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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

APPEAL CASE NO: HCAA11/2021
CASE NO: 1459/2017
REPORTABLE: YES/NO
OF INTEREST TO THE JUDGES: YES/NO
REVISED.

In the matter between:

B[...] B[...] R[...]

APPLICANT

and

LIMPOPO HOUSE OF TRADITIONAL LEADERS

FIRST RESPONDENT

M[...] R[...]

SECOND RESPONDENT

**MEC: CO-OPERATIVE GOVERNANCE HUMAN
SETTLEMENT AND TRADITIONAL AFFAIRS**

THIRD RESPONDENT

THE PREMIER: LIMPOPO PROVINCE

FOURTH RESPONDENT

JUDGMENT

MAKGOBA JP

- [1] The Appellant in this matter approached this Court on appeal against the judgment and order of a single Judge of this Division (Semenya J, as she then was) in terms whereby their application was dismissed with costs.
- [2] The Appellant had launched an application in the Court *a quo* seeking an order in terms of which the Fourth Respondent, the Premier of Limpopo Province, is compelled to remove the Second Respondent from her position as acting traditional leader of R[....] Traditional Community. It further sought an order that the matter of the identification of the appropriate senior traditional leadership be referred back to the Appellant who will deliberate and identify a candidate for the position of acting senior traditional leader.
- [3] As a ground of appeal the Appellant stated, correctly in my view, in their notice of appeal¹ that the learned judge in the Court *a quo* was correct in finding that the main issue in the matter was whether the request for the removal of the Second Respondent was at the request of the Royal Family.
In the appeal before us, the parties are *ad idem* that the aforesaid main issue still remains to be decided.
- [4] The issue regarding the appointment and removal of a traditional leader is governed by the Limpopo Traditional Leadership and Institutions Act 6 of 2005 (“the Limpopo Act”).
Section 15 of the Act provides:
Recognition of acting traditional leaders
(1) *A royal family may, in accordance with the customary law of the traditional community concerned, identify a suitable person who must be a member of the royal family to act as a king, queen, senior traditional leader, headman or headwoman, as the case may be...*
(2) *The Premier must, upon appointment of an acting traditional leader in terms of subsection (1) –*
(a) *issue a certificate of appointment; and*

¹ See Notice of Appeal, page 256 of the paginated papers at paragraph 1.1.

- (b) inform the provincial house of traditional leaders and the local house of traditional leaders.*
- (3) The Premier must review the appointment of the acting traditional leader every 12 months.*
- (4) The Premier must upon request by the royal family remove any person appointed in an acting capacity.*

The Second Respondent in the present case was appointed as acting senior traditional leader. Her appointment and removal are regulated by section 15 of the Limpopo Act. In exercising his or her powers in terms of Section 15(4) of the Act, the Premier is required to satisfy himself/herself that it is the royal family that is requesting the removal and that the person to be removed has been duly appointed in an acting capacity.

- [5] It is common cause that the royal family, in collaboration with the then acting traditional leader, K[....] M[....] R[....], identified and married the Second Respondent as a candle wife of the R[....] Traditional Community. The Second Respondent was subsequently identified by the royal family and recommended to the Premier (Fourth Respondent) as a suitable person to act as a senior traditional leader of their traditional community. Pursuant to that identification, the Premier appointed the Second Respondent on 21 February 2014 and issued her with a certificate of recognition/appointment in terms of section 15 (2)(a) of the Act, to act in that position.
- [6] It is therefore common cause that the Second Respondent was properly and duly appointed as the acting senior traditional leader of the R[....] Traditional Community. Accordingly, the status of the Second Respondent as an acting senior traditional leader is not an issue before us in this appeal. In any event same was never an issue before the Court *a quo*.
- [7] As time went on and after the appointment of the Second Respondent as an acting traditional leader, certain members of the R[....] Traditional Community, apparently

including the Appellant, started complaining about the traditional leadership of the Second Respondent, in particular that the Second Respondent was not lawfully appointed. A move gathered momentum that she be removed as their acting senior traditional leader. The Appellant then laid a dispute with the First Respondent, that is the House of Traditional Leaders.

[8] The House of Traditional Leaders investigated the matter and responded on the 1st of October 2015.²

The House of Traditional Leaders concluded that:

- 8.1. The identification and appointment of K[...] was done in terms of the Provincial Act;
- 8.2. The acting K[...] must remain acting K[...] as she has been properly appointed and recognised by government;
- 8.3. A seed raiser must be nominated as soon as possible; and
- 8.4. Senior K[...] S[...] must be included in the Council so that she can get something at the end of the month.

The Appellant was not satisfied with the decision of the First Respondent and proceeded to lodge another dispute with the Fourth Respondent (the Premier) on 29 January 2016.

[9] It is common cause between the parties that the core inner circle of the royal family of the R[...] Traditional Community is made up of the children of the late K[...] M[...] G[...] R[...]. These children are S[...] R[...], M[...] R[...], M[...] R[...] and T[...] R[...].

This aspect was endorsed even at the meeting of B[...] and D[...] held on 2 May 2015 at the Chief's Residence.

The issue of the withdrawal of the Second Respondent's certificate of appointment as acting senior traditional leader was discussed at this meeting.

² Annexure "BBR3" to Founding Affidavit at page 34 of paginated papers.

The minutes of the said meeting read³:

- *It was agreed that the meeting be adjourned for 1 hour to give Inner Circle to iron out some key issues that need them only (e.g. withdrawal of certificate of M[....] T[....])⁴;*
- *They agreed they shall report back later that day at 12h00;*
- *No agreement was reached amongst themselves (Inner Circle);*
- *It was taken back to b[....] and d[....] to judge.*

[10] The significance of the meeting of 2 May 2015 is that the Inner Circle, which is the core of the Royal Family, did not reach an agreement that the certificate of appointment of the Second Respondent as acting traditional leader be withdrawn. In other words, no resolution was adopted to request the Premier to remove the Second Respondent as the acting senior traditional leader.

[11] In terms of the Limpopo Act the “Royal Family” means the core customary institution or structure consisting of immediate relatives of the ruling family within a traditional community, who have been identified in terms of custom, and includes, where applicable, other family members who are close relatives of the ruling party. Within this meaning the children of the late K[....] M[....] G[....] R[....] i.e. the Inner Circle referred to above, and their children will form the royal family. The B[....] are certainly not members of the royal family. A person will not be regarded as a member of the Royal Family merely by virtue of bearing the surname of R[....] in the context of the present case. The Appellant call themselves “B[....] B[....] R[....]”. They may be “B[....]” but they certainly cannot be regarded as members of the Royal Family without more.

[12] The Appellant avers that it took a resolution to request the Fourth Respondent (Premier) to remove the Second Respondent from her position on 30 October 2016. It is common cause that the Premier refused to remove the Second Respondent

³ See Annexure “MR2” to Second Respondent’s Answering Affidavit at pages 83 – 87.

⁴ The name “M[....] T[....]” refers to the clan name given to Second Respondent as a candle wife in the R[....] Royal Family.

from the position of acting senior traditional leadership. The essence of the resolution adopted on 30 October 2016 is as follows:

The B[....] le D[....] Ba ga-R[....] have resolved to request the Premier to remove the acting K[....] M[....] R[....] from her position as acting senior traditional leader of the R[....] Traditional Community with immediate effect, as envisaged in Section 15 of the Limpopo Traditional Leadership and Institutions Act 6 of 2005 (my underlining).

- [13] This then begs the question whether those persons who gathered on 30 October 2016 and adopted the resolution were indeed members of the Royal Family or whether they constituted the Royal Family.

The Court *a quo* made a finding that the meeting of the 30 October 2016 was not that of the royal family and consequently the decision to remove the Second Respondent was not taken by the royal family either in the form of the immediate relatives or other family members.

For reasons that follow hereunder, the decision of the Court *a quo* cannot be faulted.

- [14] There was only one meeting of the inner core and out of the four children of the late K[....] M[....] G[....] R[....] only three attended the meeting but they did not take the decision to remove the Second Respondent. That meeting of the 2 May 2015 was attended by S[....], M[....] and M[....] whereas T[....] was not present.

- [15] The meetings of the Royal Family are regulated by the provisions of section 17 of the Limpopo Act, which provides that:

- (1) *A royal family must, when meeting to discuss matters emanating from this Act, function in accordance with customary law of the traditional community concerned.*
- (2) *Any royal family must keep a minute book in which shall be recorded in respect of each meeting thereof –*

- (a) *the date on which, the time at which and the place where such meeting was held;*
- (b) *the names of the members of the royal council present and their designations in accordance with their custom; and*
- (c) *the decision taken.*

[16] Annexure **BBR1A** to the Appellant's founding affidavit contains a list of 57 persons who attended the meeting of the 30 October 2016 when a decision to remove the Second Respondent was taken. The list shows the names of such persons, their cellphone numbers and their signatures. There is no designation of the individuals whose names appear on the roll call. It is not known who these 57 individuals are and their position or relationship with the royal family.

Annexure **BBR1B** to the Appellant's founding affidavit is another list of 94 persons alleged to have attended that meeting. This list of persons is in my view of no use. It does not have a heading to show that it constitutes a roll call of members of the royal family who attended the meeting. It does not have a date, time and place of the meeting.

[17] The Appellant contends that the decision to remove the Second Respondent was taken on the 30th of October 2016. This meeting of 30 October 2016 was attended by 57 individuals whose designations or positions in the royal family is clearly unknown. This affects the legitimacy of the structure which purported to have taken a decision to remove the Second Respondent.

The Appellant's contention that members of the inner core of the royal family (namely children of the late K[....] M[....] G[....] R[....]) were also present at the meeting of the 30 October 2016 does not take its case any further. This is so because that meeting was attended by many people who are certainly not members of the royal family.

[18] In ***Mphephu v Mphephu – Ramabulana and Others***⁵ the Supreme Court of Appeal held that the fact that the Royal Family meeting was attended by members of the Royal Council who were not part of the Royal Family invalidated any decision that was taken and purported to be a resolution of the Royal Family.

In the present case the Appellant purported to hold a meeting of the royal family but the said meeting included quite a large number of people who were not supposed to be part of the Royal Family. This in itself has invalidated the resolution purported to have been taken by the Royal Family.

[19] The role and position of the Royal Family is of great significance in traditional leadership. The Royal Family is the fabric of traditional leadership. Counsel for the First, Third and Fourth referred us to the case of ***Maxwele Royal Family and Another v Premier of the Eastern Cape and Others***⁶, which is appropriate with regard to the legitimacy of a royal family. In that case Notyesi AJ said the following at paragraphs [34] – [35]:

“[34] A royal family serves a primary source of knowledge on the prevailing customary law and customs on the succession of traditional leadership. These are all legislative functions for a royal family when identifying a suitable person as a traditional leader or acting traditional leader. The royal family is also responsible for the removal of traditional leaders because they must initiate that process before the administrative action of the premier or other relevant government functionary.

[35] There is an obligation to ensure that an entity performing or purporting to perform functions of a royal family, must be a legitimate structure and not a bogus one. The definition of a royal family is important in this regard. The ultimate objective is to ensure that traditional leaders are identified by legitimate royal families, not bogus structures. This is in line with the dignity, importance, and respect for the institution of traditional leadership. In the definition of a royal

⁵ [2019] ZASCA 58 (12 April 2019).

⁶ (2970/2020) [2021] ZAECHMHC 10 (23 March 2021).

family, some important other composite words which are separately defined in section 1 are incorporated. This aspect is delved into details when dealing with the locus standi of the applicants.”

[20] It is incumbent upon the Premier (Fourth Respondent) to satisfy himself/herself that the structure that called for the removal of the Second Respondent is a legitimate structure.

In my view the Appellant failed to put forth evidence to back up its contention that the names of the people on the list of 57 individuals is that of the legitimate Royal Family members of the R[....] Traditional Community.

[21] In the result the appeal is dismissed with costs.

E M MAKGOBA

**JUDGE PRESIDENT OF THE HIGH
COURT, LIMPOPO DIVISION**

I agree,

**G C MULLER
JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

I agree,

**K L PILLAY
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

APPEARANCES

For Appellant

: Adv AC Diamond

Instructed by

: Hammann – Moosa Inc

For First, Third & Fourth Respondents : **Adv EM Baloyi – Mere SC**
Instructed by : **State Attorney, Polokwane**

For Second Respondent : **Mr. R Mashifane**
Ratale Mashifane Attorneys

Heard on : **11 March 2022**

Judgment delivered on : **16 March 2022**