

SOUTH AFRICA / JUDGMENT

Seleka Royal Family and Another v Premier of Limpopo Province and Others (2507/2016) [2018] ZALMPPHC 4 (8 February 2018)

[2018] ZALMPPHC 4

COURT

Limpopo High Court, Polokwane

BEFORE

M.G. Phatudi

CASE / FILE NUMBER

2507/2016

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IN

THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO

DIVISION, POLOKWANE)

CASE

NO: 2507/2016

REPORTABLE:

NO
OF
INTEREST TO OTHER JUDGES: NO
REVISED
8/2/2018
In

the matter between:

SELEKA
ROYAL
FAMILY 1ST
PLAINTIFF
SELEKA
SA MOTLHASEDIROYAL
COUNCIL 2ND
PLAINTIFF
and
THE
PREMIER OF LIMPOPO
PROVINCE 1ST
DEFENDANT
HOUSE
OF TRADITIONAL LEADERS

(LIMPOPO
PROVINCE) 2ND
DEFENDANT
MEMBERS
OF THE EXECUTIVE
COUNCIL 3RD
DEFENDANT
GOVERNMENT,
HUMAN SETTLEMENT AND
TRADITIONAL
AFFAIRS (LIMPOPO PROVINCE)
ACTING
CHIEF PHETOGO DAVID
SELEKA 4TH
DEFENDANT

JUDGMENT

M.G. PHATUDI J

[1]

INTRODUCTION

1.1 This matter found its origin as motion proceedings launched in Gauteng Division, Pretoria under Case No 64467/2014. The matter was by agreement subsequently transferred to this Division for adjudication as a special trial action, it being found by its predecessor to have material disputes of fact which could not be resolved on paper.

1.2 After several unnecessary postponements, mainly at the instance of the fourth Respondent and his different legal representatives since 27 September 2016, the matter was finally heard, though on intervals, on 27 September 2016. The action is solely defended by Fourth Defendant. The First Second and Third Defendants did not strenuously contest the action as they probably have no direct and substantial interest in the dispute. Needless to say, they were merely joined in the action as nominal defendants. The fourth Defendant was then assisted by legal counsel, adv. Masipa when the matter was commenced with.

1.3 The Plaintiffs in the main seek relief for the removal, alternatively the withdrawal of the Fourth Defendant's recognition as Acting Senior Traditional Leader (acting kgosi) of Ga-Seleka traditional community. The relevant recognition certificate has been issued on 16 September 2006 in favour of the First Defendant by the First Defendant in terms of section 15(2) (a) of the Limpopo Traditional Leadership and Institutions Act 2005[1], ("the Act") and ancillary relief.

[2] Grounds for Removal:

In order to establish its claim, the plaintiffs led evidence through its witnesses. I shall refer to and survey the evidence briefly it unfolded.

2.1 The evidence of Ms Tebogo Dorcas Seleka covered a brief history and genealogical succession structure of the Seleka dynasty. Her grandfather Rotere Mamane Seleka married two customary wives, with Dorcas Lehitlo Monemudi as a senior wife. Out of this union, two males were born, namely, David Radibaki and Zacharia Tompi Seleka. Her status was that of a candle wife and she was on marriage transferred from chief Langas's royal house.

2.2 She testified- further that the Fourth Defendant Phetogo David, Seleka son of David Radibaki Seleka was identified as acting chief (kgosi) during 2007 at which occasion she was present.

2.3 The witness was referred to the contents of a royal family resolution[2], a hand written document whose signatories (28) is attached thereto. The witness indicated that the purpose of the said resolution was to "appoint" the Fourth Defendant born of Queen Kekana as a "seed-raiser", and, furthermore to "take initiative in marrying Mmasetshaba from Ga-Malome in terms of their tradition and custom..."

2.4 She also testified that despite the aforementioned resolution, the Fourth Defendant has to date failed or refused to marry a candle wife contrary to the wishes of the inner circle. She stated as a reason for his refusal that he has already married his common law wife and found himself constrained not to wed a candle wife.

2.5 According to the witness, the Fourth Defendant's conduct since his recommended "appointment" to act as a regent or seed-raiser, he was plainly recalcitrant to the interests of the royal family and the traditional council of Ga-Seleka. His misconduct led to a petition dated 17 May 2014 setting out grounds for the removal of the fourth defendant as a regents who then was already formally recognized as such by the First defendant.

2.6 The Petition document[3] allege several grounds which according to the witness are sufficiently weighty to constitute grounds for his removal as acting kgosi. "The Petition is captioned "Notice of removal Royal Acting Chief Phetogo David Seleka Royal/Council/Seleka sa Motlhasedi Royal Council"

2.7 Some of the grievances raised in the petition, as confirmed by the witness ranged from desertion from the royal family, He undermines the authority of the royal family, and custom and tradition obtaining at Ga-Seleka, thereby bringing the first plaintiff chieftaincy in to disrepute. This he illustrated by introducing his friends who are not part of a core customary structure of the royal family to run the administrative affairs in its stead. On 14 March 2014 he introduced his friends at the Department of Mineral Resources, Limpopo, with a view to secure mineral rights professing to be members of plaintiff. He displays propensity of violent conduct e.g assaulting fellow royalists e.g Mr Dipuo Seleka, Nthapeleng Seleka, Boedile Seleka and Mr Mmakata, to the disruption of the royal family/council meetings including failure to attend tribal meetings (kgotla)

[3] The witness further testified that since the submission of the Petition document to offices of the First, Second and Third defendant

during May 2014, no decisive action was taken to execute the plaintiff's resolution for Fourth defendant's removal as acting chief.

[4] After her evidence-in chief, Advocate Masipa proceeded with cross- examination which sought to negative the witness evidence.

[5] It was put to the witness that the Fourth defendant's wife, Poncho Anna Seleka is regarded as a candle wife for Seleka traditional

community as he married her with tribal dowry.

[6] At the end of cross examination, the matter was adjourned to 23 January 2017 for further evidence. On the 23 January 2017, the matter could not proceed as the Fourth Defendants defaulted on grounds of alleged ailment. Not only that, new counsel for the First, Second and Third Defendant introduced himself for the first time. Another new counsel, Mr Ramaila also stepped in and sought a further postponement as the Fourth Defendant was desirous to employ Senior Counsel, who on that day was already engaged elsewhere. For these reasons, the matter was again remanded to 04 April 2017. Again, the matter could not proceed as scheduled on 04 April

2017. The reason advanced for a further postponement was that the parties are "locked up in settlement negotiations"[4] The matter was then postponed sine die.

[7] The matter was re-called on 22 December 2017. Present at the hearing were plaintiffs' counsel of record, the Fourth Defendant who appeared in person, and there was no appearance for the First, Second and Third Defendants, despite a proper notice of set down been served.

[8] Before the matter could resume, the Fourth, Defendant again sought a further postponement of the hearing as his erstwhile attorneys

Mamabolo and associates withdrew as attorneys of record following a notice served on 13 December 2017 on the plaintiffs' attorneys. As matter stand, he should have ordinarily known about his attorneys withdrawal some 6 days prior to the hearing, and as a reasonable man in his position, and given the history of the inordinate delays on his part in the matter, the Fourth Defendant should have engaged a substitute set of attorneys in good time, if he demonstrated respect to the court. Because of the unreasonable delays in the matter, mainly at his own stance, the court ruled that it would not be unconstitutional to deny him a further remand. His application therefore failed.

- [9] The court directed him to listen attentively to the evidence as presented and that he be accorded an opportunity to cross-examine the witnesses and where necessary to contradict their version with his own version. The Fourth Defendant accordingly remained in attendance as the proceedings unfolded.
- [10] The next witness, Dipuo Joseph Seleka, testified. He stated that the Fourth Defendant is his nephew from his paternal side. They both are resident in Ga-Seleka. He confirmed that a petition was directed to office of the Premier, the First Defendant, to remove the Fourth Defendant as regent. It was issued by the plaintiff. He also mentioned that the dispute against the Fourth Defendant was over mining issues. This was discussed in community hall. While on the way home, the Fourth Defendant threatened him with assault. He attempted to hit him with a fist and he also hurled a stone at him.
- [11] Cross-examined by the Fourth Defendant, he denied ever threatening to assault the witness as alleged. He contented that he was at all material times in the tribal office, not anywhere near the hall where a meeting was held. He put it to the witness that he in fact went to him while the witness stood near the fence outside the hall. I must point that his version at this stage is an indication of some contact that he has had with the witness.
- [12] The next witness was Madidimala Thousand Seleka. He stated that the Fourth Defendant is his paternal uncle. He too confirmed that a Petition for the removal of the Fourth Defendant had been directed to the office of the First Defendant. He associated himself with the grounds for his removal. His reasons were inter alia that:-
- (a) While acting as a chief, he was un-corporative.
 - (b) He not only undermined the royal family, but has no respect for its authority;
 - (c) He also once attacked him.
- [13] This witness was also cross-examined by the Fourth Defendant. He, instead of challenging or disputing the evidence against him, he resorted to attack the witness genealogical standing in the royal family. He intimated that the dispute in the community is around the mining issues as he refused to sign for certain mining documents. He denied threats of assault.
- [14] Captain Mathetja Jacobeth Rakobela also took a stance. She gave evidence about a certain police docket wherein one D.S Mamakata was a complainant against the fourth Defendant. The charge was however later withdrawn. As the quality of the evidence was not damaging the Fourth Defendant he did not subject the witness to any cross- examination.

[15] The last witness was Boedile Godfrey Seleka. He stated that he knew the Fourth Defendant as his uncle's son. He facilitated his recommendation as an acting chief. He said both the late Ms Alice and Mr. Z.T. Seleka were not keen to "appoint" him for an acting stint because of his wayward conduct. The witness confirmed that he too was one of the signatories to the Petition referred to.

He confirmed that since his "appointment", the Fourth Defendant has since deserted the royal kraal. He nominated his friends, who are non- members of the royal family to co-manage the council's affairs. He was also man handled by him in a meeting

held on 14 July 2014. He was threatened with assault. He brought Seleka chieftaincy into disrepute. Crucial among the misconduct he committed was failure or refusal on his part as a "seed-raiser" to marry a candle wife as dictated by custom after his "appointment".

[16] It was on a semblance of the foregoing considerations that the royal family resolved to have him removed from his acting position.

[17] I must remark that this witness was not cross-examined as the Fourth Respondent left the court room without leave of court. This is unprecedented conduct amounting to contempt of court as he was previously warned to participate in the proceedings. This is particularly so that, he submitted to the hearing as he had already cross-examined two previous witnesses. There was nothing therefore to gainsay this witness' testimony.

[18] With the evidence so far presented, the plaintiff's case was closed.

[19] The legal issue is whether is there sufficient evidence of misconduct against the Fourth Defendant to justify his removal from his acting positions as kgosi.

LEGAL FRAMEWORK:

[20] Section 13 of Act 6 of 2005 provides that:-

RELIEF OF ROYA DUTIES:

Section13 (1):

"Relief of royal duties shall be on the grounds of-

(a).....

(b).....

(c).....

(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/her office"

[21] In the present case, the following factors are common cause, namely"-

21.1. The Fourth Defendant has been previously "appointed" or identified as a "seed-raiser" by the royal family on 23 August 2005 and also required to marry a candle wife thereafter. This identification process was, to my mind, analogous to the provisions of Section 15 of the Act regarding the recognition of acting Traditional Leaders. His appointment was for him to act as a Senior Traditional Leader. (acting kgosi)

21.2. While acting in that capacity, he was required by custom to become a "seed-raiser" as resolved by the royal family.

21.3. Acting on the decision of the royal family and following the prevailing legal precepts, the First Defendant issued a certificate of recognition as Acting Kgosi to the Fourth Defendant effective from 16 September 2006.

21.4. The said incumbent held on to that acting stint until the same royal family in a Petition dated 17 May 2014, which was accompanied by several grievances was lodged at the offices of the First to Third Defendants including the Premier's office. The Petition was signed by no fewer than 34 royal members. The effect of the Petition called for the Fourth Defendant's removal from his acting position.

21.5. The First Defendant in a letter to one G.P Seleka dated 23 May 2014, acknowledged receipt of the plaintiff's notice of removal as sought on 17 May 2014[5]

[22] No decision despite a lengthy effluxion of time since the notice of removal alluded to, has been taken by the First Defendant and no reasons were advanced for the inaction.

[23] In matters of this nature, it is generally accepted that the plaintiff bear the onus to found its evidence on a balance of

probabilities. In this instance, the court heard oral testimony of no fewer than four witnesses, of all which, except the evidence of Captain Rakobela, corroborated each other in many material respects. Prominent, is the general misconduct of the Fourth Respondent as contained in the Petition filed. The contents thereof were, by and large, confirmed under oath.

[24] While he had the privilege in court to refute the damning evidence adduced against him, the Fourth Defendant failed to provide a version controverting the version put against him. He later for some inexplicable reasons left the court room without leave. As a result, he is deemed to have divested himself of challenging or disputing the adverse evidence against him, particularly in respect of the last witnesses called.

[25] The totality of the evidence as it were, particular transgressions he allegedly committed, failure or refusal by him to marry a candle wife, when appointed a "seed-raiser" is, in my view, no more than a "transgression of a customary rule or principle" that warrants his removal within the meaning of Section 13(1) of the Act.

[26] Furthermore, the fact that he deserted the royal kraal and rendered the traditional council dysfunctional through his recalcitrant

behavior, plunged the plaintiff's administration into disarray. If failure to attend ordinary "kgoro" meetings, when notified to do so does not constitute "negligence or indolence" in the performance of his duties as acting chief (kgosi) then then he ought to be pardoned, if necessary for his conduct, so to speak.

[27] The kind of conduct complaint of is in my opinion quiet grave to call for his removal. This observation is fortified by the evidence of the plaintiff's evidence which, in any event, remain uncontroverted. I have no reason not to accept as weighty the evidence presented. Their evidence is found not only reliable, but persuasive to justify that the Fourth Defendant be impeached from his position.

[28] Accordingly, where it has been decided that he be removed from his acting stint, the First Defendant is by law enjoined to withdraw the recognition certificate from the date removal. The First Defendant has no discretion whether or not to fulfil the wishes of the royal family. In this case, undoubtedly, the plaintiffs have long informed the First Defendant of their decision. An acknowledgement of receipt thereof speaks for itself as already shown.

[29] Similarly, the First Defendant is obliged to publish a notice detailing the particulars of the removed incumbent in the Provincial

Gazette, and in addition;

[30] To inform the affected royal family, and the incumbent, concerned and the provincial house of traditional leaders, of the said removal.

See section 13(3) of the Act regulating the position in this instance.

[31] Counsel for the plaintiff submitted that the foregoing measures find no application in respect of acting traditional leaders in terms of Section 15 of the Act. I find myself at variance with this submission. A person appointed whether a regent or acting Senior Traditional Leader, perform in either of those capacities "royal duties" associated with it. If reasonable cause exists that fall within the purview of section 13(1) nothing precludes the royal family to impeach the person concerned. In this instance, the Fourth Defendant was recommended for appointment in terms of section 15 of the Act.

[32] The decision by the office of the First Defendant being a purely administrative decision is, on a proper case made out, reviewable if there is an abdication of power or duty. As already shown, Section 13 referred to is peremptory.

[33] This court is therefore at large to order compliance with the said provisions and to prompt the First Defendant to act in the manner the Act prescribes he/she must act or perform.

[34] Section 8(i)(ii) read with 8(2)(a) of Act 3 of 2000[6] is instructive in instances such as these to provide remedies in proceedings for judicial review.

[35] In the circumstances I grant relief as follows:-

ORDER

- (a) That, the First Defendant is ordered to withdraw the certificate of recognition issued to the Fourth Defendant (Phetogo David Seleka).
- (b) That, the First Defendant must publish a notice with the particulars of the Fourth Defendant in the Provincial Government Gazette soon after his removal from his position as acting Kgosi.
- (c) That, the Fourth Defendant is interdicted from assaulting or committing threats of assault and hurling insults on members of the plaintiff and/or any member of Ga-Seleka Community;
- (d) Further that, the Fourth Defendant is ordered to return to the plaintiffs all books of account, financial records, cheque books and similar legal instruments in his possession immediately upon the granting of this order and upon his removal.
- (e) Further that, the Fourth Defendant is personally ordered to pay the costs of suit and costs for employment of counsel.

M.G PHATUDI

JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

Date heard: 22 December 2017

Date Delivered: 08 February 2018

[1] Act 6 of 2005, as amended

[2] Vol I, (Discovered documents) P63, Paginated index) Resolution date 23.08.2005

[3] Annexure "MTS6 "Vol I, Page 11 - 15,

[4] Record, P52, line 15-20

[5] Vol I, p 19 (Discovered documents)

[6] Promotion of administrative Justice ("PAJA")

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