

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

CASE No: 6043/2020

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

Signature:

Date

20/07/2023

In the matter between:

BALOBEDU BA MODJADJI TRADITIONAL COUNCIL	FIRST APPLICANT
REGENT MPAPATLA THABISANANG MODJADJI	SECOND APPLICANT
LEON MATETA	THIRD APPLICANT
LETTY HLANGWANA	FOURTH APPLICANT
v	
HOSI TINYIKO LWANDLAMUNI PHILLIA	FIRST RESPONDENT
NWMITWA-SHILUBANA	
BALOYI TRIBAL AUTHORITY	SECOND RESPONDENT
MINISTER OF RURAL DEVELOPMENT AND	THIRD RESPONDENT
LAND REFORM	
CHIEF DIRECTOR: LIMPOPO SHARED	FOURTH RESPONDENT

SERVICES CENTRE, PROVINCIAL

DEPARTMENT OF RURAL DEVELOPMENT

AND LAND REFORM, LIMPOPO

CHIEF DIRECTOR: LIMPOPO SHARED

FIFTH RESPONDENT

SERVICES CENTRE, PROVINCIAL DEPARTMENT

OF CO-OPERATIVE GOVERNANCE, HUMAN SETTLEMENT

AND TRADITIONAL AFFAIRS

In Re:

HOSI TINYIKO LWANDLAMUNI PHILLIA

FIRST APPLICANT

NWMITWA-SHILUBANA

BALOYI TRIBAL AUTHORITY

SECOND APPLICANT

v

BALOBEDU BA MODJADJI TRADITIONAL COUNCIL

FIRST RESPONDENT

REGENT MPAPATLA THABISANANG MODJADJI

SECOND RESPONDENT

LEON MATETA

THIRD RESPONDENT

LETTY HLANGWANA

FOURTH RESPONDENT

MINISTER OF RURAL DEVELOPMENT AND

FIFTH RESPONDENT

LAND REFORM

CHIEF DIRECTOR: LIMPOPO SHARED

SIXTH RESPONDENT

**SERVICES CENTRE, PROVINCIAL
DEPARTMENT OF RURAL DEVELOPMENT
AND LAND REFORM, LIMPOPO**

CHIEF DIRECTOR: LIMPOPO SHARED

SEVENTH RESPONDENT

SERVICES CENTRE, PROVINCIAL

**DEPARTMENT OF CO-OPERATIVE GOVERNANCE,
HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS**

LEAVE TO APPEAL JUDGMENT

MANGENA AJ

- [1] Applicants seek leave to appeal the whole judgment and orders of this court delivered on 21 January 2022. The application is unopposed.
- [2] The application for leave to appeal was filed with the Registrar's office on 02 December 2022 accompanied by a condonation application.
- [3] The Applicants explained the delay and attributed it to the fact that the judgment was never received by their attorneys until the 16 November 2022 when enquiries were made with the office of the Judge President.
- [4] The condonation application is not opposed and the explanation proffered is acceptable. The issue need not detain us any longer than it is

necessary. Condonation for the late filing of the application for leave to appeal is granted.

[5] The grounds for leave to appeal are set out in the notice of appeal and were amplified by the written and oral submissions.

[6] The applicants submitted that the dispute between the parties related to the boundary and therefore required to be resolved through a procedure prescribed in the Limpopo Traditional Leadership and Institutions Act 6 of 2005. This process required a Premier to make a determination and without his report, the court was not in a position to adjudicate on the matter.

[7] It was further argued on behalf of the Applicants that the court erred by disregarding a government gazette notice attached to the heads of argument. For this contention, counsel relied on Section 5 of the Civil Proceedings Evidence Act 25 of 1965 which provides that judicial notice shall be taken of any law or government notice or any matter that has been published in a gazette. It was submitted that had the court considered the gazette, it would not have arrived at the decision it took in particular, the order directing the respondents to return possession of the property to the Applicants.

[8] I have given due regard to the submissions and considered them in tandem with the orders made and regrettably, I am not persuaded that the orders

made are susceptible to be overturned by another court. In my opinion the appeal would not have a reasonable prospect of success.

[9] It is ordered as follows:

1. Condonation is granted.
2. Application for leave to appeal is dismissed with no order as to costs.


MANGENA AJ

Acting Judge of the High Court
Limpopo Division, Polokwane

APPEARANCES:

HEARD ON : 29 June 2023

JUDGMENT DELIVERED ON : 20 July 2023. This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be **20 July 2023 at 12:00**

FOR THE APPLICANT : Mr. N Kubayi
INSTRUCTED BY : Noveni Eddy Kubayi Inc

FOR THE RESPONDENT : No Appearance
INSTRUCTED BY : Thomas & Swanepoel Inc

FOR THE RESPONDENT : No Appearance
INSTRUCTED BY : State Attorney