applicant was informed in the letter that the community is aware that he is allocating stands without their permission and further that he will be reported to the police should he continue to do so. The 7th respondent thereafter took over the duties of allocating stands to members of the community from June 2019 which led to the 3rd applicant summoning him to their office. In response to the summons, the Committee wrote a letter to the 3rd respondent, annexed to the founding affidavit as annexure “MM14”, informing it that the committee has been performing the functions of the 1st applicant for a period of four to five years after the suspension of the 1st applicant and that they shall continue to do so despite the summons. The committee further informed the 3rd applicant that any interference by the 3rd applicant will be met with mass rolling action.

- [6] The 1st applicant alleges that he has a clear right to launch the application by virtue of his appointment as a headman in terms of the Limpopo Act. He is further an interested party in that he is a resident of Ga-Seaphole. He alleges that the injury suffered by the applicants stems from him being prevented from exercising his right to convene kgoro and from running the affairs of the community.

The 1st applicant further alleges that the applicants do not have a remedy other than that of approaching this Court for an interdict and ancillary orders.

- [7] Section 18 of the Limpopo Act provides as follows:

“Role and functions of traditional leadership

A traditional leader performs any function provided for in terms of customary law, or assigned to him or her in terms of any law, subject to section 20 of the Framework Act and without derogating from the generality of the foregoing. The traditional leader performs in addition, in consultation with the traditional council, the following functions:

- (a) Promote the interests of the traditional community concerned;
- (b) In co-operation with relevant municipalities and State departments, assist with the administration of the traditional community;
- (c) Actively participate in the development of the area of his or her traditional community;
- (d) At the request of any government department or the relevant municipality, make known to all residents of the traditional community concerned the provisions of any new law; and
- (e) Performance of any functions allocated by any organ of State in accordance with this Act.”

Section 13 of the Limpopo Act provides for the circumstances under which a traditional leader may be relieved of his or her duties.

- [8] The 1st to 11th respondents contended that the Maake issue is irrelevant to the determination of this matter in that it was decided upon by this court in various other matters. Although I partially agree with the contention, I am of the view that this court cannot overlook the fact that it appears that it is this issue that sparked the chaos that led to the present litigation. As it stands now the appeal against the decision taken previous litigation between the Committee and Maake is still pending.
- [9] The respondents deny that they have unlawfully interfered with the functions of the applicants. They further deny that they have suspended the 1st applicant from his position as headman of Ga-Seaphole. They nonetheless admit that they are the ones who wrote a letter to the applicants referred to as annexure “MM13”. It is clear from the contents of the letter that the respondents were informing the 1st applicants to desist from performing his duties of allocating stands to other members of the community. It is not in dispute that the 1st applicant has been performing this function prior to the extension of Maake, Mawasha and other people’s land. The respondents stated in the said letter that the function of allocating stands rests only with the Committee which has the power to allocate stands to people or individuals in a fair and open manner.
- [10] In paragraph 21 and 22 of the founding affidavit, the applicants are alleging that on the 16 June 2019, the respondents called a meeting of the community in which it was resolved that all stands allocated by the 1st applicant shall be review by the 1st respondent. It was further resolved that the 1st applicant is suspended by the 1st respondent. The 1st applicant states that he cannot disclose the name of a person who gave him the information regarding the resolutions taken at the meeting for fear of victimization. The 1st applicant further stated that the 7th respondent took over the functions of allocating stands after the meeting of the 16 June 2019. The 7th respondent refused to talk about this issue when he was visited by the 1st applicant and the regent, Honourable Mpapatla Modjadji. The 3rd applicant summoned the 7th respondent to attend the traditional Court. Instead of the 7th attending, the 1st respondent addressed a letter which is annexed to the papers as “MM14”.
- [11] It is stated in “MM14” that the 1st applicant had been indefinitely suspended in writing as ntona of the village of Ga-Seaphole. It is further stated that the affairs of the Ga-Seaphola are run by the 1st respondent since the suspension of the 1st applicant and that members of the community are no longer reporting death cases to the 1st applicant but to the 1st respondent. It was stated that all stands which have been allocated by the first applicant are invalid.
- [12] Although the respondents contended that the applicants are relying on hearsay evidence in that the informant’s identity was not disclosed nor did he or she confirm the allegation, I find that the evidence can be accepted in that the said allegations about the resolution taken at the meeting are basically confirmed by the respondents in “Annexure MM14”.

[13] Section 13 of the of the Limpopo Act provides that relief of royal duties shall take place on the following grounds:

- (a) Conviction of an offence with a sentence for more than 12 months without an option of a fine;
- (b) Physical or mental infirmity which based on acceptable medical evidence, makes it impossible for that senior traditional leader, headman or headwoman to function as such;
- (c) Wrongful appointment or recognition;
- (d) A transgression of a customary rule or principle that warrants removal; or
- (e) Persistent negligence or indolence in the performance of the functions of his office.

[14] Part B of Schedule 2 defines what constitute misconduct and states that:

Part B All traditional leaders

1 Misconduct

A traditional leader is guilty of misconduct and may be dealt with in accordance with the provisions of item 2, if the traditional leader-

- (a) contravenes or fails to comply with any provisions of this Act or fails to perform any duty or to discharge any obligation imposed upon the traditional leader by or under any other law;
- (b) is negligent, careless or indolent in the discharge of his or her duties;
- (c) is unable to execute his or her duties in an efficient manner;
- (d) disobeys, disregards or makes wilful default in carrying out a lawful order given to him by a person having authority to give it;
- (e) conducts himself or herself in a disgraceful, improper or unbecoming manner;
- (f) is found guilty by a court of law, for any offence with an element of violence or dishonesty.

The procedure that is to be followed in cases of misconduct is laid down in item 2 Part B.

[15] It follows from the admissions made by the respondents in their letters that they are interfering with the functions of the

applicants. The respondents threatened the applicants with mass action should they continue to perform their statutory functions. It is this fact that renders the respondents' denial that they have threatened the applicants to be without merit, more so in that it had already happened to Maake. The Limpopo Act provides that the 1st applicant as the headman must perform his functions in consultation with the traditional council. The respondents' contention that it is the community which must allocate stands is therefore rejected. The conduct of the respondents constitutes usurpation of the statutory functions conferred on the applicants.

[16] It appears from the respondents' papers that they were not satisfied with the manner in which the applicants were allocating

stands within their village. However, they failed to act in terms of the procedure laid down in Part B of Schedule 2 of the Limpopo Act when they suspended the 1st applicant and usurped his functions. The applicants are entitled to the relief sought in the notice of motion.

[17] The applicants submitted that they have satisfied the requirements of a final interdict as laid down in *Setlogelo v Setlogelo*[1]. The 1st applicant as a recognised traditional leader of Ga-Seaphole and the 3rd respondent as the traditional council have a clear right to safe guard the interest of the Ga-Seaphole traditional community. The 2nd respondent is an interested party by virtue of him being the person tasked with the duty to allocate stands within the community. The respondents have caused a continuing injury to the applicants in the form of, among others, usurping their customary and statutory functions as envisaged in section 18 of the Limpopo Act. I agree with the applicants that they do not have any alternative remedy other than that sought in the notice of motion.

[18] With regard to costs, the applicants as the successful parties are entitled and should be granted costs. Counsel for applicant contended that the court should order the 2nd respondent to pay the costs. Counsel for the applicant's contention is based on the submission that he is a lawyer and that it is clear that the 1st respondent was taking advice from the 2nd respondent in that some of the 1st respondent's letters are on his office's letterheads. It appears clearly from the papers that the 2nd respondent was acting in concert with all other respondents (1st to 12th). It will not be reasonable to order him to carry the burden of paying costs alone.

[19] This application served before Naudé AJ on the 25 January

2021. It was removed from the roll due to the applicant's

non-appearance. Costs of that date were reserved. Counsel for the respondents submitted that this court should order the applicants to pay punitive costs for that date. It was contended on behalf of the applicant that they have not set the matter down for that date and that they do not know how it happened to be on the roll. I have no reason to disbelieve the applicants.

[20] In the results I make the following order:

1. The 1st to 12th respondent are interdicted and restrained from intimidating, inciting violence against the applicants, interfering with the applicants in the execution of their statutory and/or customary functions as the traditional leaders and council of Ga-Seaphole village;
2. The 1st to ninth respondents are interdicted and restrained from unlawfully allocating stands to members of Ga-Seaphole village;

3. It is declared that the 1st to 11th respondents' decision to suspend the 1st applicant and the traditional council is unlawful and invalid;
4. The 1st to 11th respondents are directed to remove any fence, bricks or items which they have put when allocating stands to members of Ga-Seaphole village, failing which the sheriff of this court is directed to do and the costs of the removal are to be borne by the respondents;
5. It is declared that the allocation of stands is to be done through the 1st and 2nd respondent and the traditional council, who are entitled to actively participate in the development of land at Ga-Seaphole village in together with the community;
6. The 1st to 11th respondents are interdicted and restrained from preventing, inciting violence or threatening any member of the Ga-Seaphole village when they are attending kgoro;
7. The 1st to 11th respondents are interdicted and restrained from unlawfully assuming the powers of the 1st and 3rd applicants;
8. The 1st to 12th respondents are ordered to pay the costs of the 25 January 2021 and of the 9 June 2021.

M V SEMENYA

DEPUTY JUDGE PRESIDENT

LIMPOPO DIVISION; THOHOYANDOU.

APPEARANCES: Date of hearing: 9 June 2021 Date delivered: 26 August 2021 For the applicants: N E KUBAYI Attorney with right of appearance in the High Court For the 1st to 12th respondents: ADVOCATE M V SEHUNANE Instructed by: SEHUNANE INCORPORATE ATTORNEYS

[1] 1914 AD 221 at 227

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