REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 2506/2022

REPORTABLE: YES/NO
OF INTEREST TO OTHER JUDGES: YES/NO
REVISED

In the matter between:

THATO KHOLOFELO MATSAUNG	**FIRST APPLICANT**
MAMAHULE TRADITIONAL AUTHORITY	**SECOND APPLICANT**

And

REBECCA MAMODUPI MATSAUNG	**FIRST RESPONDENT**
SEBETJA ELIAS THOMAS LETSOALO	**SECOND RESPONDENT**
RAMASELA FLORA SETWABA	**THIRD RESPONDENT**
FIRST NATIONAL BANK OF SA (PTY) LTD	**FOURTH RESPONDENT**

JUDGEMENT

KGANYAGO J

[1] On 24th May 2022 the applicants approached this court on urgent basis wherein they appeared before Naude AJ and obtained an order wherein the fourth respondent was ordered to unfreeze several bank accounts of the second applicant, together with other orders related to the applicants' application. The order was duly served on the fourth respondent. However, the fourth respondent has failed to comply with the court order, and the applicants have launched a contempt of court application on urgent basis against the fourth respondent.

[2] The fourth respondent is opposing the applicants' contempt of court application. The fourth respondent has also filed a Rule 7 notice challenging the authority of the first applicant to represent the second applicant, and also the applicants' attorney's authority to represent the second applicant as its attorneys of record. In reply to the fourth respondent's Rule 7 notice, the applicants have attached copy of a resolution by Bakone Ba-Mamahule Matsaung Royal Family, and copy of a power of attorney signed by the first applicant nominating Elliot Attorneys to represent him (first applicant).

[3] The fourth respondent in its answering affidavit has raised several points *in limine* which are (i) that the applicants have failed to comply with Rule 41A; (ii) there is no urgency in the application; (iii) the first applicant lacks authority to bring the application on behalf of the second applicant; (iv) the applicants have inexcusably failed to cite and join Mmamaele Georgina Matsaung (who claims to be the Regent) and a representative of the Royal Family; (v) that the order of 24th May 2022 is both incomplete and incapable of being implemented because of the controversy between the applicants and first to third respondents regarding the identity of the current chairperson of Mamahule Traditional Authority, (vi) that the applicants are seeking final relief in their application, yet they failed to make out a clear case in their founding affidavit; and (vii) that the applicants pursue the application for a final relief notwithstanding the presence of foreseeable (reasonable and actual) material disputes of fact.

[4] When the parties appeared in court on 28th June 2022, they agreed to first argue the fourth respondent's point *in limine* regarding the applicants' alleged lack of *locus standi* to bring this application. Counsel for the fourth respondent had submitted that the full court of this division in the appeal judgment under case number HCAA15/2021 heard on 10th June 2022 and electronically circulated on 15th June 2022 has found that second applicant had not yet been recognised by the Premier of Limpopo and therefore lacks *locus standi* to institute and prosecute action against the appellants in the appeal case. That the first applicant brings the current application on the basis of an entity that is non-existing. Further that as per the applicants' resolution attached to their Rule 7 reply, the said resolution refers to the first applicant been duly appointed as a senior traditional leader of Bakone Ba-

Mamahule Ga-Matsaung of the Mamahule Community to represent the Mamahule Traditional Authority in terms of section 14(1)(a)(i) of the Limpopo Traditional Leadership and Institutions Act no 6 of 2005 as amended.

[5] Counsel for the fourth respondent submit that if the second respondent does not exist in terms of statutes, the first applicant could not have been lawfully appointed as a chairperson of an entity that does not exists. Neither the first or the second applicant have the authority to bring this application. That the mandate given to the Elliot Attorneys by the first applicant, is in his personal capacity, and does not extend to the second applicant. Elliot attorneys has no authority to represent the second applicant, and further that this matter will not be decided in the absence of the second applicant.

[6] Counsel for the applicants submitted that the appeal was heard on 10th June 2022 and judgment delivered on 15th June 2022, whilst the main application before Naude AJ was obtained on 22nd May 2022. It is the applicants' contention that the judgment of the full court does not apply retrospectively, and that the current application emanates from a judgment that was heard before the 15th June 2022.

[7] It is trite that in litigation proceedings, the first thing to establish is the *locus standi in iudicio* of the litigant. The first applicant has deposed the founding affidavit in this application, and has described himself as current chief of Bakone Ba Mamahule GaMatsaung. The first applicant has further stated that he has the *locus standi* to bring the contempt of court application by virtue of being the applicant in the main application and also the chairperson of Mamahule Traditional Authority Community. Mamahule Traditional Authority is the second applicant, and the bank accounts which were frozen by the fourth respondent are in the names of the second applicant. The first applicant has further stated that he was duly authorised to depose the founding affidavit by virtue of the resolution taken by the Royal Family on 16th June 2021.

[8] It is in that resolution wherein the Royal Family has resolved that the first applicant was the duly appointed senior traditional leader and paramount chief and will represent Mamahule Traditional Authority in terms of section 14(1)(a)(i) of the

Limpopo Traditional Leadership and Institutions Act 6 of 2005 as amended. In the judgment of the full court of this division in the matter of *Mamaele Georgina Matsaung and 2 Others v Mamahule Traditional Authority*[1] it was found that the Premier of Limpopo has not yet recognized the second applicant as a traditional authority, and that it lacked *locus standi* to institute and prosecute the action against the appellants since they have not yet complied with the provisions of both the Framework Act and the Limpopo Traditional Leadership Act. That judgment has not yet been appealed upon, and it will remain valid and enforceable until set aside by a court of competent authority.

[9] The first applicant purports to have been authorised by the resolution of the Royal Family of the Traditional Authority of Mamahule Community. The Premier of Limpopo has not yet recognized that community as a community that is capable of establishing a recognized traditional authority which comply with the provisions of the Limpopo Traditional Leadership and Institutions Act. In *Bakgaka – Ba – Mothapo Traditional Council v Tshepo Mathule Mothapo & Others*[2] Dlodlo JA said:

> "It is indeed perplexing that the high court found that Kgoshigadi had the requisite *locus standi* despite the fact that she derived her authority to institute the action from a resolution passed by a Traditional Council (which had no *locus standi*)."

[12] In my view, the Bakgaka – Ba – Mothapo Traditional Council case is not distinguishable from the present case. The full court has already found that the second applicant has not yet complied with the appropriate legislation for it to be recognized a traditional authority. Therefore, the purported resolution which authorizes the first applicant to institute and prosecute the action against the respondents is void. The power of attorney by the first applicant which appoints Elliot Attorneys, is in the first applicant's personal capacity and not inclusive of the second applicant. Therefore, Elliot attorneys has not been authorized to represent the second applicant, and the second applicant is not properly before court. The bank accounts which have been frozen by the fourth respondent is in the names of the

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[1] [2022] ZALMPPHC 30 (15 June 2022)
[2] [2019] ZASCA 130 (30 September 2019) at para 16

second applicant. Without the second applicant been properly before court, the first applicant will be unable achieve the relief he is seeking. Therefore, there is merit in the fourth respondent's point *in limine*.

[13] However, that is not the end of the matter, there is an order by Naude AJ which will remain valid no matter how defective it may look until it has been set aside by a court of competent authority. That order was obtained before the 15th June 2022. The applicants have launched the contempt of court application on 15th June 2022, the same date the appeal judgment was circulated. Even if when the applicants launched their contempt of court application might not have yet been aware of the full court judgment, by the time the current application was heard, they were aware of the judgment of the full court. They were also aware of the extend of the grave repercussion the judgment of the full court was having on them. The second applicant was a party in the full court appeal and has taken part in that appeal. He therefore could not simply overlook that judgment and opted to proceed with contempt of court application with the hope this court might find that since order of Naude AJ was prior to the appeal judgment, it will not be affected.

[14] Despite the order of Naude AJ remaining valid until set aside, this court will not disregard the consequences to follow should it grant its order based on an order which is not competent to be enforced. Should this court grant the applicants the orders that they are seeking, it will be validating what it has already found to be invalid, and cause confusion. It will not be in the best interest of justice to do that. I have already found that the applicants lack *locus standi* in this matter, and also that the second applicant is not proper before this court. A court is empowered to refuse to grant an order because the applicants lacks *locus standi*.

[15] In the result I make the following order

> 15.1 The fourth respondent's point *in limine* of the applicants' lack of *locus standi* is upheld.
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> 15.2 The applicants' application is dismissed with costs on party and party scale.

KGANYAGO J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA, LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

Counsel for the applicant	**: Adv M Mphse SC**
	Adv Mzilikazi
Instructed by	**: Elliot Attorneys**
Counsel for the fourth respondent	**: R Glover**
Instructed by	**: Glover Kannieappan Inc**
Date heard	**: 28th June 2022**
Electronically circulated on	**: 30th June 2022**