

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

REPORTABLE: YES/NO
OF INTEREST TO OTHER JUDGES: YES/NO
REVISED
DATE: 10/06/2024
MV SEMENYA DJP
CASE NO. 7181/2021

In the matter between:

BATAU BA-NKWANA TRADITIONAL AUTHORITY	FIRST APPLICANT
IDA MODIKISHENG NKWANE	SECOND APPLICANT
and	
THE PREMIER OF THE LIMPOPO PROVINCIAL GOVERNMENT	FIRST RESPONDENT
THE CHAIRPERSON OF THE LIMPOPO PROVINCIAL COMMITTEE ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS	SECOND RESPONDENT
MEMBER OF THE EXECUTIVE COUNCIL FOR CO-OPERATIVE	THIRD RESPONDENT

**GOVERNANCE AND HUMAN
SETTLEMENT AND TRADITIONAL
AFFAIRS LIMPOPO PROVINCE**

**BAPEDI BA-DIKWANYANE TRIBAL
AUTHORITY**

FOURTH RESPONDENT

REGISTRAR OF DEEDS: POLOKWANE

FIFTH RESPONDENT

JUDGMENT

SEMENYA DJP.

[1] The issue in this application is whether this court has jurisdiction to review and set aside the decision of the erstwhile Lebowa Government, to transfer the property known as The Farm California 228 KT, measuring 5396.2886 hectares (the Farm) to the manner in which the property was transferred to the fourth respondent in this application.

[2] It is common cause that the dispute regarding the question as to who the rightful traditional leader of the Farm is, that existed between the applicants and the fourth respondent, has since been resolved by the second respondent. The second respondent concluded that the traditional leadership of the Farm lies with the applicants. The fourth respondent has not challenged that decision, and, in accordance with the principle laid down in **Oudekraal Estates (Pty) Ltd v The City of Cape Town and Others**¹, the decision remains valid and stands.

[3] Notwithstanding the fact that the issue of traditional leadership has been resolved in their favour, the applicants are unable to rule over the community of the Farm on the basis that it is still registered in the names of the fourth respondent. It is on account of this remaining issue that the second and third respondents could not finalise the appointments of the applicants as traditional

¹ 2010 (1) SA 333 (SCA)

leaders of the Farm. The fourth respondent's entitlement over the Farm stems from the Deed of Transfer number T30[...]. It is not in dispute that the Farm was transferred to the fourth respondent by the then Lebowa Government in 1994 by way of a grant.

[4] The applicants contend that the reason (*causa*) for the transfer as it appears on the Deed of Transfer and the condition for transfer are questionable and do not accord with the legislation under which the transfer was done.

[5] The fourth respondent is the only party that opposes the application and has raised a point *in limine* that this court has no jurisdiction to entertain the issues between the parties. The fourth respondent submits that it is the Land Claims Court that has exclusive jurisdiction to hear the matter.

[6] The fourth respondent contends that Bapedi Ba-Dinkwanyane have been in occupation of the land since 1956 and have possessed it openly as the owner and/or as if they are the owner thereof. The fourth respondent submits that the erstwhile Lebowa Government made a Grant to them in terms of section 20(1) and 20(2) of the Upgrading of Land Tenure Rights Act, 112 of 1991. In the alternative, the fourth respondent argue that it has acquired the Farm by acquisitive prescription in terms of section 1 of the Prescription Act 68 of 1969.

[7] The fourth respondent relies on the Constitution of the Republic of South Africa, 1996 (the Constitution, the Restitution of Land Rights Act² (the Restitution Act), among other legislation, in support of its point *in limine*. Section 25(7) of the Constitution provides as follows:

"A person or community dispossessed of property after the 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress."

² 22 of 1994

[8] The Restitution Act was promulgated to give effect to section 25 of the Constitution. Its long title states that it is enacted to provide for the restitution of rights in land to persons or communities dispossessed of such rights after 1913, as a result of past racially discriminatory laws or practices, to establish a Commission on Restitution of Land Rights as well as the Land Claims Court. The Function of the Commission is to process restitution claims and that any claim that the Commission is unable to resolve may be referred to the Land Claims Court.

[9] Section 22 (1) of the Restitution Act provides for the establishment of Land Claims Court which shall have the power to determine a right to restitution of any right in land to the exclusion of any court contemplated in section 166 (c) of the Constitution.

[10] At first glance, one may think that the legislation referred to above is not applicable to the facts of this case in that they refer to land which has been dispossessed due to racially discriminatory laws, which may appear not to be the case in this matter. However, the position is not that simple. The applicant relies on the report of the second respondent which is annexed to the founding affidavit.

[11] In paragraph 1 of the report, which deals with the background of the applicant's claim, the following is stated:

"The Batau ba Ga-Nkwana (the applicants) was the first to occupy Leboeng (California 228 KT) and Nooitgedacht 227 KT) during 1879 as senior traditional leaders. Their senior traditional leadership was lost in 1956 when Kgoshigadi Dinkwanyane Victoria was relocated to Sterkspruit farm from Boomplaats in Lydenburg. Sterkspruit is the farm adjacent to Californiafarm of Nkwana. Two years after such relocation, in 1958, Dinkwanyane was recognized by the apartheid government as the only Kgoshi of the whole area., including Nkwane's California and Nooitgedacht..."

[12] On paragraph 8.7, the second respondent states that it has noted that in Sekhukhune District, sharing of jurisdiction on one land by two or more traditional leaders is not uncommon and that kgoshi Nkwana was chastised by the apartheid government for supporting kgoshikgolo Sekhukhune's resistance to apartheid rule.

[13] The information in the report of the second respondent clearly shows that the issue of land is closely related to the policies of the apartheid government. The Lebowa Government is not the first government to dispossess the applicant of their right California farm. It started with the apartheid government. In any event, the Lebowa Government was a product of the apartheid policies. It was its creature.

[14] I agree with the fourth respondent that it is the Commission on Restitution of Land Rights which is best suited to deal with the applicants' claim. Furthermore, in terms of section 36 of the Restitution Act, it is the Land Claims Court which is clothed with the jurisdiction to review the decision of the Commission, the Minister or any functionary acting in terms of the Act. This court's jurisdiction on matters of this nature has been expressly excluded by section 22 of the Restitution Act.

[15] On costs, I find no reason to deviate from the general rule that the winner is entitled to costs. The fourth respondent is entitled to costs of the application.

[16] In the result I make the following order:

The fourth respondent's point *in limine* of lack of jurisdiction is upheld with costs.

M V SEMENYA
DEPUTY JUDGE PRESIDENT
LIMPOPO DIVISION.

APPEARANCES

For the applicants: Adv George Diamond
Instructed by: Diamond Inc

For the respondent: Adv B F Gededger
Instructed by: Mmala Attorneys.

Heard on **06 March 2024**

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives via email and release to SAFLII. The date and time of hand-down is deemed to be the **11 June 2024 at 11:00**