

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

Case No: 54652/09

In the matter between:

**THABANTSHO BENEFICIARIES
ASSOCIATION**

and

**HARRY BOLEU RAMMUPUDU II N.O
MPHOKE PATRICK MAGANE N.O
EDWARD MATSEPE N.O
KENNETH MORARE N.O
MPHOKE P.K MAGANE ATTORNEYS
MASTER OF THE HIGH COURT**

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th respondent

11/4/2011

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	☒
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	☒
(3) REVISED.	☐
11/04/2011 DATE	<i>[Signature]</i> SIGNATURE

Applicant

JUDGMENT

MNGQIBISA-THUSI, J

[1] The applicant is seeking the following relief:

- 1.1 The respondents be ordered to submit to the Master of the North Gauteng High Court all books, records, account or documents relating to the administration of Bakgaga-Ba-kopa Motheo Trust within ten days of service of the order upon them;
- 1.2 The respondents be interdicted from continuing to utilise the trust monies of the Trust until the order in 1 above is complied with and

the said books, records and accounts have been audited by a legally recognised auditor;

- 1.3 The respondents to pay the costs of this application in their personal capacities jointly and severally, the one paying the other to be absolved, alternatively, in their nominal capacities, jointly and severally the one paying the other to be absolved.

[2] At the beginning of the hearing the applicant abandoned the relief sought against the fifth respondent. I granted an order dismissing the claim against the fifth respondent with costs.

[3] In order to put the issues in dispute in perspective, it is necessary to give a brief background giving rise to the dispute between the parties, albeit a bit confusing in the light of the voluminous papers filed.

[4] In 2004 the farm formerly known as Rietkloof Farm JS166 in the Groblersdal area, Limpopo province, now known as Thabantsho, was awarded to the community staying at Tafelkop in terms of the provisions of the Land Restitution Act. The community was disposed of its land by the previous government sometime around 1962. In order to effect restitution, a Memorandum of Understanding (MOU) was entered into between the Bakgaga Ba-Kopa Traditional Authority (Traditional Authority), acting on behalf of the Tafelkop community and the Department of Land Affairs and other related state departments. The MOU provided, *inter alia*, that the identified land would be transferred to an entity still to be created, on behalf and for the benefit of the beneficiaries (i.e the Bakgaga Ba-Kopa community). In the interim the control of the land vested on the chief, the first respondent, and the Traditional Authority. Registration of the land on behalf of the beneficiaries has not been effected.

[5] It appears that on 4 September 2007 the first respondent, acting as a representative of the Traditional Authority, had concluded a lease agreement with Blue Ridge Platinum (Proprietary) Ltd (the lessee) in terms of which a certain portion of the land was leased to the lessee to enable it to conduct certain mining operations. In terms of the lease agreement the lessee undertook to pay monthly rentals of approximately R 116 000. It further appears that after the conclusion of the lease agreement the rental was paid into an ABSA account of the Traditional Authority.

[6] Furthermore, from around 2006 it appears that there had been a number of complaints made by members of the community, including the members of the applicant to various government officials and departments about the manner in which the Traditional Authority was conducting and managing the affairs of the community. It appears that matters came to a head when the lease agreement with Blue Ridge was signed. Various allegations have been made in this regard by both parties against each other. However, these allegations are not pertinent to the issue to be determined and will not be dealt with. Pertinent to this dispute is the fact that a section of the community started asking questions, in particular, about the funds the Traditional Authority received from the lease with Blue Ridge. As a result of the discontent amongst the members of the community, the applicant was established and became the vehicle through which demands were made to the first respondent and the Traditional Authority to account to the beneficiaries as to the community's finances, particularly the rental received from Blue Ridge.

[7] In the meantime, the first respondent had on 30 April 2008 founded a trust known as Bakgaga Ba-Kopa Motheo trust of which the first to fourth respondents were appointed as trustees. According to the trust deed, the object and purpose of the trust is "to hold land in trust in its

name on behalf of Bakgaga Ba-Kopa and/or beneficiaries of the Title Deed in respect of all land known as Thabantsho.”

[8] The members of the applicant , as alleged by the deponent to the founding affidavit, on discovering about the existence of the trust and that the trust was now vested with the control of the land to which they, amongst others, were beneficiaries, started engaging the trustees, demanding that the trust account for the monies accrued and accruing to the trust on behalf of the beneficiaries, from the time that the lease with Blue Ridge was entered. Eventually the applicant had lodged a complaint with the Master of this court about the manner in which the funds meant for the benefit of the beneficiaries was allegedly handled and the apparent lack of accountability to the beneficiaries by the trustees.

[9] The above culminated in the Master sending two letters to the legal representative of the trustees, dated 30 March 2009 and 24 June 2009. The letter dated 30 March 2009 reads in part as follows:

“Kindly be advised that we have received complaint from Thabantso beneficiaries association regarding the manner in which the above trust has been and still continues to be administered by yourselves.

Kindly deliver to the Master of the High Court:Pretoria with copies of all books, records, accounts, or documents relating to the administration or disposal of the trust properties within (30) thirty days from date of receipt of this notice.

This request is made in terms of Section 16(1) of the trust property control act 57 of 1988.

We trust that you will find the above in order and we await for your urgent response.”

[10] Section 16 (1) of the Act provides that:

“A trustee shall, at the written request of the Master, account to the Master to his satisfaction and in accordance with the Master's requirements for his administration and disposal of trust property and

shall, at the written request of the Master, deliver to the Master any book, record, account or document relating to his administration or disposal of the trust property and shall to the best of his ability answer honestly and truthfully any question put to him by the Master in connection with the administration and disposal of the trust property.”

[11] When a response was not forthcoming from the respondents, the Master sent the second letter dated 24 June 2009 in which reference was made to the first letter dated 30 March 2009. In this letter the Master requested a response with 14 days from the date of this letter.

[12] It appears that subsequently there was communication between the trustees’ legal representative and the Master in terms of which a meeting was arranged between the respondents and the representatives of the applicant, to be facilitated by the Master on 4 August 2009 in order to resolve the issues between them. For one reason or the other this meeting did not materialise.

[13] On 29 August 2009 the applicant launched these proceedings.

[14] On 7 May 2010 whilst this matter was pending, the Master had again sent a letter to the two of the trustees threatening to remove them as trustees if they did not respond to his letters dated 30 March and 24 June 2009.

[15] It was submitted on behalf of the applicant that the respondents as trustees and in control of funds legally belonging to the beneficiaries, have refused to account to the beneficiaries through the Master as to what the position was with regard to the monies held by the trust on behalf of the beneficiaries and what the monies were used for. Further that despite the request made by the Master in terms of section 16(1) of the **Trust Control Property Act** 57 of 1988 (**the Act**), the respondents have refused to comply with the Master’s directive to submit the books

and accounts of the trust in order to determine if the trustees were conducting the affairs of the trust for the benefit of the beneficiaries. The applicant contends that as its members are part of the community and therefore also beneficiaries, they had an interest in being informed about the affairs of the trust.

[16] It was contended on behalf of the applicant that, an interim interdict, restraining the trustees from dealing with the funds of the trust as the trustees had failed to account to the trust beneficiaries about all the funds received on behalf of the beneficiaries since 2007. Further that that the trustees would not suffer any prejudice by producing the books and accounts of the trusts in that the balance of convenience favoured the applicant. There was potential financial prejudice for the members of the applicant and other beneficiaries, taking into account that monies have been collected on behalf of the beneficiaries for which no account has been made.

[17] It was submitted on behalf of the respondents that the respondents had never refused to account to the beneficiaries about the affairs of the trust. Further that nothing prevented any member of the applicant, as interested parties from inspecting the books of the trust at the trust's registered offices. However, from this submission it was not clear where the trust's offices are as counsel for the respondent in argument had indicated that the trust used a postal address. Further, the trust deed does not indicate any address at which an inspection of the trust documents can be made.

[18] It was contended on behalf of the respondents that the applicant was not entitled to the relief it is seeking since it was a precondition that the Master must have exercised his powers in terms of section 16 of the Trust Property Control Act first before the applicant could institute these proceedings. It is the respondents' contention that the Master has

withdrawn his letters dated 30 March and 24 June 2009. Secondly it was contended that the relief sought by the applicant was premature as they had not exercised their rights in terms of the trust deed by inspecting the books at the offices of the trust. It was further contended on behalf of the respondents that the applicant was not entitled to copies of the books and accounts of the trust but only to inspect such as these were confidential.

[19] However, Mr Bezuidenhout from the Master's office made it clear that the Master has not withdrawn the letters date 30 March and 24 June 2009. Further that the non withdrawal of the two letters was apparent from the letter dated 7 May 2010, which is currently suspended pending finalisation of these proceedings, in which reference to the two earlier letters is made.

[20] In view of the Master's view with regard to the letters of the 30 March 2009 and 24 June 2009, the contention made on behalf of the respondents that the applicant's application is premature has no basis. According to the Master the two letters are still operative. The respondents have not complied with them. Therefore the applicant, representing persons who have an interest in the affairs of the trust as being part of the beneficiaries have a right in terms of section 19 of the Trust property Act to bring this application. Section 19 of the Trust property act reads as follows:

"If any trustee fails to comply with a request by the Master in terms of section 16 or to perform any duty imposed upon him by the trust instrument or by law, the Master or any person having an interest in the trust property may apply to the court for an order directing the trustee to comply with such request or to perform such duty."

[21] There is no reason therefore why the first prayer sought by the applicant should not be granted.

[22] With regard to the interim interdict, I am of the view that in the light of the fact that monies have been collected by the trust on behalf of the beneficiaries of the trust and in view of the fact that despite the request made by the Master in 2009 the respondents have not complied, there is sufficient evidence that the beneficiaries, including the members of the applicant might suffer potential financial prejudice if the respondents continue dealing with the funds of the trust without accounting. As correctly pointed out by counsel for the applicant the respondents will not suffer any prejudice if the second prayer is granted. After all, the funds held in trust are held for the benefit of the beneficiaries, including the trustees as members of the community. Once the books have been audited and all the suspicions are dispelled, they can continue operating the trust account.

[23] In the premises the following order is made:

1. The first to fourth respondents are ordered to submit to the Master of this court all books, records, accounts or documents relating to the administration of Bakagag-Ba-Kopa Motheo Trust with registration number IT1967/08 within 30 days of service of this order upon them;
2. The first to fourth respondents are interdicted from continuing to utilise the trust monies of the Trust until the order in 1 above is complied with and the said books, records and accounts have been audited by a legally recognised auditor;
3. The applicant to pay the costs incurred by the fifth respondent in this application;
4. The first to fourth respondents to pay the costs of this application in their personal capacities jointly and severally, the one paying the other to be absolved.


N. MNGQIBISA
Judge of the North Gauteng High Court