

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 8767/2021

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

Signature

Date...

In the matter between:

MANYAKU MARIA THULARE**APPLICANT**

and

MORWAMOHUBE ERNEST THULARE**FIRST RESPONDENT****THOROMETJANE DEBORAH THULARE****SECOND RESPONDENT****THE PREMIER, LIMPOPO PROVINCE****THIRD RESPONDENT****THE MINISTER OF CO-OPERATIVE
GOVERNANCE & TRADITIONAL AFFAIRS****FOURTH RESPONDENT****THE PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA****FIFTH RESPONDENT****LIMPOPO HOUSE OF TRADITIONAL LEADERS****SIXTH RESPONDENT**

In Re:

MORWAMOHUBE ERNEST THULARE

FIRST APPLICANT

THOROMETJANE DEBORAH THULARE

SECOND APPLICANT

and

MANYAKU MARIA THULARE

FIRST RESPONDENT

THE PREMIER, LIMPOPO PROVINCE

SECOND RESPONDENT

**THE MINISTER OF CO-OPERATIVE
GOVERNANCE & TRADITIONAL AFFAIRS**

THIRD RESPONDENT

**THE PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA**

FOURTH RESPONDENT

LIMPOPO HOUSE OF TRADITIONAL LEADERS

FIFTH RESPONDENT

JUDGMENT

MAKGOBA JP

[1] This case brings back the sad memories in the tragic history of the Bapedi Kingdom in the Limpopo Province.

On 6 January 2021 the King of the Bapedi nation, King Thulare Victor Thulare III died. At the time of his death the late King Thulare Victor Thulare III did not have a candle wife and consequently there was no hereditary heir to the throne. This created a vacuum in the traditional leadership of the Bapedi nation.

As matters stood at the present moment, there is a need for the Bapedi nation to marry a candle wife in order for the successor to the late King Thulare Victor Thulare III to be born.

The dispute in the present matter is who should hold the fort in the meantime and who should be a seed raiser to the candle wife to be married.

- [2] The Applicant in the main application is Morwamohube Ernest Thulare ("Morwamohube"). He is the Respondent in the counter application. The main Respondent in the application is Manyaku Maria Thulare ("Manyaku"). She is the Applicant in the counter application.

For the sake of convenience, and without any intention to disrespect them, they will both be referred to by their first names.

- [3] In the main application the First Applicant, being Morwamohube seeks an order declaring, that the meeting held by the Thulare Royal Family on 28 February 2021 was a properly constituted meeting of the royal family. Furthermore, he seeks an order declaring that the decision taken by the Thulare Royal Family at the said meeting to appoint him as the Acting King of the Bapedi nation and seed raiser in the house of the late King Victor Thulare III was a lawful decision of the royal family.

[4] In the counter application Manyaku seeks an order declaring:

- 4.1. that the purported meeting by the individuals Morwamohube advances to be the Thulare Royal Family on 28 February 2021 be set aside on account that same was not a properly constituted meeting by a Royal Family, alternatively the true and correct Royal Family;
- 4.2. that the meetings of the true Royal Family of the Royal Family of Thulare Victor Thulare III held on 21 February 2021 and the 9th March 2021 be confirmed as a properly constituted meeting of the Royal Family and for the purposes of appointing Manyaku as Queen of the Bapedi nation;
- 4.3. that the decision taken by the Royal Family on the 21 February 2021 and 9th March 2021 that Manyaku be appointed as the Queen of the Bapedi Nation be confirmed;
- 4.4. that Morwamohube Ernest Thulare be excluded from the genealogy and lineage of the House of Thulare Victor Thulare III, and that he is not eligible to be appointed King, Regent or otherwise of the Bapedi Nation; and
- 4.5. that the interdict order dated 5 August 2021 in her favour under case number 5197/2021 be confirmed and made a final order of Court, under case number 4253/2021.

- [5] Manyaku further sought an order against the President of the Republic to recognise her as the Queen of the Bapedi nation.

This prayer for such an order against the President was abandoned at the hearing of this matter as same was incompetent in that it is beyond the powers of this Court to grant such an order.

Factual Background

- [6] At the time of his death, the late King Thulare Victor Thulare III did not have a candle wife and consequently no child born of the candle wife. The late King Thulare III therefore did not leave any known hereditary successor to the Kingship of the Bapedi nation.

This unfortunate situation created a vacuum in the Bapedi Kingship. It is upon the aforesaid predicament that the Thulare Royal Family deemed it necessary to convene a meeting to deliberate on the issue of succession and to appoint an Acting King and seed raiser in the house of the late King Victor Thulare III.

- [7] On 31 January 2021, the royal family constituted a meeting to deal with the issue of the succession and there was no conclusion. The meeting was then adjourned to be convened on 28 February 2022. The royal family meeting took place on the 28 February 2021 at Mohlaletse, Tjate III, whereupon it was resolved that Morwamohube as the eldest surviving brother of the late King

Victor Thulare III, be appointed as the Acting King and seed raiser in the house of his late brother in accordance with the Bapedi custom and tradition.

- [8] The appointment of Morwamohube as alluded to above was apparently made in accordance with a recognised and long-established tradition followed in the event of a King, Queen, principal traditional leader, senior traditional leader, headman, or headwoman having died without leaving a successor.
- [9] Subsequent to the resolution taken at the royal family meeting on 28 February 2021, the Council of the Elders (Bakgoma and Bakgomana) was duly informed, and the resolution was acknowledged and supported. Thereafter, all protocols regarding the announcement of the resolution, lodging of the resolution with the office of the Premier of the Limpopo Province were followed and the resolution was duly acknowledged.
- [10] In the meantime, Manyaku and five (5) of her supporters convened a meeting on 21 February 2021. The said meeting was convened even though there was an agreement to hold a royal family on 28 February 2021. It is alleged by Manyaku that, her said meeting with her five (5) supporters on 21 February 2021 constitutes a proper meeting of the Thulare royal family.
It is common cause that in the said meeting of the 21 February 2021, Manyaku was chosen to be the Queen or Regent of the Bapedi nation.

[11] Amid the abovementioned process of announcing the resolution, Manyaku launched an application with this Court (under case no. 4235/2021) to *inter alia* interdict Morwamohube from claiming that he is the rightful successor and King of the Bapedi nation.

It bears further mentioning that Manyaku's aforesaid application was preceded by an application launched by Morwamohube (under case number 4064/2021) seeking an order to compel the Premier to consider and make a decision concerning his request for recognition as the Acting King of the Bapedi nation in terms of the relevant statutes. That application was withdrawn.

Manyaku initiated a further application (under case no. 5197/2021) in essence interdicting Morwamohube and others from implementing the decision by the Thulare royal family taken at the meeting of 28 February 2021 pending finalization of her application under case no. 4253/2021.

Subsequently, Morwamohube launched the present application (case no. 8767/2021) seeking the abovementioned declarators in paragraph [3].

[12] For purposes of expediency and to bring the disputes between the parties to finality, Morwamohube sought an indulgence from this Court to have all the applications pending before the Court to either be subjected to case management, consolidated and/or heard together.

A case management meeting between the Judge President and the legal representatives of the parties was held on the 24th June 2022 wherein it was

ordered that the various pending applications be decided under case number 8767/2021. Applications filed under case no. 4064/2021 and case no. 2570/2022 were withdrawn.

[13] Furthermore, the interdict granted under case no. 5197/2021 remains operational pending finalization of the application under case no. 8767/2021. As per the aforesaid directives, Manyaku filed a counter application to Morwamohube's application under case no. 8767/2021. Amongst others, Manyaku seeks an order compelling the President to appoint her as the Queen of the Bapedi nation. The said counter application is opposed by Morwamohube and the President of the Republic and the Limpopo House of Traditional Leaders.

[14] The fact that the late King Victor Thulare III never married a candle wife (mother of the heir apparent) created this complication which is the subject matter of the dispute between the parties.

The main contestants in this matter are Manyaku and Morwamohube.

Issues to be Decided

[15] The main dispute centers around the said two meetings, that is, the meeting of the 21 February 2021 and that of 28 February 2021.

The issues to be decided in this matter are:

- 15.1. Whether the group of persons who gathered at a meeting held on 21 February 2021 and 9 March 2021 constituted the true Royal Family of the late King Thulare Victor Thulare III;
- 15.2. Whether the person identified as Acting King/Queen on 21 February 2021 and 9 March 2021, being Manyaku, qualifies as such in terms of the customary law of the Bapedi nation;
- 15.3. Whether a group of persons who gathered at a meeting held on 28 February 2021 constituted the true Royal Family of the late King Thulare Victor Thulare;
- 15.4. Whether the person identified as Acting King and seed raiser on 28 February 2021, being Morwamohube qualifies as such in terms of the customary law of the Bapedi nation;
- 15.5. Whether Morwamohube is the biological son of the late King Rhyne Sekhukune III, the latter being the father of the late King Thulare Victor Thulare III;

- 15.6. Whether Makgalake, the mother of Morwamohube was married to the late King Rhyne Sekhukune III in terms of customary law; and
- 15.7. Whether the interim interdict order obtained by Manyaku against Morwamohube and others on 5 August 2021 under case number 5197/2021 should be confirmed and made a final order of Court under case number 4253/2021.

Legislative Framework

- [16] The Constitution of the Republic of South Africa, 1996 recognises the institution of traditional leadership.

In addition to this there are national legislation as well as provincial legislation that establish and regulate the institution of traditional leadership.

- [17] Section 211 of the Constitution which provides for the recognition of traditional leadership reads as follows:

- (1) The institution, status and role of traditional leadership, according to customary law are recognized subject to the Constitution.
- (2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendment to or repeal of that legislation or those customs.

- (3) The Courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

[18] Section 212 reads as follows:

- “(1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.*
- (2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law –*
- (a) national or provincial legislation may provide for the establishment of houses of traditional leaders, and*
- (b) national legislation may establish a council of traditional leaders.”*

[19] The national legislation referred to by the Constitution is the Traditional and Khoi-San Leadership Act 3 of 2019 (“the National Act”) which replaced the Traditional Leadership and Governance Framework Act 41 of 2003. The provincial legislation referred to in the Constitution is the Limpopo Traditional

Leadership and Institutions Act 6 of 2005 ("The Limpopo Act"). The Limpopo Act is subject to the National Act. Both the National Act and the Limpopo Act ("collectively referred to as "The Acts") make provisions for the appointment of traditional leaders, including acting traditional leaders. In case of the position of the King the Acts provide for an Acting King and a Regent.

- [20] The National Act defines a Regent as a person who holds a traditional leadership position in a temporary capacity when the successor to that position is still a minor.¹ The Limpopo Act defines an acting traditional leader as someone who holds the position on temporary basis where the successor has not yet been identified by the royal family concerned.²

In the circumstances of this case the definition of a Regent as per section 12 (1)(a)(i) of the National Act is not applicable as there is no incumbent who is still a minor.

- [21] The provision for the recognition of the acting traditional leader is provided for in terms of section 13 of the Khoi-San Act which provides as follows:

¹ Section 12 (1)(a)(i) of the National Act.

² Section 15 (1)(a) of the Limpopo Act.

“ 13 Recognition of acting traditional and Khoi-San leaders

(1) Within 90 days of becoming aware of any of the instances mentioned in subparagraphs (i), (ii) and (iii) –

(a) a royal family must identify a suitable person to act as a king, queen, principal traditional leader, senior traditional leader, headman or headwoman, after taking into account whether any of the grounds referred to in section 9(1) or 16(11)(h) or 16 (14) apply to such person; or

(b) a royal family or Khoi-San council, as the case may be, must identify a suitable person to act as a senior Khoi-San leader or branch head, as the case may be, after taking into account whether any of the grounds referred in section 11 (1) or 16 (14) apply to such person,

Where –

(i) a successor –

(aa) to the hereditary position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader has not been identified by the royal family concerned in terms of section 8 or 10, as the case may be; or

(bb) ...”

The Royal Family

[22] The Acts define royal family as; *the core customary institution or structure consisting of immediate relatives of the ruling family within a traditional or Khoi-San community, who have been identified in terms of customary law or customs, and includes, where applicable, other family members who are close relatives of the ruling family.*

[23] In the matter of **Maxwele Royal Family v Premier of the Eastern Cape Province**³ it was held as follows:

“[67] *Flowing from the definition of a royal family, it must be accepted that the requirements for a valid or properly constituted royal family are:*

- (i) *it must consist of immediate relatives of a ruling family;*
- (ii) *within a traditional community;*
- (iii) *who have been identified in terms of custom, and includes, where applicable, and*

³ (2970/2020) [2021] ZAECMHC 10 (23 March 2021).

- (iv) *other family members who are close relatives of the ruling family;*
- (v) *it is the core customary institution or structure.*

[24] In ***Mphephu v Mphephu – Ramabulana and Others***⁴ 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 Manyaku purported to hold a meeting of the royal family on 9 March 2021 but the said meeting included 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 on 9 March 2021. More will be said about this aspect later in this judgment.

[25] The role and position of the Royal Family is of great significance in traditional leadership. The Royal Family is the fabric of traditional leadership. The case of ***Maxwele Royal Family and Another v Premier of the Eastern Cape and Others***⁵, is appropriate with regard to the legitimacy of a royal family. In that case Notyesi AJ said the following at paragraphs [34] – [35]:

⁴ [2019] ZASCA 58 (12 April 2019).

⁵ (2970/2020) [2021] ZAECMHC 10 (23 March 2021).

"[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 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."

[26] 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.*

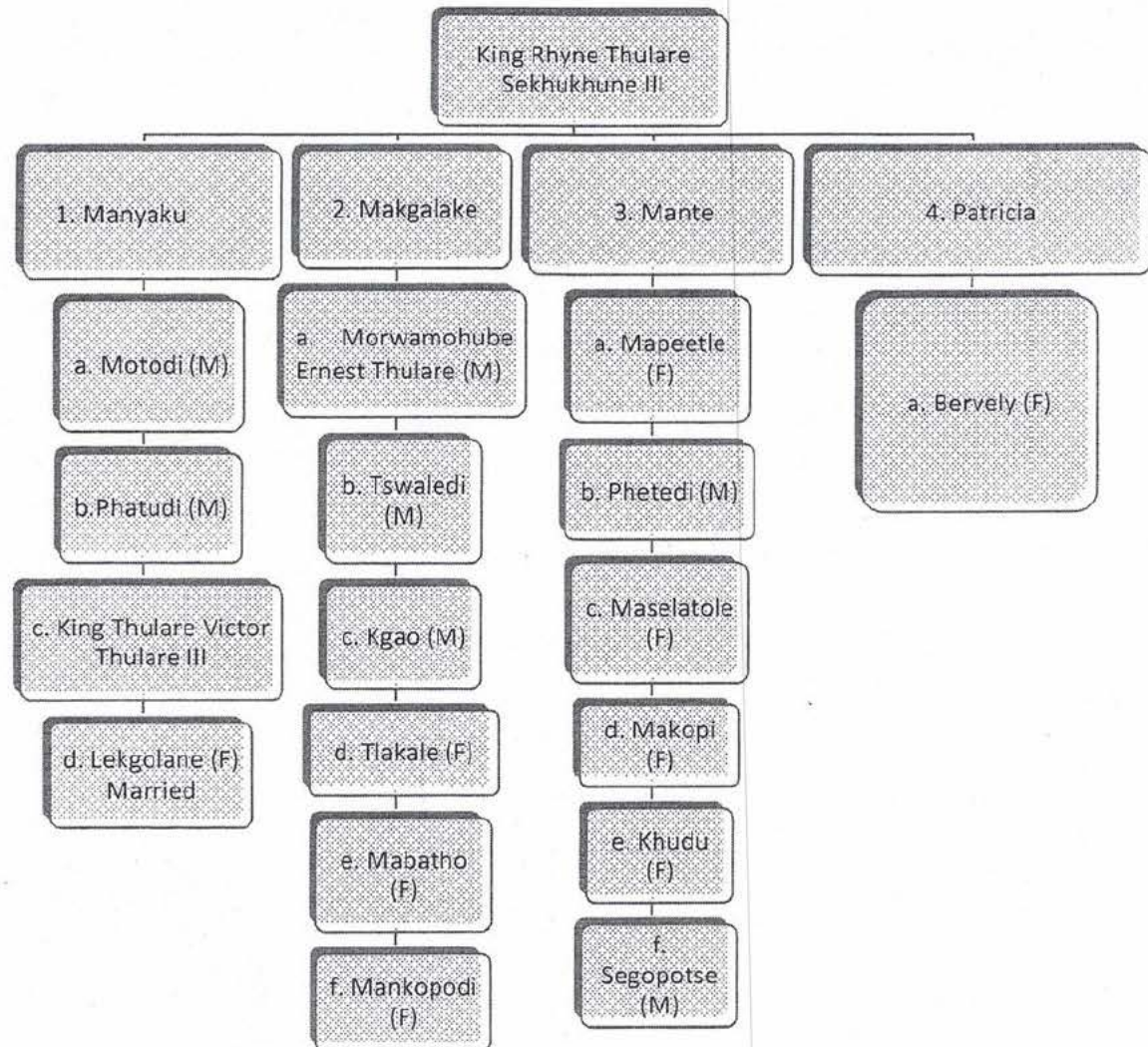
It is clear from the provisions of Section 17 of the Limpopo Act that it is a requirement that a royal family must, when meeting to discuss matters emanating from this Act, function in accordance with customary law of the traditional community concerned.

Who are members of the Royal Family in the present case?

[27] In the light of the definition of the Royal Family in terms of the Acts as shown above, it will be inappropriate to refer only to the house of the late King Victor Thulare III without having regard to the house of his father, being the late King Rhyne Thulare Sekhukhune III. I am therefore inclined to go into the genealogy of the family of the late King Rhyne Thulare Sekhukhune III.

[28] I have been referred to the genealogy of the family of the late King Rhyne Thulare Sekhukhune III which is schematically illustrated on the next page of this judgment. For the reasons that may appear later in my judgment, I accept that this indeed represent the genealogy of the family of the late King Rhyne Thulare Sekhukhune III from where the Kingship of the late King Thulare Victor Thulare originated.

GENEALOGY OF THE FAMILY OF THE LATE KING RHYNE THULARE SEKHUKHUNE III



NB*.

Morwamohube is the eldest son of King Sekhukhune III

Manyaku came with her two sons, Phatudi and Motodi (deceased) who are not the sons of King Sekhukhune III. The daughter of Manyaku, Lekgolane, a sister to King Thulare III, is married to Maphumulo family and lives in KwaZulu – Natal.

Keys:

F – Female

M – Male

1,2,3,4 – Wives of King Sekhukhune III

- [29] In the meeting of 21 February 2021 only 6 (six) people attended including Manyaku. Those people are Manyaku's son, Phatudi Thulare, the late King Victor Thulare III's two wives, Phindile and Zimkitha, Ramphelane Phillip Thulare and Lekgolane Thulare-Maphumulo.

According to Manyaku these 6 (six) people constitute the royal family of the Bapedi nation.

On the other hand the meeting of 28 February 2021 was attended by 46 (forty-six) people whose names appear on annexure "**AA12**" of Morwamohube's answering affidavit in the counter application.

- [30] From the statutory definition of royal family, it is quite clear that the royal family consists of immediate relatives of the ruling family and, where applicable, other family members who are close relatives to the ruling family.

Therefore, it ought to follow that the members of the royal family *in casu* consist of the immediate relatives of the ruling family (that is the house of the late King Victor Thulare III) and other family members who are close relatives of the ruling family, to wit, Ramphelane Thulare, Thorometjane Thulare, Diphala Thulare (Ntwampe) (who are the living siblings of the late King Rhyne Sekhukhune III) as well as the late King Victor Thulare III's other siblings, half-brothers as well as the other close relatives.

[31] In the light of the description of the royal family set out hereinabove, taking into cognizance that the late King Victor Thulare III never married a second wife, it ought to follow that his paternal uncles and aunts, including his half-brothers constitute members of the royal family. This include also those six people who attended the meeting of 21 February 2021. The attendance of that meeting should not have been limited to the six people only.

[32] I come to the conclusion that the people who attended the royal family meeting on the 28 February 2021 are members of the royal family who are required to make the decisions, including the identification of an Acting King and seed raiser.

The contention by Manyaku that the royal family consists only of herself, her two sons, her daughter, one uncle and two common wives of the late King Victor Thulare III is rejected.

[33] Manyaku initially disputed the Thulare royal family meeting of the 28 February 2021. However, she later admitted that the meeting did take place but was disrupted. She further disputes that the people who attended the Thulare royal family meeting of 28 February 2021 are members of the royal family. Furthermore, she raises an issue that she was not invited.

[34] I reject Manyaku's contention in this regard and accordingly make a finding that those people who attended the royal family meeting of 28 February 2021 constituted the Thulare Royal Family.

On the other hand, the composition of the said meeting of 21 February 2021 attended by Manyaku and her children together with Ramphelane alone does not constitute the royal family meeting of the Bapedi nation.

Meeting of 21 February 2021

[35] It is not in dispute that on 31 January 2021 a royal family meeting was held which meeting was postponed to 28 February 2021. Before that meeting of 28 February 2021 could be held, Manyaku and her group of five held on 21 February 2021 what they term a royal family meeting. The meeting of 28 February 2021 eventually took place. The meeting of the 21 February 2021 was attended by only six (6) people, namely, Manyaku, Phatudi Thulare, Ramphelane Thulare, Lekgolane Thulare – Maphumulo and the late King Victor Thulare III's two wives, Phindile and Zinkitha.

[36] The handwritten minutes of the said meeting of 21 February 2021 are reproduced hereunder.⁶

[37] The following was written under the heading “**Appointment**”:

“The meeting resolved to appoint Queen mother Manyaku Thulare as the Queen Regent and to hold the...”

The rest is not legible.

[38] There is also a document which identifies itself as: “MINUTES OF THE (INNER CIRCLE) IMMEDIATE THULARE ROYAL FAMILY HELD ON 21 FEBRUARY 2021 AT”. The subject of the said meeting was the: “APPOINTMENT OF THE ACTING KING/QUEEN IN THE PLACE OF THE LATE THULARE III THULARE”. In that document it is stated that: “SENIOR KGADI VICTORIA LEKGOLANE THULARE-MAPHUMULO SUGGESTED THE QUEEN-MOTHER MANYAKU THULARE TO ACT ON BEHALF OF THE LATE KING THULARE VICTOR THULARE DUE TO THE FACT THAT SHE HAS BEEN CLOSE TO HIS SON THE KING AND ACTIVELY INVOLVED IN THE

⁶ Annexure REP6 pages 515 – 518.

ADMINISTRATION OF THE AFFAIRS OF THE KINGDOM AND THAT SHE SHOULD ACT UNTIL THE TIME A CANDLE-WIFE (QUEEN) IS MARRIED.”

Thereafter the Queen-Mother was requested to give her succession plan and it is recorded that: “THE QUEEN-MOTHER INDICATED THAT, A CANDLE WIFE WOULD BE MARRIED AND THAT ONE OF THE LATE KING’S SONS WHO ARE STILL MINOR WILL BE ELIGIBLE TO RAISE SEEDS WITH THE CANDLE WIFE (QUEEN) AND BEAR THE NEXT KING, SEKHUKHUNE IV.”

- [39] The next document attached is titled the: DECISION OF THE INNER THULARE ROYAL FAMILY MEETING and the subject of the said meeting is: APPOINTMENT OF THE ACTING KING/QUEEN OF BAPEDI. The document reads as follows:

“On the 21st February 2021, the Thulare Royal Family convened to appoint an Acting King/Queen in the place of the late King Thulare III Thulare.

The royal family anonymously agreed that the Queen-mother Manyaku Thulare, the mother of the late King Thulare III should carry the fort and act as the Queen until the candle wife (Queen) is married.

Upon the marriage of the candle-wife the appointment of the Queen-mother will be relooked.

The decision was signed by all members of the royal family present."

[40] The third document is simply headed Agenda and the Contents thereof are more or less the same as the first document mentioned hereinabove which is headed: MINUTES OF MEETING OF THE (INNER CIRCLE) IMMEDIATE FAMILY OF THE LATE THULARE ROYAL FAMILY. In both documents the Chairperson reminds those present about the upcoming meeting of 28 February 2021.

[41] The difference between the three (3) documents is that in the first document, that is, the minutes, it is recorded that Manyaku is to act on behalf of the late King Victor Thulare III, whereas in the second document it simply suggests that Manyaku Thulare should act as the Queen until the candle wife is married. There is a big difference between the two decisions as one cannot act on behalf of a deceased King, but one can act as a Regent on behalf of a minor.

It is therefore confusing on whether Manyaku was appointed as a Queen, a Regent or an Acting Queen.

The decision of the so called royal family taken on the 21 February 2021 does not comply with the provisions of section 17 (2)(c) of the Limpopo Act as stipulated in paragraph [26] above.

[42] Manyaku and her group purported to hold another meeting on the 9 March 2021. This meeting was attended by what she referred to as “Leaders of Various Magoro (Dikgoro)” that is the clans.

The purpose of the meeting was to endorse or approve the decision taken at the meeting of 21 February 2021.

The following members of the so-called “Magoro” attended the meeting, namely:

1. Ntwampe Issac Mampuru;
2. Motubatse Mampuru;
3. Mohlabani Morewane Hlakudi;
4. Phalele Mabogoane;
5. Mapurunyane Makgata;
6. Baloshi Samuel Phala;
7. Shikwane Philemon Maleka;
8. Setlagane Obed Thipa Maredi;

9. Kgetjepe Mogwadi Marabe.

None of these people bear the surname of Sekhukhune or Thulare. It is not indicated how they are related to the family of the late King Victor Thulare III.

[43] A roll call or register of the aforesaid attendees at the meeting of 9 March 2021 does not indicate the designation of each of them. It is not indicated that anyone of those persons is a member of the Royal Family of the late King Victor Thulare III.⁷

In the circumstance such meeting was not a true and lawful meeting of the royal family as required in terms of Section 17 of the Limpopo Act. Whatever decision that was taken at the meeting of 9 March 2021 is therefore null and void.

Meeting of 28 February 2021

[44] At the time of his death on 6 January 2021 the late King Victor Thulare III had not as yet married a candle wife and as such there was no hereditary successor born or identified at the time.

⁷ See pages 513 – 514 of the paginated papers.

There was therefore a need for the appointment of an Acting King/Queen and a seed raiser.

- [45] The National Act provides that the royal family must identify a suitable person to act as a King/Queen within ninety (90) days of becoming aware that a successor to the hereditary position of a King has not been identified.⁸ It is common cause that the royal family met on 31 January 2021 in order to deal with the issue of succession as a result of the passing away of the late King Victor Thulare III. It is also common cause that the said meeting was adjourned to 28 February 2021.

Indeed, the meeting continued on 28 February 2021. From the record it does appear that Manyaku did not attend the said meeting as she claimed that she was not invited and her group allegedly held a meeting on the 21 February 2021.

- [46] Section 17 of the Limpopo Act prescribes the requirements of a royal family meeting. It requires that a royal family must keep a minute book in respect of each meeting and record, (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

⁸ Section 13 (1)(a)(i)(aa) of the Khoi-San Act.

council present and their designations in accordance with their custom, and (c) the decision taken.⁹

[47] It is quite clear from the minutes of the meeting of 28 February 2021 that the provisions of section 17 have been complied with. The date, time and the place of the meeting is clear from the minutes. The names and the designation of the members of the royal family present in such a meeting have been recorded. The decision of the meeting has been clearly recorded. The submission by Manyaku that the meeting of 28 February 2021 does not comply with the provisions of section 17 of the Limpopo Act does not have merits at all.

[48] Various members of the royal family who attended the said meeting of 28 February 2021 filed affidavits to confirm their attendance. When it was also pointed out to Manyaku that even Prince Ramphelane Thulare, a member of her grouping also attended the meeting, her denial of the existence of the meeting of 28 February 2021 became untenable and eventually her story changed from no meeting to the meeting was disrupted.

Manyaku even went on to state that she was not invited to the said meeting. Taking into account that she was part of the meeting of the 31st of January 2021,

⁹ Section 17 (2) of the Limpopo Act.

which was adjourned or postponed to 28 February 2021, the submission that she was not invited is untenable and is rejected.

It is quite clear that Manyaku would make any allegation in order to try and discredit the properly constituted royal family meeting of 28 February 2021.

- [49] As indicated earlier in this judgment, the decision taken in the meeting of 21 February 2021 does not comply with the requirements and provisions of section 17 of the Limpopo Act.

On the other hand, the decision taken in the meeting of 28 February 2021 was clearly set out and all the persons who attended the meeting (forty-six (46) in number) gave their designations as “Bakgoma”, “Bakgomana” and “Dikgadi”. Amongst the said “Dikgadi” were Thorometjane Thulare and Diphala Thulare (Ntwampe) the two being the siblings of the late King Rhyne Sekhukhune III and the aunts of the late King Victor Thulare III.

- [50] The decision taken in the meeting of 28 February 2021 is recorded as follows:

“4.1 Succession

Bakgoma and Bakgomana deliberated on the issue of succession.

Two reports were submitted for consideration as follows:

1. *Prince Ramphelane presented a report of meetings held during the month of February. He indicated that in their deliberation they agreed that Manyaku Thulare should succeed Thulare III.*
2. *Report number two from the children of King Sekhukhune III was presented by Tswaledi Sekhukhune. In his report he outlines history of succession starting from King Sekhukhune I to King Thulare II where the uncle was the only one succeeding where there is no candle wife.*

In conclusion the meeting unanimously agreed that the half-brother to the late King Thulare III by the name of Prince Morwamohube Thulare should succeed his brother to raise seed in his house.

The chairperson made an announcement of the successor."

[51] In my view the decision taken at the meeting of 28 February 2021 is clearly set out and recorded. It was a unanimous decision taken in the presence of Ramphelane Thulare who earlier came up with the name of Manyaku as a candidate to succeed the late King Victor Thulare III.

[52] I therefore make a finding that the meeting of 28 February 2021 was a duly constituted meeting of the royal family of the late King Victor Thulare III.

Consequently, the decision taken at the said meeting is valid.

Marriage of the Late King Rhyne Sekhukhune III and Makgalake, the Mother of Morwamohube

[53] Manyaku disputes the marriage of the Mother of Morwamohube (Makgalake) to the late King Rhyne Sekhukhune III.

In her affidavit she states:

“10.4.4 The Honourable Court will note that Fifth Respondent is not included in the genealogy neither is his mother as she was never married by customary union or otherwise to anyone, least of all to my husband as the statement claims.

10.4.5 The allegation of the mother of the Fifth Respondent being the wife of my husband, the late Rhyne Thulare Sekhukhune III only surfaced as recently as after the funeral of my son the late Thulare Victor Thulare III and neither the Fifth Respondent or his mother and his siblings were known to the family at all.”

[54] If Manyaku is to be believed, the whole Thulare royal family is not aware of Makgalake's marriage to the late King Rhyne Sekhukhune III and they only became aware after the funeral of his son, the late King Thulare Victor Thulare III, that is in 2021.

The family that it is alleged was not aware of the existence of the marriage between King Rhyne Sekhukhune III and Makgalake would include the two sisters, (Thorometjane and Diphala) to the late King Sekhukhune III. Manyaku does not attach to her denial any affidavit from the siblings of the late King Rhyne Sekhukhune III to substantiate this outrageous allegation.

[55] On the other hand, the two (2) sisters of the late King Rhyne Sekhukhune III, being Thorometjane Deborah Thulare and Diphala Asnath Ntwampe, confirm that their brother was married to Makgalake.¹⁰ And further the delegates who were involved during the day of the marriage/wedding between King Sekhukhune III and Makgalake have also filed affidavits. In addition, thereto there is a funeral programme of the late King Rhyne Sekhukhune III and the minutes of the Nhlapo Commission both of which confirm that the late King Sekhukhune III was married to four (4) wives and those four (4) wives included Makgalake.

¹⁰ Annexure "AAC3" and "AAC4", pages 790 and 791 respectively.

[56] Mr. Mojapelo, counsel for Morwamohube submitted, correctly in my view, that there is at least on the record eight undeniable pieces of evidence that points to the marriage between Makgalake and the late King Sekhukhune III. And those are:

- 56.1. An affidavit by Thorometjane Deborah Thulare, the sister of the late King Sekhukhune III that confirms that Makgalake was married to the late King Sekhukhune III. She also confirms that Morwamohube is the first born of the marriage between King Rhyne Sekhukhune III and Makgalake.
- 56.2. Kgoshigadi Diphala Asnath Ntwampe who is also the sister to the late Rhyne Sekhukhune III, also confirms the marriage between Makgalake and the late King Sekhukhune III.
- 56.3. The affidavit of Moruthane Sekhukhune who was the delegate for the marriage of Mante, who was married to the late King Sekhukhune III on the same day with Makgalake in 1973. He confirms that the late King Sekhukhune III married both Makgalake and Mante on the same day in 1973 and further confirms that Morwamohube is the first-born son of the late King Sekhukhune III.¹¹

¹¹ Annexure "AAC5" : page 797.

- 56.4. The affidavit of Sekwati Phillemon Thulare, the half-brother of the late King Rhyne Sekhukhune III who grew up together with the late King Rhyne Sekhukhune III and went to the same initiation school. He is the uncle to the late King Victor Thulare III and Morwamohube. He also confirms the marriage of the late King Sekhukhune III to two (2) wives on the same day, and those two (2) wives being Makgalake and Mante. He further states that; *"The marriage of Makgalake was given birth to a son Morwamohube the Applicant, son of King Sekhukhune III"*.¹²
- 56.5. The affidavit of Bishop Kgetjepe Stephen Makotanyane who also confirms that the late King Sekhukhune III had four (4) wives, which wives included Makgalake. And he further confirms that Morwamohube is the first-born son of Makgalake and King Rhyne Sekhukhune III.¹³
- 56.6. The affidavit of Motubatse Frans, who was the delegate for the marriage of Manyaku. He confirms that during the marriage of Manyaku she was told about the two (2) wives of the late King Sekhukhune III.¹⁴
- 56.7. The Nhlapho Commission report which records that the late King Sekhukhune III had four (4) wives, and those four (4) wives included Makgalake. And further the commission records that Makgalake and the late King Sekhukhune III had three (3) children and those children,

¹² Annexure "AAC6" : page 799.

¹³ Annexure "AAC7" : page 801.

¹⁴ Annexure "AAC8" : page 802.

include Morwamohube, although his name has been misspelled as Morwamoche.¹⁵

56.8. The funeral programme (obituary) of the late King Sekhukhune III which records that the late King Sekhukhune III was survived by four (4) wives.¹⁶

[57] In addition, thereto, an identity book of Makgalake which was re-issued in 2011 clearly shows that her surname was Thulare.¹⁷

I agree with Counsel that the denial of the above pieces of evidence of marriage between King Sekhukhune III and Makgalake by Manyaku puts a serious dent on her credibility in this matter.

[58] Manyaku attaches the affidavit of Phillip Ramphelane Thulare the brother to the late King Sekhukhune III. What is telling about this affidavit is that there is nowhere that Ramphelane disputes the marriage between Makgalake and his brother the late King Sekhukhune III.¹⁸

¹⁵ Annexure "AA6", page 804, paragraph (Y).

¹⁶ Annexure "AAC10", page 807.

¹⁷ Annexure "AAC11" : page 808.

¹⁸ Confirmatory Affidavit of Ramphelane Thulare: page 917 to 923.

Manyaku attached affidavits of people who at best can only state that they are unaware of the marriage between King Sekhukhune III and Makgalake.

There is also an affidavit of Frans Morewane Hlakudi who alleges to have been a delegate in the marriage of Manyaku. He only denies that Manyaku was ever told about *“Any wives of the late Sekhukhune III as same is not and have never been part of the Bapedi customs”*. Again in this affidavit, Hlakudi does not deny the existence of marriage between King Sekhukhune III and Makgalake.

[59] Instead of dealing with the affidavits of the sisters to the late King Rhyne Sekhukhune III confirming the marriage, Manyaku chooses to raise issues which are irrelevant. For an example, she raises an issue about Thorometjane Deborah Thulare having taken away a leopard skin regalia and further raises an issue about Diphala Asnath Ntwampe not being a senior Kgadi. The affidavits on the late King Sekhukhune III by his sisters Diphala and Thorometjane remain unchallenged.

On the issue of the mentioning of four (4) wives in the Nhlapo Commission, Manyaku simply states that such was done without her involvement or consultation.

[60] The totality of evidence before me has proved that there was indeed a customary marriage between the late King Rhyne Sekhukhune III and Makgalake. This marriage took place during 1973 when Morwamohube was eight years old as he was born in 1965.

The argument by Counsel for Manyaku that in 1995 Makgalake allegedly got married to a certain Mr. Mabetha at Penge, does not take this case any further. By 1995 Morwamohube was already a grown up man of 30 (thirty) years.

The alleged marriage of his mother to another man does not affect Morwamohube's status as the son of the late King Rhyne Sekhukhune III.

Traditional Leadership Practice of the Bapedi (Sekhukhune) Nation

[61] The proper and undisputed traditional leadership practice of the Bapedi nation is summed up in the affidavit of Sekwati Philemon Thulare as follows¹⁹:

"The Bapedi nation thereafter married Lekgolane the daughter of Khoshi Ramphelane of Manganeng Chieftdom in 1939 as candle wife of King Thulare II my father. The number of the wives of King Thulare II now

¹⁹ Page 799 of the paginated papers.

became five (5) in number, unfortunately King Thulare II did never have enough life. He passed away soon in 1941. Candle wife Lekgolane also passed away in 1944.

The younger brother of the late King Thulare II, namely Morwamoche III ("the nickname of Morwamohube") was according to custom, practice and usage of Bapedi nation appointed Acting King and seed raiser in the stead of his elder brother, King Thulare II.

The Acting King Morwamoche III and the Bapedi nation went back to Manganeng Chieftdom and married the younger sister of the late candle wife Lekgolane as candle wife and surrogate for Lekgolane in the house of King Thulare II, namely Mankopodi.

Acting King Morwamoche III ("nickname of Morwamohube") and the candle wife Mankopodi procreated King Sekhukhune III, the father of King Thulare III and Morwamohube, the Applicant. Therefore, King Sekhukhune III biologically is the son of the Acting King Morwamoche III and surrogate candle wife Mankopodi and sociologically is the rightful son of King Thulare II and candle wife Lekgolane.

[62] Sekwati Phillemon Thulare went further to explain that the Kingship of King Sekhukhune III and his candle wife Manyaku is redundant as it has now passed to their son the late King Victor Thulare III and Morwamohube, the Applicant. He further states that the royal family is fully aware that the Kingship of the Bapedi nation is now rested on the line of the new generation of the late King Victor Thulare III. And since the late King Victor Thulare III passed away without a candle wife, his brother Morwamohube is obliged by custom to accomplish what the late King has left without accomplishing.

[63] This was confirmed in the North Gauteng High Court per Mlambo JP in the matter of ***Kgoshikgolo Kgagudi Kenneth Sekhukhune and Another v The Commission on Traditional Leadership Disputes and Claims and Others***²⁰, at paragraph 46 which provides as follows:

"[46] The Commission dealt with this issue and stated: "Assuming that Sekhukhune III could not ascend the throne for any reason, according to the customs and customary law of Bapedi, the next eligible son would be the second born son of the candle wife [Mankopodi], in this case, Ramphelane. Failing which the sons of Thulare from the other houses in order of rank: Malekutu, Phetedi, Sekwati, Matsebe, Phatudi, Morore and

²⁰ [2018] ZAGPPHC 969.

Mafete respectively. In the event that any of the sons within the house of the deceased king, cannot take over the most senior mokgoma (being the brother of the deceased king), should raise seed on behalf of the deceased king. After the death of Thulare II, Morwamoche III brother of Thulare II raised seed on behalf of his brother. [our emphasis]

[64] This is also confirmed by Ramphelane Thulare who stated in a meeting of the 21st February 2021 that *“Bogoši is forward moving – meaning that the most senior members of the royal family now are the children of the late King Thulare III and his house”*. The most important factor that Ramphelane forgot to mention was that the late King Victor Thulare III died without a candle wife as a result he has not as yet established his house, however his house needs to be resurrected. And that should be done by marrying a candle wife on his behalf.

[65] In the minutes of the meeting of 21 February 2021, wherein Manyaku was nominated, she was apparently given an opportunity to outline her succession plan. In the said succession plan it is recorded as follows:

“Rangwane Phillip Thulare requested the Queen-Mother to outline the succession plan.

- *The Queen-Mother indicated that a candle wife would be married and that one of the late King's sons who are still minor will be eligible to raise seeds with the candle wife (Queen) and bear the next King Sekhukhune IV".*

[66] What Manyaku effectively means is that a candle wife would have to be married on behalf of the late King Victor Thulare III who died without a candle wife. This is indeed according to tradition and custom.

However, she further suggests that the sons of King Victor Thulare III will then have to procreate with the candle wife who has been married to their father in order to produce the next King. With respect, that is tantamount to a son sleeping with his mother or his father's wife. Such a taboo can never be tolerated by the Bapedi nation or any self-respecting African nation for that matter. At the hearing of this matter I raised this taboo with Mr. Coetzee, Counsel for Manyaku. In response Mr. Coetzee conceded that such a practice will also never be accommodated in the culture of White People.

What Manyaku is suggesting about the succession to the Kingship of Bapedi nation is not according to custom and is therefore rejected.

Conclusion

- [67] I am of the view that Morwamohube's identification as the Acting King and seed raiser in the house of his late brother King Victor Thulare III follows the custom and the long-established tradition of the Bapedi nation as outlined in paragraphs 61-63 hereinabove.

In terms of the family genealogy (paragraph 28 hereinabove) Morwamohube is placed second in rank to the late King Victor Thulare III as he is the eldest surviving son of the late King Rhyne Sekhukhune III.

- [68] The primary objective of Morwamohube's appointment as a seed raiser is to revive the house of the late King Victor Thulare III. This process will naturally be followed by the marriage of the candle wife by the community in accordance with the custom and customary laws of the Bapedi nation. The candle wife thus bears an heir to the throne in the kingship of his brother the late King Victor Thulare III.

[69] Accordingly, the succession plan as outlined by Manyaku is not only untenable but a taboo and never heard of in terms of the custom of the Bapedi nation. Manyaku suggests that the children of the late King Victor Thulare III will raise seed with the candle wife (who will be regarded as their mother) and then bear a successor in their father's house.

Manyaku further asserts that her entitlement to act on behalf of her son, the late King Victor Thulare III, is purely due to the fact that she has been close to her son and actively involved in the administration of the affairs of the kingdom. This contention is not only thin and of no moment in the context of the prevailing circumstances but further offends against the long-established tradition and custom of the Bapedi nation.

[70] On the conspectus of evidence before me I make the following findings:

70.1. The meeting of 28 February 2021 is the rightful meeting of the royal family of the late King Victor Thulare III. The other meeting organized by Manyaku and five (5) other people on 21 February 2021 is not the rightful meeting of the royal family.

70.2. The notion that the royal family of Bapedi nation consists of only five (5) people is rejected.

70.3. The said meeting of 21 February 2021 occurred contrary to the agreement reached by the royal family on 31 January 2021 wherein there was an agreement to postpone that meeting to the 28th of February 2021.

70.4. The meeting of 28 February 2021 did indeed take place and a resolution was adopted. It is not clear what decision was taken in the meeting of 21 February 2021. Whether such meeting was to appoint Manyaku as a Regent, as an Acting Queen, or a Fully-fledged Queen. Even if the said meeting appointed her as such, she does not qualify as the Kingship has already moved from her house to her son, the late King Victor Thulare III.

[71] In the result the main application by Morwamohube should be granted and the counter application by Manyaku should be dismissed.

Order

[72] I accordingly grant the following order:

1. The main application brought by Morwamohube is granted and it is declared that:

- 1.1. The meeting held by the Thulare Royal Family on 28 February 2021 was a properly constituted meeting of "a royal family"; and
 - 1.2. The decision taken by the Thulare Royal Family at the meeting of 28 February 2021, to appoint Morwamohube as the Acting King of the Bapedi nation and seed raiser in the house of the late King Victor Thulare III, was a lawful decision of "a royal family".
2. Manyaku shall be liable to pay the costs of the application, such costs to include the costs of two Counsel.
 3. The Counter application brought by Manyaku is dismissed with costs of two Counsel.
 4. That the interim interdict order dated 5 August 2021 in favour of Manyaku under case number 5197/2021 is discharged and the application brought by Manyaku under case number 4253/2021 is dismissed with costs.



E M MAKGOBA
JUDGE PRESIDENT OF THE HIGH
COURT, LIMPOPO DIVISION

APPEARANCES

Heard on	:	29 September 2022
Judgment delivered on	:	19 October 2022
For the Applicant in the Main Application	:	Adv. M M Mojapelo Adv. K Maleka
Instructed by	:	Ledwaba Mazwai c/o Moabelo attorneys
For the Applicant in the Counter Application	:	Adv. P J Coetzee
Instructed by	:	Phosa Loots Inc. c/o Jacob Oberholzer Attorneys