



**THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

CASE NO: 1877/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
<u>04 July 2024</u> DATE	 SIGNATURE

In the matter between

Makhalini Womlabo Communal Property Association

Applicant

And

Botwana Witbooi Skhosana

1st Respondent

Amos Skhosana

2nd Respondent

Mandla John Skhosana

3rd Respondent

Ester Skhosana

4th Respondent

Elvis Mathibela

5th Respondent

**The Minister of the Department of Agriculture,
Land Reform and Rural Development.**

6th Respondent

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 10:00 on 4 July 2024.

Judgment

Phahlamohlaka AJ

[1] The applicant launched an application for an order in the following terms:

- 1. That the first to fifth respondents be ordered to disclose the details of the account opened in the name of the Makhalini Womlambo Communal Property Association with a registered financial institution together with a true and proper statement of account together with substantiating documents reflecting the correct income, expenditure, assets and liabilities of the aforementioned account.*
- 2. That from the first to fifth respondents be interdicted and restrained from intimidating and/or threatening current and/or prospective clients of the Makhalini Womlambo Communal Property Association including but not limited to Mr Jaap Botha of Onverwacht Boerdery.*
- 3. That from the first to fifth respondents be interdicted and restrained from inviting non-CPA members to meetings organised by and for members of the Makhalini Womlambo Communal Property Association by its current committee members.*
- 4. That from the first to fifth respondents be interdicted and restrained from unlawful and unauthorised communication through attorneys or otherwise as if they are still authorized members of the Makhalini Womlambo Communal Property Association executive committee.*
- 5. That from the first to fifth respondents be ordered to pay costs of this application.*

[2] The application is opposed. In the opposing affidavit the first to third respondents raised two points *in limine*. At the commencement of the application the parties informed me that I must first deal with the points of law raised by the first and third respondents.

[3] The first point *in limine* relates to the applicant's failure to exhaust internal remedies before the launching of this application. The respondents contend that the applicant's constitution regulates the relationship between the members of the applicant and must, therefore, be adhered to by all the members of the applicant with no exception. To this end, the respondents rely to paragraph 25.1 of the said constitution which provides that "*in the event of any disputes between the members the disputes may, at the request of any party to the dispute, be referred to the disciplinary committee (which shall constitute of elders" who shall later hear all parties to the dispute and to take into account the principles and provisions of the Constitution of the Republic of South Africa. Should all parties agree thereto in writing, the decision of the Disciplinary Committee shall be final and binding on all parties with regards to the disputes."*

[4] Paragraph 25.1 of the applicant's constitution is not peremptory. It is optional for any party to a dispute to refer the dispute to a dispute resolution mechanism in terms of the applicant's constitution. It is very clear in that it provides that any party to a dispute may refer the dispute to the elders who will deal with that dispute.

[5] Additionally, the respondents rely on paragraph 25.2 of the applicant's constitution which provides that "*in order to facilitate the resolution of disputes and avoid unnecessary litigation, the Director General of the Department of Land Affairs may on his own accord at the request of the association or any member thereof, appoint a conciliator acceptable to the parties to a dispute to assist in resolving a dispute between members and committee provided that if the parties to the dispute do not agree on the person appointed the Director General may appoint a person who in his/her opinion has adequate experience or*

knowledge in conciliating disputes according to sections 10(2) and (3) and (4) of the Communal Property Association ct, 28 of 1996.”

[6] The respondents argued that the applicant also failed to avoid the unnecessary litigation in that it ignored this remedy in terms of paragraph 25.2 of the applicant’s constitution. The respondents contended that instead of approaching the Director General, the applicant approached junior officials who could not assist in the resolution of the dispute.

[7] Thirdly, the respondents will rely on paragraph 25.3 of the applicants constitution which provides that “*should it not be possible to appoint a conciliator or obtain the services of a conciliator or convene a meeting upon which such conciliator must be appointed or the conciliator cannot proceed for whatever reason, the Director general may, in addition to the dispute resolution mechanism available in terms of the law, at his owner accord assist in the solving any issues for the purpose to resolve such dispute.*”

[8] As alluded to earlier, the subsections the respondents rely on, give any party to a dispute an option of resorting to the dispute resolution mechanism as provided for in the constitution of the applicant. In my view, it does not preclude any party to a dispute from approaching the courts of law.

[9] The parties are *ad idem* that the applicant approached the office of the Director General. However, the respondents complain that junior officials in the office of the director general dealt with the dispute. These complaints, in my view, are unfounded and lack merit as the director general's office is an office staffed with members or officials of that office.

[10] In my view, this point of law is without merit and therefore stands to fail.

[11] The second point *in limine* raised by the first and third respondents is that this court lacks jurisdiction. The respondents rely on paragraph 25.11 of the applicant's constitution which reads as follows “*nothing here*

in contained or implied shall preclude a party from applying to court for a temporary interdict or other relief of an agent or temporary nature, pending the award of the arbitrator here under.”

[12] The respondents’ content that the type of the application brought by the applicant herein is not covered by the exemption or the exception provided for in paragraph 25.11. In my view, this argument also lacks merit because, as alluded to earlier, the constitution of the applicant does not preclude any party from approaching the courts. Consequently, this point of law also stands to be dismissed.

[13] The respondents also argue that the chairperson’s powers to institute the current proceedings are derived from a resolution which is unsigned. The respondents complain that the document is unsigned by those who allegedly gave the chairperson authority to depose to the founding affidavit, let alone instructing attorneys, and secondly, it does not have a date and place where such a meeting was held where such an alleged resolution was taken. In my view, this point of law was brought late and from the bar. This point of law too, is meritless and it stands to be dismissed.

[14] On the issue of costs, I did not find any reason to deviate from the accepted principle of our law that the successful party ought to be awarded costs.

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

The points *in limine* are dismissed with costs.



K F Phahlamohlaka
Acting Judge of the High Court,
Mpumalanga Division,
Mbombela (Main Seat)

Judgment reserved on: 28 March 2024

Judgment delivered on: 4 July 2024

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