

REPUBLIC OF SOUTH AFRICA

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE****CASE NUMBER: 915/2018**

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
DATE: <u>30/4/19</u> SIGNATURE: <u>[Signature]</u>	

In the matter between:

CASTER MPATSAKGOMO MOELA AND 34 OTHERS APPLICANTS**AND****MATHOPE JACKSON PHASHA AND 13 OTHERS RESPONDENTS**

JUDGEMENT

KGANYAGO J

- [1] The applicants have brought an application against the respondents seeking an order that they intervene in the main application as co-applicants. The respondents are opposing the applicants' application.
- [2] The applicants alleges that they are members of Roka-Makgalanoto traditional community, and that the first to the thirteenth respondents are trustees of Roka-Makgalanoto Community Trust. According to the applicants, the trust has been established for the benefit of the entire community.
- [3] The applicant in the main application Phokeng Daniel Shai is seeking an order that the first to thirteen respondents be ordered to fully account to trust beneficiaries being members of Roka-Makgalanoto traditional community by delivering the financial accounting books and records for the period 2011 to 2017.
- [4] The applicants in the present application are alleging that they are the direct beneficiaries of the trust as they belong to Roka-Makgalanoto traditional community. According to them they are having a direct and substantial interest in the main application. They allege that the first to thirteenth respondents have committed breach of their duties as trustees by failing to account to them and the entire community as the trust beneficiaries despite being requested to do so on numerous occasions.
- [5] The respondents in their answering affidavit have raised three points *in limine*. The first point *in limine* is that the applicants lacks legal interest

and *locus standi*, the second one is alleged failure to follow the proper procedure, and third one is alleged failure to follow Promotion of Access to Information Act no 2 of 2000 (PAIA). On merits the respondents denies that this is an application for intervention. According to the respondents the applicants have brought this application to circumvent the obstacle that the applicant in the main application has encountered. They submit that the applicant in the main application has realised that in his answering affidavit he has stated that he was not authorised by the “so called” beneficiaries to bring that application. So this application is just a strategy to rectify that onerous slip-up.

- [6] With regard to the first point *in limine*, the respondents submit that the applicants are not beneficiaries of the trust and on that basis they lack the necessary legal interest and *locus standi* in this application. The test which must be applied is whether the applicants have a direct and substantial interest in the subject matter of the litigation, that is a legal interest in the subject matter of the litigation which may be affected by the decision of the court. (See **Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)** [2015] ZACC at paragraph 56)
- [7] In determining what constitute direct and substantial interest Mlambo JA as he was then, in **Gordon v Department of Health, KwaZulu-Natal** 2008 (6) SA 522 (SCA) at 529 c-f said:

"...In the Amalgamated Union case (supra) it was found that the question joinder should ... not depend on the nature of the subject matter... but on the manner in which, and the extent to which the court's order may affect the interest of third parties. The court formulated the approach as first to consider whether the third party would have locus standi to claim relief concerning the same subject matter, and then to examine whether the situation could arise in which, because the third party had not been joined any order the court might make would not be res judicata against him, entitling him to approach the courts again concerning the same subject-matter and possibly obtain an order irreconcilable with the order made in the first instance. This has been found to mean that if the order or judgment sought cannot be sustained or carried into effect without necessary prejudicing the interests of a party or parties not joined in the proceedings, then that party or parties have a legal interest in the matter and must be joined."

- [8] The applicants in this matter are capable and have *locus standi* to bring their own separate application seeking the same orders as the applicant in the main application. If they were to follow that route, the risk is that they might obtain an order which might be irreconcilable with orders which might be made in the main application. The respondents themselves have stated in their answering affidavit in the main application that the applicant was not authorised by "so-called" beneficiaries to bring that application. That on its

own shows that the applicants in the intervening application have direct and substantial interest in the subject matter of the litigation.

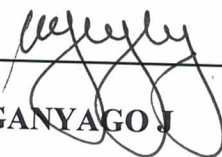
[9] In **Judicial Service Commission v Cape Bar Council 2013 (1) SA 170 (SCA) Brand JA** held that it is settled law that the joinder of a party is only required as a matter of necessity as opposed to a matter convenience if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned. The respondents by alleging in the answering affidavit in the main application that the applicant needed the authority of “so-called” beneficiaries to initiate his application, demonstrate that there is a risk of the applicants’ rights being prejudicially affected by an order issued in the main application (**See Morudi and Other v NC housing Services and Development Co Limited and Others [2018] ZACC 32**).

[10] I therefore conclude that the applicants have a direct and substantial interest in the outcome of the main application and have also *locus standi* to bring this application. It therefore follows that the respondents’ first point *in limine* stand to fail.

[11] Regarding the second and third points *in limine*, in my view are not relevant to the determination of an intervention application. The applicants are not yet parties to the litigation, and they have not yet fully put their version before court. In my view, the respondent’s two remaining points *in limine* are premature and stand to fail.

[12] In the result I make the following order.

12.1 The respondents' points *in limine* are dismissed with costs.



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

APPEARANCE:

COUNSEL FOR THE APPLICANT	: MR PF PHASHA
INSTRUCTED BY	: PHOKOANE PHASHA ATTORNEYS
COUNSEL FOR THE RESPONDENT	: MR MP CHIDI
INSTRUCTED BY	: MAMMULE CHIDI ATTORNEYS
DATE OF HEARING	: 11 MARCH 2019
DATE OF JUDGEMENT	: 30TH APRIL 2019