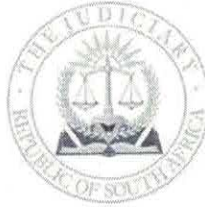


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED
Signature	
Date..... 03/05/2019	

CASE NO: 4561/2017

In the matter between:

LANGA, KGABAGARE DAVID**and****PREMIER, LIMPOPO PROVINCE****LIMPOPO PROVINCE: MEC FOR CO-OPERATIVE****GOVERNANCE, HUMAN SETTLEMENT****AND TRADITIONAL AFFAIRS****RALUSHAI COMMISSION OF INQUIRY****KGATLA COMMISSION OF INQUIRY****HANS MASEBE LANGA****APPLICANT****1ST RESPONDENT****2ND RESPONDENT****3RD RESPONDENT****4TH RESPONDENT****5TH RESPONDENT**

JUDGMENT

MAKGOBA JP

- [1] The Applicant brought an application against the Respondents for an order in the following terms:
- 1.1. That the decision of the First Respondent to withdraw a Certificate of Recognition as Senior Traditional Leader of the Mapela Traditional Community, issued to the Applicant be declared unlawful and void *ab initio*, be reviewed and set aside;
 - 1.2. That the decision of the Third Respondent to recommend, to the First Respondent, that the Fifth Respondent be installed and recognised as Senior Traditional Leader of the Mapela Traditional Community, be declared unlawful and void *ab initio*, be reviewed and set aside;
 - 1.3. That the decision of the Fourth Respondent to recommend, to the First Respondent, that the Fifth Respondent be installed and recognised as Senior Traditional Leader of the Mapela Traditional Community, be declared unlawful and void *ab initio*, be reviewed and set aside;

1.4. That the Court directs that the status *quo ante* the aforesaid unlawful decision referred to in 1.1 above be restored.

- [2] The Applicant was the Senior Traditional Leader of the Mapela Traditional Community. The Fifth Respondent has been recognised and appointed as Senior Traditional Leader in the Applicant's stead, by the First Respondent ("the Premier"). Essentially, this is an application for the review and setting aside of the First and Second Respondents' decision to withdraw the Applicant's certificate of recognition as senior traditional leader and appointing the Fifth Respondent as the Senior Traditional Leader with effect from 1 April 2017.
- [3] The First Respondent's (the Premier's) decision is challenged on the basis that it is allegedly not authorised by the empowering legislation and therefore *ultra vires*. It is also challenged on the basis that he allegedly failed to notify the Applicant of his intended action and afford the Applicant an opportunity to make representations in the circumstances where the law requires the Premier to do so. The Third and Fourth Respondents decisions are challenged on the basis that they are allegedly procedurally unfair, relevant considerations were not taken

into account; the decisions were influenced by material error of fact; the decisions are arbitrary, unreasonable and irrational.

- [4] The Respondents' standpoint is that the Applicant has not made out a case to support the prayers it is seeking and further that the prayers are not supported by the facts of this case.

The Respondents furthermore state that in the unlikely event of this Court setting aside the Premier's decision, and unless the Applicant proves that this is an exceptional case, the appropriate remedy that may be granted is not to restore the status *quo ante* but to remit this matter for reconsideration by the First Respondent (the Premier).

Dramatis Personae

- [5] The Applicant is the son of one Madikwe Hendrik Langa, a one-time acting Kgoshi of the Mapela Traditional Community. The Applicant was appointed and issued with a Certificate of Recognition as Senior Traditional Leader in terms of section 12(1)(b) of the Limpopo Traditional Leadership and Institutions Act 6 of 2005 ("the Limpopo Act") by the then Premier of Limpopo Province with effect from the 6 November 2009. The current Premier (First Respondent) withdrew the aforesaid certificate of appointment and recognition as Senior Traditional Leader and in the Applicant's stead appointed and recognised the Fifth

Respondent as such with effect from 1 April 2017 after receiving and implementing the recommendations of the Fourth Respondent.

[6] The First Respondent (being the Premier of the Limpopo Province) is cited herein by virtue of his oversight function vis-à-vis the Provincial Traditional Leadership Institution. He has the power to recognise and issue a certificate of recognition of amongst others Senior Traditional Leaders in the Province in terms of section 12 of the Limpopo Traditional Leadership and Institutions Act 6 of 2005 ("the Limpopo Act"). In the present proceedings the Premier acted in terms of sections 13 and 30 of the aforesaid Act in terms whereof he removed the Applicant as Senior Traditional Leader and replaced him with the Fifth Respondent following the recommendations of the Fourth Respondent.

[7] The Second Respondent as the MEC for the Department of Co-Operative Governance, Human Settlement and Traditional Affairs, is cited herein in his capacity as the political overseer of the institution of traditional leadership in the Province. The office of the Second Respondent is responsible for the administration of the Limpopo Province's traditional leadership affairs.

[8] The Third and Fourth Respondents were delegated Provincial Committees referred to in section 25 read with 26A of the Traditional Leadership and Governance Framework Act 41 of 2003 ("the Framework Act") with the authority to investigate and make recommendations on traditional leadership disputes and claims in the Limpopo Province. The Third Respondent completed its work around 1997 and handed its report to the First Respondent. The Fourth Respondent completed its work in December 2016 and also handed its report to the First Respondent. In the present case it is the findings and recommendations of the Third and Fourth Respondents which are sought to be reviewed and set aside by the Applicant.

[9] The Fifth Respondent is presently the incumbent of the Traditional Leadership of the Mapela Traditional Community after he was so appointed and recognised by the Premier with effect from 1 April 2017. His appointment and recognition as such follow the recommendations of the Third and Fourth Respondents.

Record of Decision sought to be reviewed and set aside

[10] In the Notice of Motion the Applicant in terms of Rule 53(1)(b) of the Uniform Rules of Court, called upon the First, Second, Third and Fourth

Respondents to dispatch to and file with the Registrar of this Court the record of the decision sought to be reviewed and set aside (including all correspondence, reports, memoranda, documents, evidence, transcripts and recorded proceedings and other information serving before the First Respondent when the decision(s) were made) together with such reasons as they are by law required to give or desire to make.

- [11] In response to the aforesaid notice and in terms of Rule 53(3) the Respondents furnished various correspondences, memoranda, copies of Provincial Gazettes and among others and of importance the Reports by the Commission on Traditional Leadership Disputes and Claims of both the Ralushai Commission (Third Respondent) and Kgatla Commission (Fourth Respondent). The contents of the aforesaid documents or records form part of the evidential material in these proceedings. They in fact constitute the decisions or recommendations sought to be reviewed and set aside by the Applicant.

Condonation

- [12] All the parties in these proceedings were remis in serving and filing some of their papers on time as prescribed by the Rules of Court. The Applicant was six months out of time in serving and filing his

supplementary founding affidavit. The First, Second, Third and Fourth Respondent were three months out of time in serving and filing their answering affidavit whilst the Fifth Respondent served and filed his answering affidavit six months late. All the parties made applications for condonation of their late filing of their papers. They opposed each other's application for condonation. By agreement between the parties and at the hearing of this matter on 17 April 2019 the Court granted each party condonation for the late filing of their respective papers with an appropriate order that the costs will be costs in the cause.

FACTUAL BACKGROUND

- [13] The factual background which includes the genealogical history of the Mapela Community Traditional Leadership will put this matter in correct perspective. The history is traced from the reign or regime of the late Kgoshi Hans Langa I to the present day situation when the Applicant was relieved of his duties as Kgoshi of the Mapela Traditional Community with effect from 1 April 2017. It appears clearly from the papers filed of record that since the death of the late Senior Traditional Leader, Alfred Sedibu Langa in 1937, the successors have hitherto and until the installation of the Fifth Respondent been acting as Kgoshi and / or regents.

Genealogical History

- [14] Kgoshi Hans Malesela Langa I was the first traditional leader of the Mapela Community and built his capital at the foot of Magope Hill. He had 29 wives but for the purpose of this case we shall concern ourselves to only five wives. His senior wife was Malega Maria Langa who was also the candle wife, that is **masechaba**. Alfred Sedibu Langa was born of the marriage relationship between Kgoshi Hans Langa I and Malega Maria Langa and therefore succeeded his father as Kgoshi of the Mapela Community in 1918.

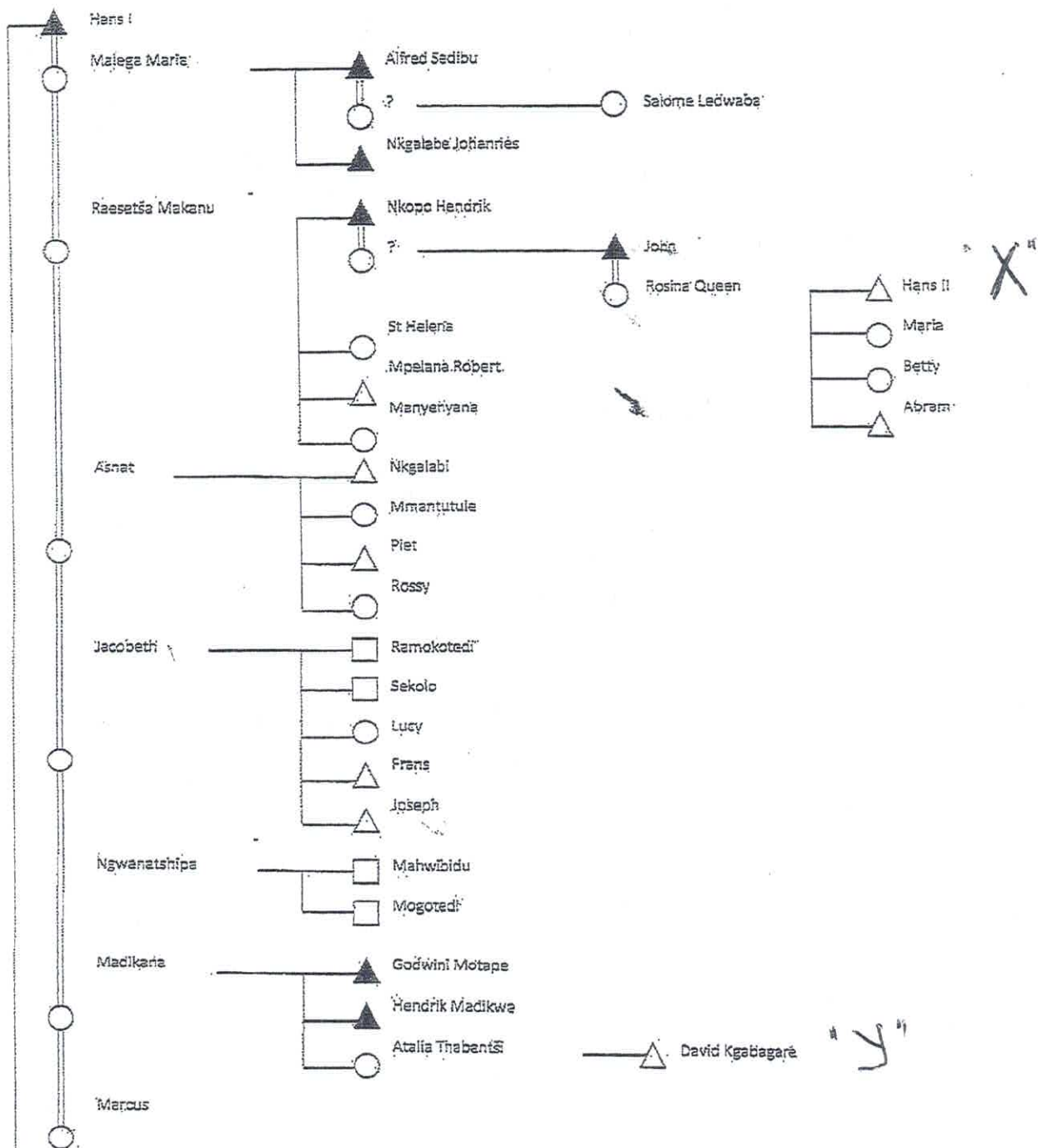
Alfred Sedibu Langa did not have a male issue to succeed him as Kgoshi until he died in 1937. Upon his death in 1937 Alfred Sedibu Langa was succeeded by his younger brother, Johannes Nkgalabe Langa who acted as regent until his death in 1957.

- [15] The death of Johannes Nkgalabe Langa gave rise to a new line of successors with the nomination of Godwin Motape Langa in 1957 from another house. The said Godwin's mother was Madikana, the fifth wife of the late Kgoshi Hans Langa I. Godwin was the elder brother of Hendrik Madikwe Langa. The two are born from the fifth house of the late Kgoshi Hans Langa I and were half-brothers of the late Kgoshi Alfred Sedibu Langa. Godwin ruled for a short period of six months

before he met his untimely death in 1958. His death paved a way for his younger brother Hendrik Madikwe Langa to be nominated and appointed as the acting Kgoshi of Mapela Community.

- [16] Henrik Madikwe Langa's reign was terminated in 1976 when John Masebe Langa, the son of Nkopo Hendrick Langa from the second house of Kgoshi Hans Langa I was appointed in his place as acting Senior Traditional Leader of Mapela Community. John was appointed with the sole mandate of raising a seed for the late Kgoshi Alfred Sedibu Langa by cohabiting with the candle wife (*masechaba*) designate, Rosina Queen Langa. It is against this background that a **masechaba** in the name of Rosina Langa was married as a candle wife (*masechaba*) in 1958. The then regent Hendrik Madikwe Langa rejected Rosina and refused to accept her as a *masechaba*. Hendrik further refused to cohabit with Rosina. His refusal prompted the royal house (**bakgomana**) to nominate John Masebe Langa as his substitute and the latter was installed as regent of the Mapela Community. The Fifth Respondent (Hans Masebe Langa) was born out of the cohabitation of John, the regent and Rosina, the **masechaba**.

- [17] Having rejected the rightful masechaba Hendrik Madikwe Langa went on to marry his "own masechaba" by the name of Athalia in 1960. The Applicant is born of the marriage between Hendrik and Athalia.
- [18] While John Masebe Langa continued with his reign, the disgruntled Hendrik Madikwe Langa mobilized supporters who turned amok against John and his supporters. A civil commotion ensued in the Mapela Community with the result that John fled to Hammanskraal where he sought refuge with his family, that is Rosina and the young Fifth Respondent. The violence had erupted in 1977 and Hendrik moved the royal head kraal to Fothane where he was reinstated as traditional leader. After his death in 1990, Hendrik was succeeded by his wife Athalia who ruled as a regent until 2009 when she passed the baton to her son David Kgabagare Langa, the Applicant.
- [19] I have incorporated in this judgment a schematic illustration of the official Langa genealogy concerning their traditional leadership. I have marked with letters "Y" and "X" the positions of the Applicant and the Fifth Respondent respectively where they appear on their family tree.



LEGEND

△	Male	▲	Male deceased
○	Female	●	Female deceased
□	Gender unknown		
	Marriage		
	Sibling		

NOTE: John married Rosina Queen as a concubine wife for Alfred Sedibu. From this union, Hans II was born.

Role of the Commissions (Third and Fourth Respondents)

[20] The Third Respondent ("the Ralushai Commission") had an opportunity to investigate, hear evidence and make findings in respect of the traditional leadership dispute of the Mapela Traditional Community. The Ralushai Commission completed its work in 1997 and made the following findings and recommendations:

"The Commission finds that the marriage to Athalia and the issuing to her of the letter of appointment by the Lebowa Government was contrary to custom and tradition and thus irregular. The Commission recommends that Athalia Langa be removed as acting chieftainess and that Hans II be installed as chief under the name Hans Langa II, because such actions will restore the bloodline of Chief Alfred Sedibu Langa. If Athalia is not removed, and at one stage or another her son takes over, it will mean the creation of a new bloodline, starting with Madikwe Langa who was acting chief. Hans II is, for royal succession purpose, not the sociological son of John Langa but of Alfred Langa. He is the biological son of John Langa, who acted for a very short time before he and Rosina were forced to flee out by violence instigated by Madikwe Langa and his group. Athalia's son is not the biological and, sociological son of Madikwe Langa and as such, cannot succeed as permanent chief of the Mapela tribe."

[21] The above recommendations of the Ralushai Commission were for unknown reasons not implemented with the result that Athalia continued ruling until her son, the Applicant took over from her in 2009. The

Applicant was issued with a certificate of recognition on 6 November 2009.

[22] In 2013 the Mapela Traditional Leadership dispute and claim was referred to another Commission namely the Fourth Respondent ("the Kgatla Commission"). Madimetja Joseph Langa, the last born son of Kgoshi Hans Langa I disputed the chieftainship of the then incumbent, Kgabagare David Langa (the Applicant herein). He argued that Kgabagare is not the rightful heir to the throne. To him Hans II, the Fifth Respondent whose mother consorted with John Langa, is the rightful heir.

[23] The Kgatla Commission conducted its proceedings in public and all interested parties including the Applicant were invited to attend the proceedings and participate in the hearing. As proof that the Applicant was invited and did attend the Commission's proceedings a letter from Kaleka Mahapa Attorneys (Applicant's erstwhile attorneys) dated 20 January 2017 and addressed to the Premier's Office states the following:

"3. Ever since our client's appearance before the Kgatla Commission, he has never received the Commission's report, instead he received a letter dated 05 December

2016 from the Commission on Traditional Leadership Disputes and Claims wherein he was informed about the commission's recognition of the lineage of Alfred Sedibu Langa by Mr Langa Madimetja Joseph."

The Applicant participated at the Commission hearing to the extent that he even called Kgoshigadi Maphuti Canatia Maraba of the Maraba Traditional Community at Kaalspruit and the daughter of Robert Lekgoa Langa to testify in support of his case that he is the rightful heir to the throne.

[24] The Kgatla Commission recommended that:

1. The lineage of the late Hendrik Madikwe Langa as a ruling lineage be terminated and that the current incumbent, Kgoshi Kgabagare David Langa be removed from his position in terms of the provisions of section 12(1)(c) of Traditional Leadership and Governance Framework Act No 41 of 2003 read with section 13(1)(c) of the Limpopo Traditional Leadership and Institutions Act No 6 of 2005.
2. The lineage of the late Alfred Sedibu Langa be restored and Hans II Malesela Langa (ID: 710401 5321 089) be recognised as a traditional leader of Mapela Traditional Council in terms of section

12(1) (b) of the Limpopo Traditional Leadership and Institutions Act No 6 of 2005.

Withdrawal of Applicant's certificate of recognition

[25] In a letter dated 5 December 2016, the secretary of the Kgatla Commission notified the Applicant of the outcome of the Commission hearing and investigation thus:

"2. Kindly be informed that the claim for restoration and / or recognition of the lineage of Alfred Sedubi Langa by Mr Langa Madimetja Joseph is accepted"

At its meeting held on 6 December 2016 the Mapela Royal Family resolved to appoint Hans Malesela Langa (Fifth Respondent) as the Senior Traditional Leader of the Mapela Traditional Community. The contents of their resolution is that *"We do hereby acknowledge the appointment of Hans Malesela Langa as the Chief of the Langa tribe of Mapela, as he is the legitimate one to hold the title of Hans Masebe II, born of the house of Chief Alfred Sedibu Langa of the Makgaripana Clan (Kgoro ya Mošate)"*.

[26] On the 28 February 2017 the Office of the Second Respondent (MEC COGHSTA) sent out a memorandum to the Premier requesting the Premier to approve the relief of royal duties of Kgabagare David Langa (Applicant) and recognise Hans Malesela Langa (Fifth Respondent) as

the Senior Traditional Leader of the Mapela Traditional Community. The memorandum was approved by the Premier on 1 April 2017 whereafter the certificate of recognition as Senior Traditional Leader issued to the Applicant was withdrawn and the Fifth Respondent was appointed and recognised as the new Senior Traditional Leader of the Mapela Traditional Community.

[27] In implementing the recommendations of the Kgatla Commission the Premier purported to have acted in terms of section 30 of the Limpopo Traditional Leadership and Institutions Act No 6 of 2005. By then the Fifth Respondent had already been identified by the Royal Family at its meeting of the 6 December 2016.

[28] The removal of the Applicant as Senior Traditional Leader and the recognition of the Fifth Respondent as Senior Traditional Leader were duly published in the Provincial Government Gazette dated 16 August 2017.

GROUND OF REVIEW

[29] The Applicant's review application is not concerned with or based on the merits of the decision of the First Respondent but is concerned with

whether the decision was arrived at in an acceptable manner. The focus is on the process and on the way the decision-maker arrived at the challenged conclusion¹. The Applicant avers that the decisions taken by the First Respondent (Premier) have not been authorised by the empowering legislation on which it relies and that these decisions are therefore unlawful and *ultra vires*.

[30] The Applicant pointed out the following aspects as his grounds of review:

30.1. That irrespective of the evidence deposed to by the Respondents

The resolution by the Royal Family on 6 December 2016 does not identify a person who qualifies to become a Senior Traditional Leader and that the Royal Family has not given reasons for its decisions. This, according to the Applicant, shows a gross irregularity on the part of the Respondents which entitles the Applicant to an order reviewing and setting aside the decisions taken by the First Respondent.

30.2. That in terms of section 12(1)(a) of the Limpopo Act the Royal

¹ Hoexter: Administrative Law in South Africa (2nd Ed) at p 108 and Rustenburg Platinum Mines v CCMA 2007(1) SA (SCA) at para 31

Family should identify a person who is qualified to assume the traditional leadership position and inform the Premier and also inform the Traditional Council of the recognition of the new Senior Traditional Leader in terms of section 12(1)(a)(ii) of the Act. Furthermore that in terms of section 12(1)(b)(iii) of the Act the Premier was to inform the Provincial House of Traditional Leaders of the recognition of the new Senior Traditional Leader. The Applicant avers that all these provisions of the Limpopo Act have not been complied with.

30.3. That the provisions of section 13(2)(a) of the Limpopo Act have not been complied with. Section 13(2)(a) provides that when the Royal Family decides to remove a Senior Traditional Leader, the Royal Family concerned must within a reasonable time and through the relevant customary structure inform the Premier of the province concerned and furnish reasons for the removal.

30.4. That the provisions of section 30 of the Limpopo Act have not been complied with. Section 30 of the Act deals with the implementation of decisions of Commissions. I shall deal with this aspect fully hereunder when I examine the legislative framework in my judgment.

30.5. That the Premier failed to follow a procedurally fair decision as is

envisaged *inter alia* in section 3 of the Promotion of Administrative Justice Act, 3 of 2000 (PAJA) in that the Premier failed:

- (1) To give the Applicant adequate notice of his proposed decision. That the Applicant was never informed by the Premier that he intended to make a decision to withdraw the Applicant's Certificate of Recognition.
- (2) That the Applicant was not given a reasonable opportunity to make representations.
- (3) The Applicant was never given a clear statement of the Premier's intention to withdraw the Applicant's Certificate of Recognition.
- (4) The Applicant was not given adequate notice of his right to appeal and / or take the decision on review.
- (5) The Applicant was not informed of his right to request reasons for his decision.

LEGISLATIVE FRAMEWORK

[31] Section 12(1) of the Limpopo Traditional Leadership and Institutions Act 6 of 2005 ("the Limpopo Act") provides as follows:

12 Recognition of Senior Traditional Leader, Headman or Headwomen

(1) Whenever a position of a senior traditional leader, headman or headwoman is to be filled –

(a) The royal family concerned must, within a reasonable time after the need arises for any of those positions to be filled, and with due regard to the customary law of the traditional community concerned –

- (i) Identify a person who qualifies in terms of customary law of the traditional community concerned to assume the position in question; and*
- (ii) Through the relevant customary structure of the traditional community concerned and after notifying the traditional council, inform the Premier of the particulars of the person so identified to fill the position and of the reasons for the identification of the specific person.*

(b) The Premier must, subject to subsection (2) –

- (i) by notice in the Gazette recognise the person so identified by the royal family in accordance with paragraph (a) as senior traditional leader, headman or headwoman, as the case may be;*
- (ii) issue a certificate of recognition to the person so recognised; and*
- (iii) inform the provincial house of traditional leaders and the relevant local house of traditional leaders of the recognition of a senior traditional leader, headman or headwoman.*

[32] The question is whether the provisions of section 12(1) (a) and (b) of the Act have been complied with. The Applicant maintains that the provisions of the Act have not been complied with.

[33] It is common cause that on the 6 December 2016 and after the recommendations of the Kgatla Commissions have been made known a meeting of the Royal Family was held and a resolution was adopted to the effect that the Royal Family **“acknowledge the appointment of Hans Malesela Langa as the Chief of the Langa tribe of Mapela”**. The resolution goes on to give reasons for the Royal Family’s decision thus: **“As he is the legitimate one to hold the title of Hans Masebe II, born of the House of Chief Alfred Sedibu Langa of the Makgaripana Clan.”** Whether the resolution indicates “acknowledge” instead of “identify” is neither here nor there. It is a matter of semantics.

In any event by the time the dispute was before the Kgatla Commission the name of the Fifth Respondent was already known as the identified person to assume the traditional leadership of the Mapela Community. Hence when the recommendations of the Commission were released the name of the Fifth Respondent was already mentioned in the report of the Commission as it appears in paragraph [24] above. It cannot be suggested that the Premier just picked up the Fifth Respondent’s name from nowhere. It is clear that the name was furnished to him by the Royal Family.

[34] It is clear from the plain wording of section 12(1) of the Limpopo Act that the House of Traditional Leaders plays no role in the identification and recognition of a chief. All that is envisaged by these provisions is that it will be informed of the result of the process before the appointment of a chief is announced to the public. No provision is made for the Premier to await any further input from the House before proceeding to publish his or her decision to recognise the candidate. It cannot be said that the Legislature intended the failure to inform the House to nullify the entire recognition process. The Applicant's argument that the provisions of section 12(1)(a) and (b) of the Limpopo Act have not been complied with can therefore not hold water.

[35] The Applicant did not produce sufficient evidence to show that the provisions of section 12(1)(a) and (b) of the Act have not been complied with. It could not have been the intention of the Legislature when enacting section 12 of the Act that all the provisions of the section have to be complied with to the letter.

In **African Christian Democratic Party v Electoral Commission**²

O'Reagan J delivering the majority judgment for the Constitutional Court said the following at para 25:

"[25] The question thus formulated is whether what the applicant did constituted compliance with the statutory provisions viewed in the light of their purpose. A narrowly textual and legalistic approach is to be avoided as Olivier JA urged in Weenen Transitional Local Council v Van Dyk....."

- [36] The Constitutional Court followed this approach in **Liebenberg N.O and Others v Bergrivier Municipality**³ where Mhlantla AJ (as she then was) writing for the majority said the following at para 25 and 26:

"[25] In African Christian Democratic Party v Electoral Commission and Others, this Court, in the context of assessing a local authority's compliance with municipal electoral legislation, held that "[a] narrowly textual and legalistic approach is to be avoided". Rather, the question is whether the steps taken by the local authority are effective when measured against the object of the Legislature, which is ascertained from the language, scope and purpose of the enactment as a whole and the statutory requirement in particular.

[26] Therefore, a failure by a municipality to comply with relevant statutory provisions does not necessarily lead to the actions under scrutiny being rendered invalid.

The question is whether there has been substantial compliance, taking into account the relevant statutory provisions in particular and the legislative scheme as a whole."

² 2006 (3) SA 305 (CC)

³ 2013 (5) SA 246 (CC)

[37] In my view the provisions of section 12 of the Limpopo Act have been complied with and even if it may be argued to the contrary I hold the view that there has been a substantial compliance with the provisions of section 12 of the Act with regard to the identification of the Fifth Respondent as a suitable person to be recognised as a traditional leader by the Premier. A mere failure to inform the Traditional Council and / or the House of Traditional Leaders if any, cannot render the process invalid.

[38] Section 13 of the Limpopo Act provides as follows:

13 Relief of royal duties

(1) Relief of royal duties shall be on the grounds of-

- (a) conviction of an offence with a sentence of imprisonment for more than 12 months without an option of a fine;*
- (b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for that senior traditional leader, headman or headwoman to function as such;*
- (c) wrongful appointment or recognition;*
- (d) a transgression of a customary rule or principle that warrants removal; or*
- (e) persistent negligence or indolence in the performance of the*

functions of his or her office.

(2) Whenever any of the grounds referred to in subsection (1)(a), (b), (d) and (e) come to the attention of the royal family and the royal family decides to remove a senior traditional leader, headman or headwoman, the royal family concerned must, within a reasonable time and through the relevant customary structure-

(a) inform the Premier of the province concerned of the particulars of the senior traditional leader, headman or headwoman to be removed from office; and

(b) furnish reasons for such removal.

[39] Section 13 of the Limpopo Act deals with the relief of royal duties. The Applicant avers that the Respondents failed to comply with the provisions thereof in particular section 13(2)(a) of the Act.

There is no merit in this submission. Section 13(2)(a) is only applicable where the removal of the traditional leader or the relief of his royal duties is at the instance of the Royal Family concerned, that is on the grounds listed in subsections 1(a)(b)(d) and (e). In the present case the relief of the royal duties is based on subsection 1(c), that is on the ground of wrongful appointment or recognition.

[40] Section 30 of the Limpopo Act provides as follows:

30 Implementation of decisions of commission

- (1) The Premier must, within seven days of receipt of the decision of the commission in terms of section 26(2) of the Framework Act, refer such decision to the provincial house of traditional leaders for its advice on implementation.*
- (2) The provincial house of traditional leaders must submit its advice contemplated in subsection (1) to the Premier within 14 days of receipt: Provided that the Premier may, if he or she deems it necessary, require the provincial house of traditional leaders to submit its advice within a specified shorter period.*
- (3) The Premier must implement the decision of the commission within 30 days of receipt of such decision from the commission.*

[41] Section 30(1) of the Limpopo Act provides that the Premier must within 7 days of receipt of the decision of the Commission refer such decision to the Provincial House of Traditional Leaders. Section 30(2) provides that the Provincial House must submit its advice to the Premier within 14 days. Section 30(3) provides that the Premier must implement the decision of the Commission within 30 days of the receipt of such decision from the Commission.

The First to Fourth Respondents conceded that not all the provisions of this section have been complied with in that the Premier did not refer the decision of the Commission to the Provincial House. It was argued on behalf of the Applicant that such failure to refer the decision of the

Commission to the Provincial House invalidates the whole recognition process by the Premier. I disagree.

- [42] The question is whether the Premier's failure to refer the decision to the Provincial House of Traditional Leaders in breach of section 30(1) of the Act nullified the recognition process. Section 30(1) is couched in peremptory terms. It is so that the disregard of peremptory provisions of a statute is fatal to the validity of the proceeding affected⁴. But as the Supreme Court of Appeal explained in **Nkisimane & Others v Santam Insurance Co Ltd**⁵ :

"Statutory requirements are categorized as "peremptory or "directory". They are well-known, concise and convenient labels to use for the purpose of differentiating between the two categories. But the earlier clear-cut distinction between them (the former requiring exact compliance and the latter merely substantial compliance) now seems to have become somewhat blurred. Care must therefore be exercised not to infer merely from the use of such labels what degree of compliance is necessary and what the consequences are of non or defective compliance. These must ultimately depend upon the proper construction of the statutory provision in question, or, in other words, upon the intention of the lawgiver as ascertained from the language, scope and purpose the enactment as a whole and the statutory requirement in particular".

⁴ Schierhout v Minister of Justice 1926 AD 99 at 110

⁵ 1978 (2) A 430 (A) at 433H – 434A; Lupacchini NO & Another v Minister of Safety and Security 2010 (6) SA 457 (SCA)

[43] It is trite that the subject-matter of the prohibition, its purpose in the context of the legislation, the remedies provided in the event of any breach of the prohibition, the nature of the mischief it was designed to remedy or avoid and any cognizable impropriety or inconvenience which may follow from invalidity are all factors which must be considered when the question was necessarily to be visited with nullity⁶. And the vital question to ask in this exercise is whether the Legislature intended the breach to nullify the entire recognition process.

[44] In **Ludidi v Ludidi & Others**⁷ the MEC (Premier in our case) recognised Ms Ludidi as a chief and issued a recognition certificate to that effect. He further published the notice of recognition in the Government Gazette in terms of section 18(1)(b) of the Traditional Leadership and Governance Act, 2005 (Eastern Cape) (Act 4 of 2005) – the equivalent of section 12(1) of the Limpopo Act. However he did not inform the House of Traditional Leaders of the recognition before it was so published as required by section 18(2) of the said Provincial Act.

⁶ Palm Fifteen (Pty) Ltd v Cotton Tail Homes (Pty) Ltd 1978 (2) SA 872 (A) at 885D - G

⁷ Ludidi v Ludidi & Others (658/2017) [2018] ZASCA 104 (23 July 2018)

The Supreme Court of Appeal had to decide whether the MEC's (the Premier's in our case) failure to inform the House of Traditional Leaders about the recognition of a traditional leader before the relevant notice was published in the Gazette, in breach of section 18(2) of the Provincial Act, nullified the recognition process. The Court decided that the recognition process is not nullified.

[45] Maya P, writing for the unanimous Court said at para 31:

*"Thus, the prohibition has nothing to do with the decision itself but is merely directed at the publication of such decision before the House has been informed thereof. The object of the provisions is simple. The newly appointed chief becomes a member of and sits in the House as a traditional leader. It is a matter of common sense that it would be improper for the House to learn of a new addition to its membership from a public announcement. The requirement of prior notification to the House is in the nature of courtesy to that body. It can hardly be concluded in the circumstances that the Legislature intended to unravel the entire recognition process by reason of a mere failure to observe the contemplated administrative formality. That would undoubtedly bear a disproportionate, inequitable and impractical result"*⁸.

⁸ See *Pottie v Kotze* 1954 (3) SA 719 (A) at 727F - H

[46] In the present case the Provincial House of Traditional Leaders was ultimately informed (though belatedly) of the withdrawal of the Applicant and recognition of the Fifth Respondent in a memorandum dated 31 August 2018.

I accordingly make a finding that the failure to strictly comply with the provisions of section 30 of the Limpopo Act does not invalidate the recognition of a traditional leader.

[47] A further ground of review relied on by the Applicant to set aside the decision of the Premier is that the Premier failed to follow a procedurally fair decision as is envisaged in section 3 of PAJA. He alleges that the Premier failed to give him adequate notice of his proposed decision and that he was never given an opportunity to make representations or submissions to the Premier in regard to the decision to withdraw the Applicant's Certificate of Recognition as Traditional Leader.

[48] It must be pointed out from the onset that when the Premier took the aforesaid decision he acted in terms of section 30 of the Limpopo Traditional Leadership and Institutions Act 6 of 2005 in that he was implementing the recommendations of the Kgatla Commission. Nowhere in section 30 of the Act or in any other section of this Act is it provided

that the Premier should hold any enquiry or invite the affected traditional leader to make representations or submissions before the decision to relieve the traditional leader of his royal duties is taken.

- [49] In *casu*, following the Fourth Respondent's (Kgatla Commission) submission of its recommendations to the Premier, the Premier invited the Royal Family to provide the particulars of the person who qualified in terms of section 12(1)(a)(i) of the Limpopo Act. Having received the name of the Fifth Respondent, the Premier recognised him. The Applicant does not state at which of these stages did the Premier fail to invite his input. The Applicant was informed of the process leading to the withdrawal of his recognition certificate and was invited to make representations before his recognition certificate was withdrawn. The Applicant was invited at the Kgatla Commission proceedings and he attended. He was allowed to put his version before the Commission and even called Kgoshigadi Maphuti Canatia Maraba to testify as his witness at the commission and even before the recommendations were made to the Premier.

[50] In terms of section 30(3) of the Limpopo Act the Premier is obliged to implement the recommendations of the Commission within thirty days of the receipt of such recommendations from the Commission. There is no room made for the Premier to hold a further enquiry or invite inputs from the affected traditional leader.

[51] After the conclusion of the Commission hearing the Fourth Respondent did by way of the letter dated 5 December 2016, advised the Applicant that:

"the claim for the restoration and / or recognition of the lineage of Alfred Sedibu Langa by Mr Langa Madimetja Joseph is accepted". The fact that the Fourth Respondent's recommendation was conveyed to the Applicant is confirmed by the Applicant's former attorney in the letter dated 20 January 2017 which appears on page 39 of the review record.

Being aware of the Third and Fourth Respondents' recommendations to the effect that he be withdrawn as traditional leader and be replaced by the Fifth Respondent, the Applicant cannot be heard to say that he still expected the Premier to invite his input. The decision had already been made at the Commission level. Such decision still stands until set aside⁹.

⁹ See *Oudekraal Estates (Pty) Ltd v City of Cape Town & Others* 2004 (6) SA 222 (SCA)

[52] There is no provision in the Limpopo Act or the Framework Act which obliges the Premier to invite further input from the Applicant on the receipt of the Fourth Respondent's recommendations. The Applicant does not state which or what input he intended to make to the Premier and in which way that would have influenced the Premier's decision when inviting the Royal Family to submit the particulars of the identified person. The process of identifying the Fifth Respondent had nothing to do with the Premier. The Applicant is in any event a member of the Royal Family. The Applicant should have known that short of reviewing and setting aside the Fourth Respondent's recommendation, the Premier had no option or discretion other than implementing the Fourth Respondent's recommendation as enjoined by legislation.

[53] Counsel for the Applicant relied heavily on the unreported case in the then Bophutatswana Provincial Division of **Emmanuel Segwagwa Mamogale v The Premier, North West and Others (Case No. 227/2006)** that failure by the Premier to grant a traditional leader an opportunity to be heard before withdrawing his certificate of recognition amounts to an irregularity which can result in the setting aside of the decision. The case relied on by Counsel is distinguishable from the present case before me. In the **Mamogale** matter there was a particular

statute which stipulated that the Premier was obliged to hold an enquiry and have the traditional leader's version before a decision could be made to relieve the traditional leader of his position. That was provided for in terms of section 42 of the Bophutatswana Traditional Authorities Act No 23 of 1978. This enactment is at any rate no longer in our statute book.

As I have already indicated in paragraph [52] above that there is no equivalent provision in the Limpopo Act and the Framework Act.

[54] The Applicant has not made out a case for review based on the provisions of section 3 of PAJA.

REVIEW OF DECISIONS OF THIRD AND FOURTH RESPONDENTS

[55] The Applicant seeks to review and set aside the decisions of the Third and Fourth Respondents on the grounds that the decisions were procedurally unfair, relevant considerations were not taken into account, the decisions were influenced by a material error of fact, the decisions are arbitrary unreasonable and irrational.

[56] In his founding affidavit as well as the supplementary affidavit the Applicant did not bring forth evidence to support the grounds on which

he purports to challenge the decision of the Third and Fourth Respondents. All he did was to sketch a brief history of his family tree and how he fits in as a legitimate traditional leader. The version he gave does not present any evidential material to show how the decision of the Third and Fourth Respondents can be challenged on the grounds alleged by him. He concludes his founding affidavit by saying the following in paragraph 48:

"From the aforesaid facts and background it is clear that the conclusions and recommendations made by the Third and Fourth Respondents are incorrect, that I was not informed of the aforesaid decisions, that I never took part in the process in arriving at the purported decisions and that as a result of the aforesaid the decisions made by the Third and Fourth Respondents should be reviewed and set aside."

- [57] It certainly can never be true that the Applicant did not take part in the process in arriving at the decisions and that he was never informed of the decision. I have shown in this judgment that the Applicant participated in the process and was furnished with the findings and decisions of the Third and Fourth Respondent. When the First Respondent makes a decision to recognise an incumbent, he acts independently in his administrative decision, and requires no consultation by an affected party.

[58] It is no surprise that Counsel for the Applicant did not present any argument on the review of the decisions of the Third and Fourth Respondents in his heads of argument as well as in his oral argument. No case is made out for the review and setting aside of the decision of the Third and Fourth Respondents.

THE CHIEFTAINSHIP OF THE MAPELA COMMUNITY

[59] I have already set out and explained the genealogical history of the Langa family in relation to their traditional leadership and hierarchy. It is appropriate that the position of the Applicant and the Fifth Respondent be investigated further in order to determine their status in relation to the chieftainship they both claim. As already pointed out earlier, the Applicant is the son of Hendrik Madikwe Langa and Athalia Langa. The Fifth Respondent is the son of John Langa and Rosina Queen Langa. One must then proceed to determine who is the rightful heir to the throne between them.

[60] Sufficient evidence is provided to prove that Rosina Queen Langa was married as a candle wife (**masechaba**) in 1958. The subsequent marriage of Athalia in 1960 as another candle wife was a great irregularity and a serious violation of African custom. It is against custom

to have two candle wives of the same generation at a time, much as we cannot have two chiefs ruling the same community simultaneously.

By custom therefore the marriage of Athalia as another candle wife (according to Hendrik Madikwe Langa) is invalid.

[61] To all intends and purposes, Hendrik belonged to one of the most junior houses of Kgoshi Hans Masebe Langa I. His mother, Madikana was ranked fifth. In line with the wide spread and deep rooted principle of seniority governing Africans, no way can Madikana house be catapulted to the first rank among the Mapela Community. The house of Madikana can never produce chiefs, at best it can procreate regents. Therefore Hendrik could hardly become a chief. His self-imposition as chief of the Mapela Community was not only fallacious but a violation of custom as well.

[62] Hendrik's rejection of Rosina was a well calculated subterfuge designed to create his ruling lineage, which he succeeded doing in that upon his death, his wife Athalia, became a regent and later their son, the Applicant assumed chieftainship. Hendrik fully recognised that his association with Rosina, the candle wife, would hem in his ambitious plan as Rosina was already chosen according to custom. Hendrik's self-

imposition to the throne as chief was irregular. His fifthly ranked mother was not even a candle wife. He was far in line of succession.

- [63] The position of senior traditional leadership is ascribed by birth and is inheritable, yet regency is acquired through nomination and therefore cannot be inherited. Hendrik achieved the regency position through nomination by the royal family. It was therefore inappropriate for him to be succeeded by his wife and ultimately his son. On the other hand the Fifth Respondent is the son of Rosina, the candle wife. Rosina was married to the Mapela Community with the purpose of bearing a future Kgoshi. The Fifth Respondent is therefore the rightful and legitimate traditional leader of the Mapela Community.

CONCLUSION

- [64] The Applicant is seeking an order to review and set aside the decision of the Premier in withdrawing his certificate of recognition and recognising and appointing the Fifth Respondent in his stead. I have already made a finding that the Applicant has not made out a case for the review sought. The appropriate order would be to dismiss the application and I intend to do so.

[65] Even if the Applicant was to be successful and I grant an order setting aside the decision of the Premier, such an order would be cold comfort for the Applicant. The granting of the order in favour of the Applicant would entail referring the issue back to the Premier for reconsideration. Such reconsideration entails the Premier following the procedural steps he might have defaulted on previously. In my view the end result will still be the recognition of the Fifth Respondent because the latter is the only rightful and legitimate heir to the throne by virtue of being the son of the candle wife, Rosina. Under no circumstances will the Applicant ever qualify to be recognised as a senior traditional leader no matter how meticulous the prescribed procedures may be followed by the Premier in the process of recognition.

[66] The application is accordingly dismissed with costs.



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

APPEARANCES

Heard on	: 17 April 2019
Judgment delivered on	: 03 May 2019
For the Applicant	: Adv. C.A Da Silva SC
Instructed by	Friedland Hart Solomon & Nicolson Attorneys c/o Nelis Britz Attorneys
For the 1st, 2nd & 3rd Respondents	: Adv. T.C Lithole
Instructed by	: State Attorney
For the 5th Respondent	: Adv. JLH Letsoalo
Instructed by	: AB Maharajh Attorneys c/o Kgohlishi A Mamabolo Attorneys