

SOUTH AFRICA / JUDGMENT

N Wandlamhari Communal Property Association and Another v Mathebula and Others (LanC89/2019B) [2025] ZALCC 30 (18 July 2025) [2025] ZALCC 30

COURT

Land Claims Court

BEFORE

Bishop

CASE / FILE NUMBER

LanC 89/2019B

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IN

THE LAND COURT OF SOUTH AFRICA

HELD

AT RANDBURG

CASE

NO: LanC 89/2019B

Before:

Bishop AJ

Heard

on: 15 July 2025

Order

on: 17 July 2025

Reasons

on: 18 July 2025

(1)

REPORTABLE: YES/NO

(2)

OF INTREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

In the matter between:

THE N'WANDLAMHARI
COMMUNAL PROPERTY
ASSOCIATION
First Applicant
MHLANGANISWENI
COMMUNITY
Second Applicant
and
MILLINGTON
ZAMANI MATHEBULA
First Respondent
RICHARD
MANGALISO NGOMANE
Second Respondent
SURPRISE
WELCOME NTIMANE
Third Respondent
KAIZER
MESHACK KHUMALO
Fourth Respondent
SIPHO
ORANCE MKHWANAZI
Fifth Respondent
FRANK
SOLLY BHUNGELA
Sixth Respondent
RULANI
HARRIET MAWELA
Seventh Respondent
THUYANI
SOUL DLAMINI
Eighth Respondent
MAVHURAKA
COMMUNITY
Ninth Respondent
MINISTER OF RURAL
DEVELOPMENT AND
LAND
REFORM
Tenth Respondent

DIRECTOR GENERAL:

DEPARTMENT OF
RURAL
DEVELOPMENT AND LAND REFORM
Eleventh Respondent
THE CHIEF LAND CLAIMS

COMMISSIONER: COMMISSION ON
RESTITUTION OF
LAND
RIGHTS
Twelfth Respondent
REGIONAL LAND CLAIMS

COMMISSIONER: MPUMULANGA
PROVINCE
Thirteenth Respondent
ASSOCIATION
CONCERNED BENEFICIARIES
Fourteenth Respondent
DION
SONTO MNIS
Fifteenth Respondent
ORDER

1.

This application is heard as an urgent application and the provisions regarding the service requirements and the time periods in the Land Court are dispensed with.

2.

The fourteenth and fifteenth respondents are interdicted and restrained from taking steps to hold and from

holding:

2.1.

An annual general meeting of or on behalf of the first applicant scheduled for 19 July 2025; and

2.2.

Any other subsequent annual general meeting or any other meeting of or on behalf of the first applicant, other than in terms of the applicable provisions of the first applicant's constitution.

3.

There is no order of costs as between the Applicants and the First to Ninth Respondents.

4.

Costs as between the Applicants and the Tenth to Fifteenth Respondents are reserved for determination in the main action.

JUDGMENT

BISHOP, AJ:

- [1] This application arises midstream in the resolution of a profound disagreement about who should benefit from the restoration of the MalaMala Game Reserve. The Applicants approached this Court urgently to prevent the Fourteenth and Fifteenth Respondents (the Concerned Beneficiaries) from holding a general meeting of the First Applicant (the NCPA) which was scheduled for 19 July 2025.
- [2] The MalaMala land sits between the Kruger National Park and the Sabi Sands Game Reserve. It is immensely valuable land. So valuable that, in 2012, this Court concluded that at an estimated cost of R800 million it was not feasible to require the State to restore it to the communities who had been removed from the land through racist policies of colonialism and apartheid.[1] Despite that conclusion, in 2013 the State decided to pay over R1 billion to purchase the land and restore it the dispossessed communities.
- [3] The dispute at the heart of this case is who should benefit from the restitution of the MalaMala land. The restitution claim for the land was brought by various people and communities and consolidated into a single claim in the name of the Mhlanganisweni Community – the Second Applicant. When the claim was settled in 2013, the Mhlanganisweni Community and the Mavhuraka Community (the Ninth Respondent) were combined to form a new entity to take ownership of the MalaMala land. That entity is the NCPA, the First Applicant.
- [4] This amalgamation of the Mhlanganisweni and Mavhuraka Communities under the banner of the NCPA is the genesis of the present litigation and, as I will explain, other litigation in this Court and the High Court.
- [5] To understand why the Applicants seek to prevent the Concerned Beneficiaries calling a general meeting, I need to canvass two categories of evidence. First, the general dispute between the Applicants, the Mavhuraka Community and the Concerned Beneficiaries. Next, the specific events that preceded the calling of the meeting that was scheduled for 19 July 2025, precipitating this urgent application.

The Underlying Dispute

- [6] The Mavhuraka Community did not lodge a restitution claim for the MalaMala land. For that reason, the Mhlanganisweni Community takes the view that, despite their inclusion in the NCPA, members of the Mavhuraka Community should not benefit from the MalaMala land.

- [7] In 2019 the NCPA and the Mhlanganisweni Community launched an action in this Court for a range of relief to achieve that end (the Main Action). The Main Action seeks to effectively reverse the 2013 merger of the two communities so that only members of the Mhlanganisweni Community will benefit from the MalaMala land, or that only members of the Mavhuraka Community who demonstrate they were dispossessed from the MalaMala land can benefit from it.
- [8] The Main Action is part heard. This Court dismissed a range of preliminary objections in May 2022[2] and began hearing evidence in October 2022. At that point the Concerned Beneficiaries intervened and raised their own preliminary

objections to the Main Action. Two of those objections are relevant to the current urgent application. To understand them, I need to take a step back and narrate what had occurred within the NCPA in the decade after its formation in 2013.

- [9] When the NCPA was created an interim committee was appointed to manage the NCPA. It consisted of members from both Communities. In 2016, a new committee took office, made up only of members of the Mhlanganisweni Community. This is what the Applicants call the “Executive Committee”.
- [10] Only members of the Mhlanganisweni Community participated in the 2016 meeting that elected the Executive Committee. Why? Because at that point the members of the Mhlanganisweni Community had been verified while at that stage members of the Mavhuraka Community had not. Verification was mattered because of the way the NCPA constitution deals with who can be regarded as members and therefore who can vote at general meetings, including to elect an executive committee.[3]
- [11] There is an ongoing dispute about whether the Executive Committee is legitimate, and whether it is even an executive committee as envisaged in the NCPA constitution. Some Respondents say it was only an interim committee elected for a limited time and for the purpose of facilitating the verification of the Mavhuraka Community. The Applicants assert that it was a properly elected executive committee with full powers and for an ordinary term. For simplicity I will call this committee – which remains in existence – the Executive Committee. In doing so, I do not mean to imply that it is a lawfully elected executive committee under the NCPA. That is a dispute I intentionally avoid resolving, for reasons I explain below.
- [12] Despite the fact that the NCPA’s constitution limits the term of any executive committee to three years, and requires regular annual general meetings, no new executive committee has been elected, and no AGM to elect a new committee has been successfully held. The reasons depend on who you ask. The Applicants say they have tried to hold AGMs to consider the verification of the Mavhuraka Community and elect a new executive committee, but that these attempts have been disrupted by the Concerned Beneficiaries and other members of the Mavhuraka Community. There were attempts in February 2018, October 2019 and January 2020.

- [13] The Respondents do not deny that they have disrupted meetings in the past, or that this is part of the reason no meeting has been held. But, they say, they disrupted the meetings because they excluded the Mavhuraka Community. In the view of the Mavhuraka Community, the Executive Committee and the Mhlanganisweni Community have refused to call a general meeting since 2020 so that they can hold onto power and continue to exclude the Mavhuraka Community by not adopting them as members.
- [14] This history must also be understood against the backdrop of an order of the High Court granted in 2019. In 2016 the First to Eighth Respondents – who are members of the Mavhuraka Community – launched an application in the Pretoria High Court. They claimed the NCPA had not been properly managed and that it required intervention to ensure compliance with its constitution. They sought a range of relief including placing the NCPA under administration and compelling the Department of Rural Development and Land Reform to assist the beneficiaries to hold an AGM and elect a new executive committee.
- [15] On 9 May 2019 Khumalo J granted some but not all of the relief.[4] She did not place the NCPA under administration. But she did order the Director-General to complete and release the results of the verification of the Mavhuraka Community, and to “assist the beneficiaries of the NCPA to prepare for the Annual General Meeting and the elections of the new executive committee members”. Importantly, the order is directed at the Director-General, not the Executive Committee or the NCPA.
- [16] The verification of the Mavhuraka Community was subsequently completed in 2019. However – for the disputed reasons set out above – the verification report has not been adopted by the NCPA as envisaged in the NCPA constitution.[5]
- [17] That brings us back to the two preliminary issues that the Concerned Beneficiaries raised in the Main Action. Cowen J determined these in a judgment delivered on 10 August 2023.[6]
- [18] The first objection was to the authority of the Executive Committee to bring the Main Action on behalf of the NCPA. The Concerned Beneficiaries argued that, as it was not a properly elected executive committee and had exceeded its term, it could not have authorized the NCPA to launch the Main Action. Cowen J dismissed the objection because the NCPA did not rely on a decision of the Executive Committee, but a decision of a special general meeting held on 9 March 2019. In doing so, she intentionally did not resolve the ongoing dispute about the legitimacy of the Executive Committee.
- [19] The second preliminary objection was to the validity of the decision taken at that special general meeting. The Respondents argued that because it was taken solely by members of the Mhlanganisweni Community and excluded the Mavhuraka Community, it was invalid. That was not a problem, according to the Applicants, because only members of the Mhlanganisweni Community were members of the NCPA

as only they had, at that point, been verified (the meeting occurred before the verification of the Mavhuraka Community was finalised).

[20] Cowen J disagreed. She held that even though the membership of the Mavhuraka Community had not yet been verified, they were entitled to vote, at least on an issue as fundamental to the NCPA as whether to pursue the Main Action. “[W]here the verification process has been delayed,” she held, “the members’ register – and thus the voter’s roll – would have to be compiled in a different way, at least pending finalisation of the verification process and its adoption.”[7] The register should be compiled using the process adopted for the initial election in 2013 and “in a way that includes members

from both constitutive communities.”[8]

[21] The Applicants applied for and were granted leave to appeal that decision in January this year.[9] The appeal to the Supreme Court of Appeal is still pending. The Main Action is on hold until that appeal is resolved.

[22] Against this contentious background, it is perhaps unsurprising that there have been two previous occasions on which the holding of a general meeting has come before this Court.

[23] First, in February 2022 the Department sought to convene an AGM of the NCPA. The Applicants urgently approached this Court to interdict it from doing so. The reasons are essentially the same as the reasons they advance in the present application – the proposed AGM was not called in line with clause 15 of the NCPA’s constitution. Cowen J agreed, in essence, because the Department had provided no proof that 100 members of the NCPA had supported a call for a general meeting.[10]

[24] Second, on 11 December 2023 – after she had upheld the preliminary objection to the decision to authorize the Main Action – Cowen J granted an interim interdict against the Concerned Beneficiaries preventing them from proceeding with a general meeting scheduled for the next day. The interdict was to operate pending the determination of Part B which, as far as I am aware, was never determined. I was only provided with the order Cowen J granted. I do not know the context in which the order was granted

or what relief was sought in Part B. I mention it only as it shows this is not the first time the Concerned Beneficiaries have attempted to call a general meeting, and not the first time the Applicants have approached this Court to block it.

[25] That sets the background for the present dispute. I have described it at some length because the contours of the current dispute only make sense against an understanding of the long and difficult road that led the parties here.

The Calling of the Meeting for 19 July 2025

- [26] The events that immediately precipitated this dispute began on 5 June 2025 when Mr Mnisi – the Fifteenth Respondent – issued a notice calling a meeting of the NCPA to be held on 7 June 2025. The purpose was to resolve to call a general meeting. On the same day, the Applicants’ attorneys wrote to Mr Mnisi. The letter contends that Mr Mnisi was not entitled to call an elective AGM and demanded that he desist.
- [27] Mr Mnisi ignored the demand and held the meeting on 7 June 2025. Approximately 300 people were present. Who exactly attended is uncertain, and I address it below. The meeting resolved, purportedly in terms of clause 15 of the NCPA constitution, to call a general meeting.
- [28] On 13 June 2025, Mr Mnisi issued a notice inviting people who were not yet verified to attend a new verification exercise to be held on 16 and 17 June 2025. On 18 June 2025, the Applicants’ attorneys wrote to Mr Mnisi to demand that he stop purporting to verify beneficiaries and taking steps to hold a meeting of the NCPA. Mr Mnisi responded the next day effectively confirming that a general meeting would be convened.
- [29] The next day, 20 June 2025, the Applicants became aware that Mr Mnisi had distributed a notice calling an elective AGM of the NCPA for 19 July 2025. The issues on the agenda of that meeting would include updating the verification register, appointing lawyers for the NCPA, and the election of a new executive committee.
- [30] That notice, combined with Mr Mnisi’s refusal to accede to their demands, prompted the Applicants to bring the present application.

The Application and the Defences

- [31] It was launched on 25 June 2025 and seeks an interim interdict against Mr Mnisi and the Concerned Beneficiaries preventing them from holding the general meeting of the NCPA on 19 July 2025, or any other meeting. The interdict would operate pending the final determination of the Main Action.
- [32] The primary basis for the relief is that Mr Mnisi and the Concerned Beneficiaries have not complied with clause 15.1.3 of the NCPA constitution. The clause requires the calling of a general meeting if “100 (one hundred) members of the Association ... sign a written request and hand it to the Chairperson”. The second basis is that the meeting would interfere with the Main Action. That is why the interdict was only sought until the Main Action is finalized.
- [33] I struggled to understand the logic of linking the unlawful calling of the meeting to the Main Action. If a meeting is lawfully called, then the fact that it may impact on the Main Action – by altering the balance of power in the NCPA, causing the withdrawal of the Main Action, or in any other way – is irrelevant. The Applicants have no right to prevent a lawful meeting of the NCPA merely because it will have consequences for the Main Action. The Main Action does not freeze the NCPA in amber until its resolution; it remains governed by its constitution, not by the pending litigation. At the same time, the Applicants are entitled to prevent an unlawful meeting whether it will impact on the Main Action or not.

[34] I put these concerns to Ms Barnes SC at the hearing. In response she proposed a new draft order that sought final relief against Mr Mnisi and the Concerned Beneficiaries that was not linked to the completion of the Main Action. The new proposed relief reads:

“That the fourteenth and fifteenth respondents are hereby interdicted and restrained from taking steps to hold and from holding an annual general meeting of or on behalf of the first applicant scheduled for 19 July 2025 and from holding any other subsequent annual general meeting or any other meeting of or on behalf of the first applicant, other than in terms of the applicable provisions of the NCPA Constitution, in particular clause 15 of the NCPA Constitution.

[35] The draft was circulated to the other parties and they were afforded an opportunity to comment on it. Other than persisting with their objections to any form of relief, there was no new objection to the Applicants seeking this amended relief, or to the way it was worded. I intend to treat the application as one for this form of relief, rather than the interim relief initially sought.

[36] How did the Respondents respond to the application? Mr Mnisi and the Concerned Beneficiaries oppose the application. They contend it is not urgent, that the First Applicant lacks standing to bring it, and that the Applicants have failed to meet the requirements for an interim interdict.

[37] The Tenth to Thirteenth Respondents (the Department) filed a notice to participate, but no affidavit. Mr Modisa appeared for the Department at the hearing and argued against granting the application. I permitted him to do so as it is always valuable for this Court to know the position of the Department. But it is not generally appropriate for a party to ambush other litigants by only revealing their position at a hearing. All parties, the Department included, should file affidavits setting out their position in advance. This allows other parties, and the Court, to properly consider the issues at stake.

[38] The First to Ninth Respondents – the Mavhuraka Community – filed an explanatory affidavit. They do not directly oppose the order the Applicants seek. But they asked that, if it is granted, the Court also grant further orders requiring the Applicants to convene an annual general meeting, to share all benefits of the NCPA, to disclose the legal fees spent to date on the Main Action, and not to use the NCPA’s funds for further legal processes without a valid community resolution. This relief was not sought in a formal counter-application.

[39] At the hearing, Mr Mbhalati informed me that his clients did not persist with seeking that relief. But he emphasized the difficult position in which the Mavhuraka Community finds itself. Its members are excluded from participating in the NCPA until their verification is adopted. But a meeting to adopt the verification will be held without them and only with members from the Mhlanganisweni community. And, despite a constitutional requirement for an annual general meeting, none has been successfully held since the verification was complete. I suggested that the Court, although it could not grant relief resolving this impasse, could indicate the need to resolve it and how that might be achieved. Mr Mbhalati supported that suggestion and no other party argued it would be improper.

[40] These, then, were the questions I was required to answer:

[40.1] Is the application urgent?

[40.2] Is there merit in the objection to the NCPA's standing?

[40.3] Would the 19 July 2025 meeting be lawful?

[40.4] Are the other requirements for interdictory relief met?

[40.5] What is the appropriate order?

[40.6] Is there a way out of the current deadlock?

[40.7] Who should pay the costs of this application?

[41] Having considered them, I granted an order on 17 July 2025 in the following terms:

5. This application is heard as an urgent application and the provisions regarding the service requirements and the time periods in the Land Court are dispensed with.
6. The fourteenth and fifteenth respondents are interdicted and restrained from taking steps to hold and from holding:
 - 6.1. An annual general meeting of or on behalf of the first applicant scheduled for 19 July 2025; and
 - 6.2. Any other subsequent annual general meeting or any other meeting of or on behalf of the first applicant, other than in terms of the applicable provisions of the first applicant's constitution.
7. There is no order of costs as between the Applicants and the First to Ninth Respondents.
8. Costs as between the Applicants and the Tenth to Fifteenth Respondents are reserved for determination in the main action.

[42] I granted the order without reasons because the meeting was scheduled for 19 July 2025 and I wanted to give as much notice of my order as possible, but I was not yet ready to provide my reasons. These are my reasons for the order which will be delivered on 18 July 2025.

Urgency

[43] The matter is plainly urgent. The proposed general meeting is on 19 July 2025. In order to prevent the meeting occurring, the Applicants require a hearing before that date. They have not unduly delayed in approaching the Court. They learnt that the meeting was scheduled for 19 July 2025 on 20 June 2025 and launched this application on 25 June 2025.

- [44] The claim that the Applicants would be able to obtain substantial redress in due course by seeking to set aside the results of the proposed meeting after the fact misses the point. Whatever resolutions are taken at the meeting will have either a legal or a factual impact until a decision on their legality is taken. Some of the consequences may be impossible to unscramble months after the fact when a hearing in due course occurs.
- [45] Cowen J treated two virtually identical applications to prevent allegedly unlawful meetings of the NCPA from occurring as urgent. I see no reason to treat this application differently.

Standing Authority

- [46] The next defence is framed as one of standing. The Concerned Beneficiaries argue that the Executive Committee does not have authority to litigate on behalf of the NCPA. They contend that it was appointed in 2016 as an interim committee and that it “was never intended that this structure would operate as a de facto executive committee.” The resolution purporting to authorise this application was taken by the Executive Committee. But if the Executive Committee is illegitimate, it cannot instruct attorneys to

litigate on behalf of the NCPA.

- [47] There are three difficulties with this line of argument.
- [48] First, although raised as a standing issue, it is in fact a question of authority. There is no doubt that the NCPA has the necessary interest to bring litigation preventing what it alleges is an unlawful meeting. The question is whether a properly constituted body has validly acted on behalf of the NCPA to instruct attorneys to bring the application. That is an issue that ought to have been raised through Rule 7, not as a complaint about standing. Procedurally, the issue is not properly before me.
- [49] Second, the status of the current Executive Committee is a dispute that will need to be determined in the Main Action. As I explained earlier, the Respondents made the same argument before Cowen J: that the Executive Committee did not have the authority to act on behalf of the NCPA. Cowen J avoided deciding the issue because the NCPA did not rely on a decision of the Executive Committee, but a decision at a special general meeting.[11]
- [50] But she explained why “the interests of justice would not – in my view – be served by venturing to deal with that issue now”.[12] Most importantly, the Court had already heard some, but not all, of the evidence about what occurred at the 16 October 2016 meeting when the Executive Committee was elected. There remains a factual dispute about how and for what purpose the Executive Committee was elected in
2016. That dispute, Cowen J held, should be resolved once all the evidence is led. I take the same view. Deciding the issue in these proceedings, on scanty evidence, when it is hotly contested in the Main Action would cause more harm than good.

[51] Third, it is not necessary to decide whether the NCPA has validly authorised this application because there is no challenge to the standing or authority of the Second Applicant – the Mhlanganisweni Community – to interdict an unlawful meeting. Even if the NCPA has not taken a valid decision to instruct its attorneys, no party contended that the Mhlanganisweni Community has not. It cannot be denied relief merely because the Executive Committee may not have had the requisite authority to act on behalf

of the NCPA.

[52] I therefore make no finding about the status of the current Executive Committee; the issue must be decided based on all the evidence and full argument. I find only that: (a) the authority of the Executive Committee was not properly placed in issue; and (b) the

Mhlanganisweni Community has standing and there is no challenge to its decision to bring this application.

Was it Lawful for the Respondents to Call the 19 July 2025 Meeting?

[53] This turns on the proper interpretation of clause 15.1.3 of the NCPA's constitution. To repeat, it provides that a general meeting "may be convened at any time on the requisition of: ... 100 (one hundred) members of the Association who sign a written request and hand it to the Chairperson".[13] This is the only provision the Respondents rely on to justify the meeting they called. The simple question is whether they complied

with it.

[54] On these papers, I can only conclude that they did not. But that does not mean they cannot in future. That is an issue I need not and should not decide.

[55] The first problem is that the request was not made by 100 members of the NCPA. The Applicants attached a list of the members of the NCPA to the founding affidavit. The Concerned Beneficiaries admitted the accuracy of that list. But in their answering affidavit they do not put up evidence to show that 100 members of the NCPA on that list supported the decision on 7 June 2025 to call for a general meeting. There was no evidence of who attended that meeting. In fact, there is no positive averment in the answering affidavit that 100 members of the NCPA supported the decision to call for the general meeting.

[56] Shortly before the hearing, the Concerned Beneficiaries put up the minutes of the 7 June 2025 meeting and an attendance register. The attendance register shows that approximately 300 people attended. But there is still no averment, let alone evidence, that 100 of those people are members of the NCPA. It is not for the Court to compare the two lists to try and resolve the question, particularly without any evidence or argument.

- [57] In any event, it became plain at the hearing that the Concerned Beneficiaries did not contend that 100 of the people listed in the NCPA's membership register had supported the call for the general meeting. The reason is that only members of the Mhlanganisweni Community appear on the membership register. That is the very injustice they want to resolve in a general meeting.
- [58] In her heads of argument and at the hearing, Ms Gana argued instead that the logic Cowen J adopted to hold that the Main Action was not properly authorised, established that members did not need to appear on the membership register in order to be regarded as members under the NCPA constitution. Verified, and potentially even unverified, members of the Mavhuraka Community were members who could call a general meeting under clause 15.1.3 even if they were not on the membership register.
- [59] There are two reasons this logic cannot prevail, at least in these urgent proceedings.
- [60] The first is the way the Concerned Beneficiaries pleaded their case. Mr Mnisi states in the answering affidavit: "it is true that only members of the Mhlanganisweni Community have been verified and adopted, the Mavhuraka Community members have been verified but not adopted." It is exactly that problem they seek to resolve through a new AGM. It needs solving precisely because there is currently a distinction between the members of the Mhlanganisweni Community and the Mavhuraka Community. The Applicants' understanding, and my own understanding prior to argument, was that this was a concession that there was a difference between verified and unverified members that mattered for the purpose of clause 15.1.3.
- [61] The argument that, despite not being on the membership register, members of the Mavhuraka Community must be treated as members, is not made in the answering affidavit; it was advanced by counsel in heads and at the hearing. I would be hesitant to decide the issue on that basis when it was not clearly pleaded and where the Applicants have not been afforded a fair opportunity to answer it.
- [62] Even if I was to overlook the failure to plead the point, there is another reason Cowen J's reasoning on membership cannot aid the Concerned Beneficiaries. Assume I accept that verified members of the Mavhuraka Community are members of the NCPA even prior to adoption by the NCPA; there is no evidence to show that 100 such members supported the request. Clause 9.10 of the NCPA constitution provides that the "presence of the name of any member in the register shall be prima facie proof of membership of the Association, and conversely, the absence of any member's name in the register shall be prima facie proof that such person does not have any right to membership".
- [63] The Mavhuraka Community could put up the verification report and compare that to the attendance list of 7 June

2025. But the verification report of the Mavhuraka Community is not before me. That makes it impossible for me to assess whether 100 of the people who attended the meeting on 7 June 2025 were verified members of the Mavhuraka Community even if they were not on the membership register.
- [64] Even on a more attenuated basis that members of the Mavhuraka Community could be regarded as members of the NCPA without verification but through some other process (which was the holding of Cowen J), I am in no better position. I have no basis to assess whether those who attended the meeting on 7 June 2025 are members of the Mavhuraka Community. The Concerned Beneficiaries certainly provided none.
- [65] What Cowen J envisaged is that there would be some informal but agreed process to assess community membership for voting rights at an AGM. She did not hold that, absent any agreement or process, any person could merely assert membership of one of the communities and thereby claim membership of the NCPA. Nor did she hold that there must be no objective check on membership for the purposes of assessing compliance with clause 15.1.3.
- [66] Quite the opposite. In interdicting the Department from convening an AGM in 2022, Cowen J took the same approach I have taken on these facts. The Department argued that it was entitled to convene a meeting under clause 15.1.3 because a meeting of 100 members of the Mhlanganisweni and Mavhuraka communities had supported such a call. Cowen J rejected that argument because the Department had “not placed any evidence before me upon which I can conclude that the persons who resolved ... to request the Department to convene the ... AGM were in fact then members of the NCPA.”[14] As she explained, when it comes to calling an AGM under clause 15.1.3 and “[w]hatever the duties of the NCPA may be to admit persons entitled to membership, the procedures of the NCPA Constitution for admission of members must be observed.”[15] Because there was no evidence seeking to establish membership, it was unnecessary for Cowen J to “make any findings about precisely how [the process of admitting members] must unfold under the NCPA Constitution, nor who the current members in fact are.”[16]
- [67] The same applies here. Whatever the requirements for membership are for the purposes of clause 15.1.3, the onus was on the Concerned Beneficiaries to show that 100 members had supported the call for a general meeting. How they could establish that is an issue I expressly leave open. On any approach, they have not satisfied their burden on these facts.
- [68] Lastly, even leaving aside the question of whether 100 members supported the request to call a meeting, it was not handed to the Chairperson. Clause 15.1.3 does not permit 100 members to call for a meeting and then hold it. It permits them to present their request to the Chairperson who is then obliged to convene the meeting. This was simply not done.[17] And as Cowen J held in 2022, that on its own constitutes non-compliance with clause 15.1.3. [18]

[69] What this means is that the Applicants have established not just a prima facie right, but a clear right to interdict the meeting on 19 July 2025. I see no unfairness in treating this as final relief. As the Concerned Beneficiaries themselves pointed out, insofar as the meeting scheduled for 19 July 2025, the relief was always final in effect. Insofar as future meetings are concerned the relief now sought applies only to meetings called without compliance with clause 15.

Irreparable Harm and Alternative Remedy

[70] The Concerned Beneficiaries argued that the Applicants had failed to show irreparable harm or the absence of an alternative remedy. The Applicants, they said, could challenge the results of the planned general meeting after the fact.

[71] I disagree, as did Cowen J in 2022. She held in directly comparable circumstances that “[t]here is no alternative satisfactory

remedy but to approach a Court for relief to stop the Department from calling an unlawful meeting.”[19] The same is true here. Moreover, permitting an unlawful meeting to occur “can result in chaotic and illegitimate governance of a CPA that is embroiled in litigation about the very issue of membership.”[20]

[72] I see no purpose in allowing an unlawful meeting to occur. The results of the meeting will be hugely disruptive for the NCPA and the two communities. It may be that disruption is necessary to resolve the current stalemate. But it must occur lawfully, not unlawfully. To quote Cowen J (again): “Legality must prevail in governance processes of CPA’s, not least when there is an internal dispute being litigated concerning membership.”[21]

[73] I treat this as final relief because it is untethered to the Main Action. But even if I was to consider it as interim relief and assess the balance of convenience, that would plainly favour the Applicants. The order now sought only prevents the meeting on 19 July 2025, and any other unlawful meeting. It does not prevent the Concerned Beneficiaries from seeking to muster the support of 100 members to call a lawful meeting. And my judgment does not decide how membership is defined or proved for that purpose.

The Relief

[74] I agreed in substance with the relief the Applicants sought in their draft order. I reworked it slightly to make its meaning plain. The relief prevents the meeting on 19 July

2025. It also interdicts Mr Mnisi and the Concerned Beneficiaries from holding or taking steps to hold another meeting other than in accordance with the NCPA constitution. Their conduct demonstrates that, absent an order, there is a reasonable apprehension that they may again attempt to convene an unlawful meeting.

- [75] The order is framed that way exactly because it recognizes that it may be possible for them to convene a lawful meeting. It is delinked from the Main Action because the Applicants did not establish a right to prevent a lawful meeting merely because the Main Action is pending.

The Way Forward

- [76] The current attempt to convene a general meeting is unlawful and cannot be allowed to proceed. But that does not mean that the Mavhuraka Community or the Concerned Beneficiaries have no options open to them.
- [77] I appreciate the real sense of frustration on both sides of this dispute. The Mhlanganisweni Community feels they have been forced into a marriage they did not want and compelled to share land they think should be theirs alone. They instituted litigation six years ago to resolve that dispute which has no immediate end in sight.
- [78] The Mavhuraka Community feels excluded from the NCPA in which they believe they should be equal partners. They see constant attempts to deny them the rights and benefits promised by the NCPA's constitution, and feel powerless to change their position because they are not acknowledged as members by the Executive Committee and the Mhlanganisweni Community.
- [79] The Main Action will likely take years to finally resolve the substantive disputes. Must all sides just accept the stalemate until then? No.
- [80] I do not wish to give the parties advice on how to solve their disputes. Parties must define their own disputes and resolve them how they deem best. But I do want to emphasise that my finding that this particular attempt to call a general meeting was unlawful does not mean that no meeting can be called to move the parties forward until the Main Action is resolved. It means only that any meeting must be called lawfully. That leaves several options.
- [81] The NCPA constitution requires annual general meetings. An item on the agenda of each meeting must be "membership matters". The Khumalo J judgment required the Department to assist the beneficiaries to convene a general meeting to resolve the issue of the verification of the Mavhuraka Community.
- [82] It remains open to affected parties to seek to enforce these obligations in the NCPA constitution and the Khumalo J order so that a general meeting is held and the issues are resolved. Ms Barnes SC rightly conceded that the pending Main Action on its own was no basis to object to a lawfully called general meeting.
- [83] To the extent that the Applicants may say that the fear of disruption is the reason no AGM has been called, it is open to them to secure a meeting from disruption. The Court can be called on to issue orders to prevent disruption and, if necessary, to enlist the aid of the Sheriff and the South African Police Service to enforce those orders. The possibility a meeting may be disrupted is not a justification for non-compliance with the obligation to hold annual general meetings.

- [84] It is also open to the Concerned Beneficiaries to call a meeting in compliance with clause 15.1.3. I have not decided who is and is not a member for purposes of that clause. It may be that verified members of the Mavhuraka Community must be treated as members even if they are not on the register – that issue remains undecided. But then the Concerned Beneficiaries must be able to show that 100 of the verified members supported a call for a general meeting, and that they presented that request to the Chairperson.
- [85] I do not suggest that any of these courses of action are simple or cost free. Each side will no doubt seek to resist a move by the other that they perceive will not be in their interest. And there remain thorny legal questions about the powers of the Executive Committee and the scope of membership. Those must be resolved when they are properly raised and fully ventilated.
- [86] But the parties are not powerless to move forward. The key point is this – they must move forward lawfully. Otherwise whatever steps are taken are likely to cause further discord, and are unlikely to resolve the present deadlock.

Conclusion and Costs

- [87] The final issue is costs. The Applicants initially sought costs. In their revised order they asked that costs should be reserved for determination in the Main Action. The Mavhuraka Community asked that there should be no costs order against them and costs should only be reserved as between the Applicants and the other Respondents. The Applicants agreed.
- [88] So do I. This Court does not ordinarily make costs awards. Whether one is justified here is best sorted out when the primary disputes between the parties are resolved.
- [89] Those then are the reasons for my order. For completeness and convenience, I repeat it below:
- [89.1] This application is heard as an urgent application and the provisions regarding the service requirements and the time periods in the Land Court are dispensed with.
- [89.2] The fourteenth and fifteenth respondents are interdicted and restrained from taking steps to hold and from holding:
- [89.2.1] An annual general meeting of or on behalf of the first applicant scheduled for 19 July 2025; and
- [89.2.2] Any other subsequent annual general meeting or any other meeting of or on behalf of the first applicant, other than in terms of the applicable provisions of the first applicant's constitution.
- [89.3] There is no order of costs as between the Applicants and the First to Ninth Respondents.
- [89.4] Costs as between the Applicants and the Tenth to Fifteenth Respondents are reserved for determination in the main action.

M BISHOP

Acting Judge of the Land Court

APPEARANCES:

For the Applicants: Adv H Barnes SC and Adv M Musandiwa Instructed by: Malatji & Co Attorneys

For the First to Ninth Respondents: Adv Mbhalati Instructed by: GW Mashele Attorneys For the

Tenth to Thirteenth Respondents: Adv Modisa Instructed by: State Attorney, Pretoria For the

Fourteenth and Fifteenth Respondents: Adv D Gana Instructed by: Mculu Incorporated Attorneys

[1] Mhlanganisweni Community v Minister of Rural Development and Land Reform and Others

[2012] ZALCC 7.

[2] N'Wandlamhari Communal Property Association and Another v Mathebula and Others

[2022] ZALCC 36 (N'Wandlamhari I).

[3] The details of how membership operates is fully set out in the judgment of Cowen J in N'Wandlamhari Communal Property Association and Another v Mathebula and Others

[2023] ZALCC 27 (N'Wandlamhari II), particularly at paras 10-15.

[4] Mathebula and Others v Nwandlamhari Communal Property Association and Others

[2019] ZAGPPHC 201. Some of the orders she granted were subsequently overturned on appeal. The details are not relevant for resolving the present dispute.

[5] The Concerned Beneficiaries state at one point that the verification was adopted at a special general meeting of the NCPA on 12 December

2020. This was also the evidence of Mr Mnisi (the Fifteenth Respondent) in N'Wandlamhari II (n

3) at para 18. But later in the answering affidavit Mr Mnisi states expressly that the membership of the Mavhuraka Community has been verified, but not adopted. I understood Ms Gana to accept in argument that this is indeed the position. I proceed on that basis.

[6] N'Wandlamhari II (n 3).

[7] Ibid at para 48.

[8] Ibid.

[9] N'Wandlamhari Communal Property Association and Another v Mathebula and Others

[2025] ZALCC 3 (16 January 2025)

[10] N'Wandlamhari I (n 2).

[11] N'Wandlamhari II (n

3) at para 32.

[12] I should note, for completeness, that the issue is slightly different from the one before Cowen J. She had to consider the

authority for the NCPA to bring the Main Action which could redefine or alter the very nature and composition of the NCPA. This

application is far more mundane – preventing the holding of an allegedly unlawful meeting. There was no argument that it would not fall within the ordinary authority of the Executive Committee, if it had been lawfully appointed.

[13] The Department made an argument that because clause 15.1 uses the word “may”, it does not preclude other ways of calling a general meeting. Wisely, no other party supported this argument. The “may” in clause 15.1 is empowering. It identifies the instances in which a general meeting may be convened. It does not leave open the possibility for other unspecified ways to call a general meeting. That would defeat the purpose of the provision as nobody would know whether a general meeting called outside the prescripts of clause 15.1 was validly called.

[14] N’Wandlamhari I (n

2) at para 40.

[15] Ibid.

[16] Ibid

[17] The reason may be that the Respondents do not recognize that the Executive Committee is legitimate and therefore there is no

Chairperson to whom to present the request. This explanation was not pleaded or properly argued. Even if it had it would not avail the Respondents. I have left the legitimacy of the Executive Committee undecided. Even if it is illegitimate, that would not entitle the Respondents to convene a meeting outside of the strictures of clause 15.

[18] N’Wandlamhari I (n

2) at para 37.

[19] Ibid at para 41.

[20] Ibid.

[21] Ibid.

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