

## REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA  
LIMPOPO DIVISION, POLOKWANE**

**CASE NO: 8368/2019**

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
DATE..... SIGNATURE:.....	

In the matter between:

**BAKGOMA BA MOTHAPO COUNCIL**

**APPLICANT**

**And**

**THATO PALEDI MOTHAPO**

**FIRST RESPONDENT**

**MASHOTO MOTHEO MAREKETLE MAHLANGU**

**SECOND RESPONDENT**

**ACTING KGOSHIGADI REFILWE MADIPONA**

**MOTHAPO**

**THIRD RESPONDENT**

**PALEDI ISAAC MOTHAPO**

**FOURTH RESPONDENT**

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**JUDGEMENT**

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**KGANYAGO J**

- [1] The applicant which describes itself as the inner circle of Mothapo royal family, has brought an application against the respondents seeking orders that the 1<sup>st</sup> and 2<sup>nd</sup> respondents make themselves available for DNA testing with a member of the applicant's royal family; and that the costs of the DNA test be borne by the applicant. The founding affidavit of the applicant was deposed by Legodi Johannes Mothapo who describes himself as the secretary of the applicant, and that he was authorised to depose that affidavit by virtue of the resolution that was taken by the applicant on 16<sup>th</sup> June 2019.
- [2] The applicant in its founding affidavit have stated that they have instituted an application in this court under case number 6241/2018 in which they are seeking orders that the 3<sup>rd</sup> respondent be relieved of her duties as both kgoshigadi and mmakgoshi of Mothapo Traditional Council; and further that the Premier of Limpopo be interdicted from inaugurating or inducting any other person from being the next kgoshi(gadi) of Mothapo Royal Council.
- [3] The applicant has stated in its founding affidavit that when the 3<sup>rd</sup> respondent was married into Mothapo royal family as mmakgoshi, the purpose for that marriage was for her to bear the Mothapo family a child who would one day become the future kgoshi of Mothapo tribe. Further that the 3<sup>rd</sup> respondent was to bear a child with a senior mokgoma who is now deceased. It is the applicant's contention that the 3<sup>rd</sup> respondent had refused to engage in intimacy with the deceased, but engaged in intimacy with men unknown to Mothapo royal family, which resulted in her bearing children by these men who are not from Mothapo royal family.

- [4] The applicant avers that it is having a reasonable apprehension that the 3<sup>rd</sup> respondent as well as the ordinary members of the community are seeking to inaugurate the 1<sup>st</sup> respondent as the next acting Kgoshi. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are the children of the 3<sup>rd</sup> respondent. The applicant has further stated that the 3<sup>rd</sup> respondent had already issued letters to COGHSTA, Premier of Limpopo Province and Magistrate Court Mankweng requesting that the 1<sup>st</sup> respondent should be next heir of the people of Mothapo. The applicant has submitted that they doubt whether the 1<sup>st</sup> respondent was born from the royal blood, and therefore they are seeking DNA test to be conducted. Further that they are of the view that if it is found that the 1<sup>st</sup> respondent is not of royal blood, the 3<sup>rd</sup> respondent might seek to inaugurate the 2<sup>nd</sup> respondent as the next kgoshi(gadi), and they are also seeking that blood tests be also be done on the 2<sup>nd</sup> respondent as they do not know her paternity.
- [5] The 1<sup>st</sup> to 3<sup>rd</sup> respondents (respondents) are opposing the applicant's application. The 4<sup>th</sup> respondent did not file any opposing papers, but has filed has an affidavit in support of the opposition to the applicant's application by the respondents. The 3<sup>rd</sup> respondent had deposed the answering affidavit on behalf of all the respondents. The respondents in their answering affidavit have raised technical objections only, and did not deal with the merits of the applicant's application. The respondents have raised the points *in limine* of lack of authority; non-joinder or misjoinder; material dispute of fact; and defective application, frivolous, vexatious, scandalous and unreasonable application by the applicant.
- [6] In relation to lack of authority, the respondents have stated that the structure known as Bakgoma-Ba-Mothapo Council does not exist within Mothapo royal

family, and that the structure that exist is known as Bakgomana-Ba-Mothapo. In support of their contention the respondents have attached an order of Le Roux J of the TPD dated 27<sup>th</sup> October 2015 under case number 3001/1994. In that order the first applicant has been described as “*The Bakgomana of the Bakgaga-Ba-Mothapo Tribe.*” It is the respondents’ contention that the citation of the applicant as Bakgoma-Ba-Mothapo Council is a misjoinder as that institution is non-existent.

- [7] The respondents have further submitted that there is another case which is pending in this court under case number 6241/2018 which the first applicant has been cited as Bakgoma-Ba-Mothapo Council and the second applicant as Bakgomana-Ba-Mothapo Council. The respondent has submitted that it is interesting why in the present application Bakgomana-Ba-Mothapo Council have not been joined to the proceedings. That for the above reasons, the applicant’s application is bad in law, defective, frivolous, scandalous, vexatious and unreasonable.
- [8] The respondents submit that annexure “E” attached to the applicant’s founding affidavit is a letter dated 17<sup>th</sup> September 1997 by Bakgaga Traditional Authority addressed to Magistrate Mankweng. In that letter the Bakgaga-Ba-Mothapo Traditional Councillors (Bakgomana) have recommended that the 1<sup>st</sup> respondent be registered as the heir and the kgoshi of the Mothapo tribe. It is the respondents’ contention that the letter was written by Bakgomana-Ba-Mothapo which are the highest decision-making body within the royal family to recommend the 1<sup>st</sup> respondent, and that it was not written by 3<sup>rd</sup> respondent. The respondents further submit that failure by the applicant to join Bakgomana-

Ba-Mothapo in these proceedings renders the applicant's application to be defective, which defect cannot be rectified.

- [9] The respondents have also submitted that the applicant should have foreseen that there was going to be a material dispute of fact, and therefore not approach the court by way of motion proceedings. It is the respondents' contention that the deponent of the affidavit under case number 6241/2018 was well aware that existence of the applicant was disputed, but in the current application chose only to cite Bakgoma-Ba-Mothapo knowing very well that such a structure was non-existent and disputed. Further that the deponent of the founding affidavit should have foreseen that there was going to be a serious material dispute insofar as his status and blood lineage is concerned in that it is within the deponent's knowledge that he is not born out of Mothapo Royal blood, but was fathered by one late Fokisi Molepo.
- [10] In court counsel for the applicant conceded to the respondents' points *in limine*. He submitted that the applicant's application does not meet the standard required in terms of the law, and that the applicant's problems were created by the order granted on 27<sup>th</sup> October 1995. That if that order was complied with, they will not be having the problems that they are now encountering. That until such time the Premier of Limpopo resolve these issues, they will continue encountering these problems.
- [11] What this court must first determine is the question whether the applicant had *locus standi* to claim the relief that it is seeking. In *Four Wheel Drive v Rattan NO*<sup>1</sup> Schippers JA said:

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<sup>1</sup> 2019 (3) SA 451 (SCA) at para 7

“The logical starting point is *locus standi* – whether in the circumstances the plaintiff had an interest in the relief claimed, which entitled it to bring action. Generally, the requirements for *locus standi* are these. The plaintiff must have adequate interest in the subject matter of the litigation, usually described as a direct interest in the relief sought, the interest must not be too remote; the interest must be actual, not abstract or academic; and it must be a current interest and not a hypothetical one. The duty to allege and prove *locus standi* rests on the party instituting the proceedings.”

- [12] The question whether the applicant had standing to institute the proceedings must be determined with reference what is stated in the applicant’s founding affidavit. The applicant in its founding affidavit has stated that it had *locus standi* to bring this application as it is having an interest in the matter, as it is firstly part of the royal family, and thus have the right and influence as to who will be inaugurated as the next kgoshi(gadi). Secondly that its standing is based on the fact that they are residence of Mothapo tribe and have an interest on who will be their ruler.
- [13] The respondents have disputed existence of a structure or institution called Bakgoma-Ba-Mothapo Council within Mothapo royal family. The respondents have also disputed that the deponent of the applicant’s founding affidavit is of royal blood. The legitimacy of the applicant has been disputed, and that has been conceded to by their counsel. The concession made by their counsel is fatal to the applicant’s case. Without the applicant been a legitimate structure within the royal family, and also the deponent of the applicant’s founding affidavit not being of royal blood, the do not have any say or role to play in the identification as to who will the next senior traditional leader.

[14] Section 12 of *Limpopo Traditional Leadership and Institution Act*<sup>2</sup> prescribe the procedure to be followed in identifying a senior tradition leader. The section also prescribes the procedure to be followed in case there is a dispute in relation to the person identified. In terms of section 12(1)(a), it is the responsibility of the royal family to identify the person who qualifies. Since the applicant is not within the structure of the royal family, it had no direct and substantial interest as to who will be identified as the next senior traditional leader of Bakgaga–Ba–Mothapo tribe, and therefore has no standing in bringing this application. On this point alone, the applicant’s application stands to be dismissed.

[15] The respondents have also submitted that under case number 6241/2018 which the applicant is one the applicants, the respondents are disputing the existence of the applicant in the current case. The applicant has there therefore instituted these proceedings by way of motion well knowing that a serious dispute of fact was bound to ensue in relation to its existence within the royal family of Mothapo.

[16] It is trite that an applicant who elects to proceed by way of motion proceedings despite being aware that a serious dispute of fact was bound to develop, runs the risk that the application may be dismissed. It is not proper that an applicant should commence proceedings by way of motion procedure with the full knowledge that a serious dispute of fact might arise. (See *Room Hire Co (Pty) Ltd v Jeppe Street Mansion (Pty) Ltd*<sup>3</sup>). On this point also, the applicant’s application stands to be dismissed.

[17] In the result I make the following order:

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<sup>2</sup> of 2005

<sup>3</sup> 1949 (3) SA 1155 (T)

17.1 The applicant's application is dismissed with costs on party and party scale.

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**KGANYAGO J**

**JUDGE OF THE HIGH COURT OF SOUTH  
AFRICA, LIMPOPO DIVISION,  
POLOKWANE**

**APPEARANCES:**

<b>Counsel for the applicant</b>	<b>: Prof/Adv JLH Letsoalo</b>
<b>Instructed by</b>	<b>: PMK Tladi &amp; Associates</b>
<b>Counsel for the respondents</b>	<b>: Adv KK Kekana</b>
<b>Instructed by</b>	<b>: Makgoba Kgomo Makgaleng Inc</b>
<b>Date heard</b>	<b>: 24<sup>th</sup> October 2022</b>
<b>Electronically circulated on</b>	<b>: 3<sup>rd</sup> November 2022</b>