



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

Case No: 18155/2013

25/6/2015

In the matter between:

MAPHUTI JONA MANAMELA

Applicant

and

**THE PREMIER OF LIMPOPO
PROVINCIAL GOVERNMENT**

First Respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL
FOR COOPERATIVE GOVERNANCE, HUMAN
SETTLEMENT AND TRADITIONAL AFFAIRS**

Second Respondent

KWENA DARIUS MANAMELA

Third Respondent

KGOSHIGADI MATLALA

Fourth Respondent

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

23/6/15

[Signature]

REASONS

D S FOURIE, J:

[1] On 5 March 2015 I granted an order in terms whereof this application was dismissed with costs. Thereafter, on 31st March 2015 the applicant requested reasons for the said order. These are my reasons.

[2] The applicant applied for an order that the decision of the first and/or second respondent to terminate the appointment of the applicant as the acting headman and to appoint the third respondent as headman of the GaManamela Community be reviewed and set aside. The application was opposed by the third and fourth respondents. It is common cause that the applicant and the third respondent are brothers and the sons of Paul Manamela, the former headman of the GaManamela Community who passed away during 1984. One Maleka Manamela, a nephew of Paul Manamela, was then appointed as acting headman, a position he held until 1991.

[3] According to the applicant the third respondent was then appointed as headman on condition that he should reconcile and remarry his former wife, or another woman of his choice, within 12 months of his appointment. Apparently he failed to do so as a result whereof his appointment was withdrawn and the applicant was then appointed as acting headman of the GaManamela Community. According to the applicant his appointment was terminated on 30 October 2012 when he received a letter from the Bakone Traditional Council dated 27 November 2012 (annexure "FA4" to the founding affidavit) in terms whereof he was informed as follows:

"You are kindly informed that the Honourable Premier has in terms of section 15(2) of Limpopo Traditional Leadership and Institution Act, Act No 6 of 2005 withdrawn Manamela Maputhi Jona and recognised Manamela Kwena Darius of ga-Manamela Village under Bakone ba Matlala Traditional Council with effect from 30 October 2012."

[4] It was pointed out by the applicant in his founding affidavit that he had no prior knowledge that his appointment would be withdrawn, nor was he given any notice of the intended withdrawal. He therefore submitted that the first and/or second respondents had been acting unlawfully by not affording him the opportunity to be heard and to oppose the intended withdrawal of his appointment.

[5] According to the record of proceedings filed on behalf of the first and second respondents it appears that:

- The third respondent is the elder brother of the applicant and he has been challenging the position of headmanship since 2003. The dispute between the two brothers was then referred to the House of Traditional Leaders in 2005 for investigation;
- A Committee on Custom, Culture and Tradition was mandated to attend to the dispute. The committee invited the two brothers with their family in an effort to resolve the on-going dispute. It was found that the family of Manamela does not deny the third respondent the opportunity to lead the community, but that he should marry a wife before he could be enthroned as headman;

- On 11 September 2008 the chairperson of the House of Traditional Leaders informed Traditional Affairs that “the marital status of Darius Manamela cannot be used to deny him what is rightfully due to him in terms of culture and law”; After its investigation the committee recommended on 19 December 2005 that the third respondent be appointed as headman to replace his younger brother.
- On 17 August 2012 the Department arranged a meeting at the Traditional Council to facilitate the process of withdrawing acting headman Jona Manamela. The family again indicated that one can only be enthroned if he has married a wife, but on 18 September 2012 the Bakone Traditional Council indicated that the third respondent should be appointed as headman notwithstanding his marital status;
- During October 2012 the Department of Co-operative Governance, Human Settlements and Traditional Affairs made a recommendation to the first respondent in terms whereof it was recommended that the applicant be removed and the third respondent be recognised as headman of the GaManamela Community in terms of section 12(1)(b) of the Limpopo Traditional Leadership and Institutions Act No 6 of 2005;

- On 27 November 2012 the applicant was informed that he had been withdrawn and the third respondent appointed as headman with effect from 30 October 2012.

[6] During argument it was pointed out to counsel who was appearing for the applicant that according to the record of proceedings it appears that a committee was mandated to investigate the issue between the two brothers, that they and their family were invited to resolve the on-going dispute and that the applicant had the opportunity to put his case before the committee. It was then conceded that the applicant had been informed about this process and that there had been discussions with regard to the position of headman. Counsel for the applicant thereafter informed me that he was no longer insisting on an order as prayed for and he conceded, rightly so in my view, that the application should be dismissed with costs.

[7] Having regard to the record of proceedings I was also unable to find that the first and/or second respondents acted procedurally unfair or that the applicant was not afforded the opportunity to be heard. The first respondent acted on the recommendation of a committee after the issue had been investigated properly. For these reasons I was of the view that the applicant did not make out a case and that his counsel was justified in not insisting on an order as prayed for.


D-S FOURIE
JUDGE OF THE HIGH COURT
23/6/15.