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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)**

CASE NO: 5799/2018

AND

CASE NO: 2950/2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: YES/NO

SIGNATURE: Naude–Odendaal J

DATE: 21/01/2025

In the matter under Case No 5799/2018 between: -

WILLIAM MATSORANG SEKGOPO

Applicant

And

THE PREMIER OF LIMPOPO PROVINCE

First Respondent

MOKGADI JOSEPHINE SEKGOPO

Second Respondent

THE MEC FOR CO-OPERATIVE

**GOVERNANCE AND HUMAN SETTLEMENT
AND TRADITIONAL AFFAIRS**

Third Respondent

**THE COMMISSION ON TRADITIONAL
LEADERSHIP DISPUTES AND
CLAIMS (“CTLDC”)**

Fourth Respondent

**LIMPOPO PROVINCIAL COMMITTEE ON
TRADITIONAL LEADERSHIP DISPUTES &
CLAIMS (CTLDC)**

Fifth Respondent

COMMISSIONER KGATLA N.O

Sixth Respondent

DR P.X SHILUBANE N.O

Seventh Respondent

MR T. MAHOSI N.O

Eighth Respondent

DR M.W MHLABA N.O

Ninth Respondent

SEKGOPO TRADITIONAL COUNCIL

Tenth Respondent

SEKGOPO ROYAL FAMILY

Eleventh Respondent

AND in the matter under CASE NO 2950/2024 between:-

SEKGOPO TRADITIONAL COUNCIL

First Applicant

MOKGADI JOSEPHINE SEKGOPO

Second Applicant

and

THE COMMISSION ON TRADITIONAL LEADERSHIP,

First Respondent

DISPUTES AND CLAIMS (“CTLDC”)

**LIMPOPO PROVINCIAL COMMITTEE ON
TRADITIONAL LEADERSHIP DISPUTES AND
CLAIMS**

Second Respondent

COMMISSIONER KGATLA N.O.

Third Respondent

DR. PX SHILUBANE N.O.

Fourth Respondent

DR. MW MHLABA N.O.

Fifth Respondent

MR. T MAHOSI N.O.

Sixth Respondent

WILLIAM MATSORANG SEKGOPO

Seventh Respondent

THE PREMIER OF THE LIMPOPO PROVINCE

Eighth Respondent

**THE MEC FOR CO-OPERATIVE GOVERNANCE,
HUMAN SETTLEMENTS AND TRADITIONAL
AFFAIRS**

Ninth Respondent

**LIMPOPO PROVINCIAL HOUSE OF TRADITIONAL
LEADERS**

Tenth Respondent

SEKGOPO ROYAL FAMILY

Eleventh Respondent

JUDGMENT

NAUDE–ODENDAAL J:

[1] The above two matters came before me as a special allocation. The parties agreed that the interlocutory applications became moot. Both matters under case number 5799/2018 and case number 2950/2024 were heard as one for purposes of determination of the merits on both simultaneously. There was also the question of condonation in respect of the late bringing of the review application under case number 2950/2024 and the late filing of the replying affidavit under case number 5799/2018. The crisp issue, in essence to be determined, is who the rightful heir to the position of senior traditional leader of the Sekgopo Traditional Community is. For ease of reference, the respective parties will be referred to as “William”, “Josephine”, “The Premier”, “The MEC”, etc.

[2] I will deal with Case No: 5799/2018 first and thereafter with Case No: 2950/2024.

CASE NO: 5799/2018:-

[3] William Matsorang Sekgopo (“William”) was the Applicant in this matter. He applied that the decision of the Premier taken on 23 April 2018 not to approve the recommendation that his claim for the restoration of the Sekgopo Senior Traditional Leadership be granted, as contained in the report by the Provincial Committee of the Commission on Traditional Leadership Disputes and Claims dated the 4th of December 2017, be reviewed and set aside. Further that the decision of the Premier taken on 23 April 2018 be varied in terms of the provisions of Section 8(1)(c)(ii)(aa) of the Promotion of Administrative Justice Act, 3 of 2000 and substituted with the following decision:-

“The following recommendation of the fifth respondent in its report dated 4 December 2017 is approved: ‘In the light of the evidence and findings above, the Commission hereby recommends that the claim of Sekgopo Matsorang William for the restoration of Sekgopo Senior Traditional Leadership to the rightful lineage of Mamakobe be granted.’”

[4] William further applied that the following declaratory orders be made in terms of Section 8(1)(d) of the Promotion of Administrative Justice Act, 3 of 2000:-

- 4.1 That the Second Respondent, Josephine Mokgadi Sekgopo, does not qualify to be the candle wife/mmasetseba of the late Piet Motshotsho Sekgopo;
- 4.2 That according to the Sekgopo Customary Law the candle wife of the Senior Traditional Leader of the Sekgopo Traditional Community has to be married from the Maake/Maupha family;
- 4.3 That the Senior Traditional Leadership of the Sekgopo Traditional Community should be restored to the rightful lineage of the late Mamakobe Sekgopo who passed away in 1922, more in particular to a successor born from the said Mamakopbe Sekgopo's candle wife from the Maake family;
- 4.4 That the Applicant, William Matsorang Sekgopo II, is the rightful heir to the position of Senior Traditional Leadership of the Sekgopo Traditional Community.

[5] William further applied that the Premier be ordered to remove Josephine from her position as Acting Senior Traditional Leader of the Sekgopo Traditional Community in terms of the provisions of Section 15(4) of the Limpopo Traditional Leadership and Institutions Act, 6 of 2005, with effective date being the date on which William is recognised as the Senior Traditional Leader of the Sekgopo Traditional Community, alternatively that it is ordered that the position held by Josephine as Acting Senior Traditional Leader for the Sekgopo Traditional Community shall lapse in accordance with Section 13(8) of the Traditional and Koi-San Leadership Act, 3 of 2019, on such date as William is recognised by Notice in the Provincial Gazette as the Senior Traditional Leader of the Sekgopo Traditional Community.

[6] Further, William applied that the Premier be ordered to recognise him as the Senior Traditional Leader of the Sekgopo Traditional Community in terms of the provisions of Section 8(2)(d) and 8(3) of the Traditional and Koi-San Leadership Act 3 of 2019, read with the provisions of Section 12(1)(b) of the Limpopo Traditional Leadership and Institutions Act, 6 of 2005, and further be ordered to take the following steps within 2 months after date of this order:-

6.1 By notice in the Provincial Gazette recognise him (William) as the person identified by the Sekgopo Royal Family in a resolution taken on 21 February 2011 as the Senior Traditional Leader of the Sekgopo Traditional Community;

6.2 Issue a certificate of recognition to him (William) as Senior Traditional Leader of the Sekgopo Traditional Community;

6.3 Inform the Provincial House of Traditional Leaders and the relevant Local House of Traditional Leaders of the recognition of William as Senior Traditional Leader of the Sekgopo Traditional Community.

[7] Lastly, William, applied for costs against the first (the Premier), second (Josephine) and third (the MEC) respondents, jointly and severally, the one to pay, the other to be absolved.

THE APPLICANT'S (WILLIAM'S) SUBMISSIONS AND ARGUMENT:-

[8] William contends that he is the rightful heir to the position of Senior Traditional Leader of the Sekgopo Traditional Community ("the Sekgopo"), a community duly recognised as such in terms of the now repealed Traditional Leadership and Governance Framework Act, 41 of 2003 (the "Framework Act"), the Limpopo Traditional Leadership and Institutions Act, 6 of 2006 (the "LTLIA" or "Limpopo Act"), and the Traditional and Khoi-San Leadership Act 3 of 2019 (the "Leadership Act of 2019").

- [9] The second respondent, Josephine Mokgadi Sekgopo, holds the position of Acting Senior Traditional Leader of the Sekgopo Traditional Community, acting as Regent for her son Koma, who she claims should be the next senior traditional leader of the Sekgopo Traditional Community.
- [10] It is common cause between the parties that Mamakobe Sekgopo (1870 - 1922) was the last undisputed Kgoši (senior traditional leader) of the Sekgopo Traditional Community. The underlying dispute between William and Josephine as to who the rightful heir to the Sekgopo throne is, originated from Mamakobe's succession.
- [11] The disputes between William and Josephine over the leadership position date back many decades and have been the subject of previous litigation:
- 11.1 Immediately after the recognition of the second respondent as acting traditional leader in 1992 by the Lebowa Government, William and the Sekgopo Royal Family objected to her appointment and lodged a series of complaints with government as well as a claim with the Ralushai Commission. This history is fully set out in paragraph 18 of the supplementary founding affidavit, Bundle 2 at pages 134 to 143 and also in the Memorandum to the Premier dated 7 September 2010, annexure "A" to the founding affidavit, Bundle 1 at pages 14 – 20. According William's version, several Magistrate's, the Commission on Traditional Authorities and the Ralushai Commission which heard evidence on this dispute on 27 February 1997, all concluded that William is Mamakobe's rightful successor.
- 11.2 Following upon an application by William to the Premier's predecessor, and after an investigation by the anthropological section of the third respondent's Department, the then Premier made a decision during 2010 that William indeed is the rightful heir to the position of Senior Traditional Leadership and that Josephine should be removed as Acting Senior Traditional Leader. This decision was in line with the findings and recommendations of the Ralushai

Commission. Josephine obtained interdicts against the Premier from giving effect to the decision which were again later dismissed.

- 11.3 That decision was not executed by the then Premier in view of the fact that William had also lodged an application with the Commission on Traditional Leadership Disputes and Claims (the “CTLDC” – fourth respondent) for restoration of the position of Senior Traditional Leader to him. That claim was heard by the Limpopo Provisional Committee of the CTLDC (commonly known as the “Kgatla Commission”) which, after hearing evidence from both sides, also came to the conclusion that William is the rightful heir to the Sekgopo leadership position. The Kgatla Commission recommended on 4 December 2017 that William’s claim for restoration of the Sekgopo Senior Traditional leadership position to his lineage be granted.
- [12] On 23 April 2018 the Premier decided not to approve the recommendation of the Kgatla Commission, despite his predecessor’s decision in 2010 that William is indeed the rightful heir. This decision led to the present review application.
- [13] After considering William’s amended Notice of Motion and Supplementary Founding Affidavit in terms of Rule 53(4) which were delivered on 30 March 2022, together with that portion of the Record on which William relies, the Premier and the MEC for Co-operative Governance, Human Settlement and Traditional Affairs (“the MEC”) by notice withdrew their opposition to the review application and filed a further notice to abide this Court’s decision.
- [14] Only the Second (Josephine) and Tenth (Sekgopo Traditional Council) Respondents therefore still oppose the relief sought by the applicant in the amended Notice of Motion.

THE LEGAL FRAMEWORK AS PER THE APPLICANT’S SUBMISSIONS:

- [15] Chapter 12 of the Constitution of the Republic of South Africa expressly recognises the institution, status and role of traditional leadership according to customary law, subject to the Constitution.
- [16] Over the years the institution of traditional leadership has been interfered with, undermined, distorted and eroded mainly by repressive laws of the past. (See *Bapedi Marote Mamone v Commission on Traditional Leadership Disputes and Claims* 2015 (3) BCLR 268 (CC) at par [21]; *Bapedi Marote Mamone v Commission on Traditional Leadership Disputes and Claims* [2012] 4 All SA 544 (GNP) at paragraph [1].) Customary law is now afforded its rightful place within South African law. (See *Alexkor Limited & Another v Richtersveld Community & Others* 2004 (5) SA 460 (CC) at para [51]). Section 211(3) of the Constitution provides that Courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law. It was submitted that in the present case this Court will be required to adjudicate this review application applying the customary law of succession of the Sekgopo Traditional Community.
- [17] In order to restore the integrity and legitimacy of the institution of traditional leadership in line with customary law and practices, Parliament enacted legislation that gave effect to the constitutional imperative in the form of the Traditional Leadership and Governance Framework Act, 41 of 2003 (the “Framework Act”) and provincial legislation such as the Limpopo Act. The Framework Act has been repealed by the Traditional and Khoi-San Leadership Act, 3 of 2019, with effect from 1 April 2021. The present review application commenced before the repeal of the Framework Act with the result that both the Framework Act and the Leadership Act of 2019 are applicable.
- [18] The pre-amble to the Framework Act set out, amongst others that the State, in accordance with the Constitution seeks to restore the integrity and legitimacy of the institution of traditional leadership in line with customary laws and practices. The preamble further set out that the institution of traditional leadership must be transformed to be in harmony with the Constitution and the Bill of Rights so that,

amongst others, the institution of traditional leadership must derive its mandate and primary authority from applicable customary law and practices.

- [19] As discussed in *Bapedi Marote Mamone v Commission on Traditional Leadership Disputes and Claims* 20015 (3) BCLR 268 (CC) at para [13] and [14] by the Constitutional Court, the “*entire Chapter 12 of the Constitution is devoted to matters pertaining to traditional leadership and customary law. Section 211 proclaims that the institution of traditional leadership is recognised. This recognition is extended to the status and the role played by traditional leadership in our society. It is apparent from the language of the section that recognition was given to an institution which was already in existence, having been established in terms of customary law*”.
- [20] The Framework Act which was passed by Parliament in 2003 gave effect to Chapter 12 of the Constitution. The Commission on Traditional Leadership Disputes and Claims (the “CTLDC”) was established in terms of section 23 of the Framework Act and this Commission had to “*carry out its functions in a manner that is fair, objective and impartial*”. The CTLDC could, of its own accord, or upon the request by an affected party investigate and make decisions on traditional leadership disputes. Those matters were listed in section 25(2) of the original Framework Act and included (a) “*cases where there was doubt that a kingship, senior traditional leadership or headmanship was established in accordance with customary law and customs*”; (b) “*instances where the title or right of the incumbent to a traditional leadership position was contested ...*”. It was submitted that both these subsections are relevant to the present dispute.
- [21] Section 25(3)(a) further instructed the CTLDC to “*consider and apply customary law and the customs of the relevant traditional community as they were when the events occurred that gave rise to the dispute or claim*”. In *Mamone* at paragraph [20] the Constitutional Court held that this particular subsection was a clear indication that the Framework Act was to be applied retroactively to disputes and claims that arose before the Framework Act came into force. In the present case William lodged his claim with the original CTLDC (the “old Commission”) on 20 June 2005.

- [22] The CTLDC had a limited lifespan and its term expired in January 2010. (See *Mphephu v Mphephu-Ramabulana* [2019] 2 All SA 51 (SCA).) It is defined as the “old Commission” in section 28(11)(a) of the Framework Act after its amendment by the Traditional Leadership and Governance Framework Amendment Act, 2009. The Amendment Act established the “new Commission” as the successor in law of the old Commission as it existed immediately before the Amendment Act. Section 28(11)(b) of the Framework Act provided that all disputes and claims that were before the old Commission are deemed to have been lodged with the new Commission.
- [23] In the present case the old Commission, due to its workload, did not consider William’s claim before its term expired. William’s claim was only considered by the new Commission which was established in section 22 of the Framework Act after its amendment. The new Commission could only make recommendations in respect of traditional leadership disputes before it, in contrast to the old Commission which made binding findings. Section 15(3)(a) of the amended Framework Act however had a similar requirement, namely that the Commission must consider and apply customary law and the customs of the relevant traditional community as they applied when the events occurred that gave rise to the dispute or claim.
- [24] It was submitted that Section 26 of the Framework Act provided that the recommendation of the Commission must be conveyed in a case such as the present to the relevant Provincial Government and any other relevant functionary to which the recommendation of the Commission applies in accordance with applicable provincial legislation. It was further submitted that in the present case the provincial legislation which is applicable, is the Limpopo Act which places the obligation to act upon the decisions of the Commission on the Premier. In terms of section 26(3) of the Framework Act the Premier had to make a decision on the recommendation of the Commission within a period of 60 days. Section 30 of the Limpopo Act obliges the Premier to obtain the advice of the Provincial House of Traditional Leaders on the implementation of such decision. (See *Langa v Premier, Limpopo* 2022 (3)

BCLR 367 (CC) at par [13] where the Court held that the word ‘decision’ in section 30 of the Limpopo Act should now be read as ‘recommendation’.)

- [25] The Framework Act made provision for the establishment of provincial committees for the CTLDC to deal with disputes and claims relating to traditional leadership. In the Limpopo Province the provincial committee of the CTLDC was commonly known as the Kgatla Commission, so named after its Chairperson. It is the Kgatla Commission that heard William’s claim on 14 July 2017 at a public hearing at which both William and Josephine gave evidence. The Kgatla Commission recommended on 4 December 2017 that William’s claim be accepted.
- [26] Section 63(10) of the Leadership Act of 2019 provides that the CTLDC which was established by section 22 of the Framework Act (the new Commission) shall continue to function in accordance with the provisions of sections 21 to 26A of the Framework Act “*until the expiry of its term of office, subject to section 25(4)(b) of the Framework Act*”. Section 63(10)(b) of the same Act provides that any recommendation by the CTLDC remains valid notwithstanding the repeal of the Framework Act.
- [27] The CTLDC and its provincial committees, including the Kgatla Commission, were organs of state as defined in Section 239 of the Constitution and in conducting their investigations, were exercising public powers and performing public functions in terms of the Framework Act. Their findings and recommendations are therefore reviewable under PAJA, but more importantly, continue to be binding administrative actions until set aside by a Court. (See *Mamone v CTLDC* [2012] 4 All SA 544 (GMP) at para [9], confirmed on appeal by the SCA in *Bapedi Marota Mamone v Commission on Traditional Leadership Disputes and Claims & Others* 2014 (3) All SA 1 (SCA) at para [17]). As pointed out in *Premier of the Eastern Cape v Hebe* [2018] 1 All SA 194 (ECB) at paragraph [63], the Premier derives the power to make a decision on the recommendation made in terms of the Framework Act by the CTLDC or its provincial Committee from the Framework Act. The recommendation

is a jurisdictional fact and a prerequisite for the exercise by the Premier of his authority as contemplated in section 26 of the Framework Act.

THE APPLICANT'S (WILLIAM'S) CLAIM AND THE SEKGOPO HISTORY AND CUSTOMARY LAW OF SUCCESSION AS PER THE APPLICANT'S (WILLIAM'S) VERSION:-

- [28] The Applicant (William) submitted that, both the CTLDC and the Kgatla Commission had the obligation in terms of section 25(3)(a) of the Framework Act to consider and apply the customary law and customs of the Sekgopo Traditional Community as they applied when the events occurred that gave rise to the dispute or claim. Section 211(3) of the Constitution provides that a Court must apply customary law when that law is applicable, subject to the Constitution and the legislation specifically dealing with customary law.
- [29] The Sekgopo customary laws of succession which were applicable at the time when Josephine married her late husband Piet Motshotsho; the applicable customary law on whether she can be regarded as his "*candle wife*"; as well as the Sekgopo customs on succession following the death of the last undisputed Kgoši of the Sekgopo, namely Mamakobe Sekgopo, are therefore of crucial interest in the present application.
- [30] The Sekgopo customary law and customs regarding their succession have been established through the documents which William submitted with his 2005 claim lodged with the CTLDC and the further documentation that he lodged with a new Commission in 2012. These customs were also discussed and confirmed in the Ralushai Commission's report, on which William relied for his claim, and in the investigation which the Premier's office conducted in 2010 and in which reliance were placed on various reports by Magistrate's exercising jurisdiction over the Sekgopo, and also in the Kgatla Commission's report under review. It was submitted that William has also for purposes of the review application, commissioned a well-known anthropologist, Prof. Chris van Vuuren, to

independently investigate the history, customs and customary law of the Sekgopo Community. Prof. Van Vuuren's affidavit and report form part of the papers before Court. This report came to the same conclusions as the Ralushai Commission, the Premier's advisors in 2010 and the Kgatla Commission.

[31] It was submitted that William fully dealt with these customs and the applicable customary law in the supplementary founding affidavit, which need not be repeated herein in full. The following summary should suffice:

31.1 The successor to the throne of the Sekgopo Kgoši must be born of the Kgoši's "*tribal wife*" or mmasetšaba ("*mother of the nation*"), popularly referred to as the "*candle wife*". The choosing of a candle wife for the Kgoši constitutes a social contract between the royal family and the Sekgopo Community. The Royal Council (the Bakgomana) plays an important role in the selection of the tribal wife.

31.2 In respect of the Sekgopo, the mmasetšaba has to be selected from the Maake (Maupa) family of Kgaga. In the present case it was common cause, and also so admitted by Josephine in the public hearing with the Kgatla Commission, that Mamakobe Sekgopo (born approximately 1870) was born from the marriage between his father, Kgoši Motsheudi Sekgopo and his candle wife, Mamaphoko Maake from the Maake (Maupa) family.

31.3 It was submitted that the mmasetšaba is very seldom the first wife (in chronological order) married by the Kgoši. The birth of the first born son of the mmasetšaba is viewed as the fulfillment of the social contract between the royals and the people. If the candle wife is however infertile, or only bears female children, or dies before the birth of a male heir, that is not the end of the contract between the members of the Community and the Royal House and not the end of the agreement between the Royal House of Sekgopo and that of Maake, from which the tribal wife comes. In such a case the Royal Council of Sekgopo would request the Royal House at Maake to avail a

supplementary or surrogate wife, who is often a younger sister of the mmasetšaba, to continue the contract. Any children born from her are regarded as the children of the original mmasetšaba.

31.4 The mmasetšaba may also be selected after the death of the Kgoši if he died before his rightful successor is born. One of the royal family members are then requested to act as a seed raiser and any male child born of this union from the mmasetšaba or her surrogate, are regarded as the successor of the late Kgoši. According to William, this is what happened in the present case. It was submitted that to someone unfamiliar with customary law, such customs may appear strange, but as was illustrated in the recent judgment by Makgoba JP in *Thulare v Thulare and Others* [2022] ZALMPPHC 53 (19 October 2022), this Court recognises and applies such customs and customary law principles.

31.5 The royal council (the Bakgomana) activates the process for the selection of the mmasetšaba and a royal delegation would visit the Maake (Maupa) family, taking with them an empty clay pot as a symbolic gesture indicating that the Sekgopo vessel is empty and that it must be filled by the Maake (Maupa) by providing a tribal wife. Once this is accepted, the delegation returns and call a pitšo (tribal meeting) at which the community at large must give their approval to the marrying of a candle wife. Each family has to contribute cattle towards the dowry.

31.6 The delegation then returns with the dowry to the Maake. They will return a third time taking a traditional blanket, a grain basket and a winnowing basket.

31.7 Before the chosen candle wife leaves her parents' abode, an animal would be slaughtered to celebrate her upcoming new status. Upon her arrival at the royal house at Sekgopo, all fires are extinguished and all lights (candles) are similarly switched off or extinguished. The chosen tribal wife will then with the

help of the makgomana, light a new fire at the mošate and once this fire is lit, all other fires are lit from it. This is the origin of the popular term “candle wife”.

31.8 There are also other collective assignments that are only put into action with the marriage of a candle wife. It was submitted that the last time these rituals were performed was when a tribal wife was married for the late Mamakobe from the Maake family.

[32] William submitted that the relevant history of the Sekgopo, starting with Sephomolo, the first Kgoši to be called Sekgopo was also fully set out in the founding papers, in the record before this Court and confirmed by Prof van Vuuren in his main and supplementary reports. Therefore, it was submitted, that it was again only necessary to repeat the most crucial aspects of this history:

32.1 The name Sekgopo comes from the first of the Sekgopo ancestors to be given this name, namely Sephomolo whose great grandfather Mohale lead the Lovedu (Modjadji) from Mashonaland in Zimbabwe. Sephomolo broke away from the Lovedu and formed a separate entity around 1800. The name Sekgopo became the tribal name as well as that of the royal family. Before settling down at their present place of abode, Sephomolo and his community relocated several times and during these travels Sephomolo developed close ties with the Koni of Dikgale and their royal houses intermarried. Sephomolo's candle wife was from the Maake (Maupa) family and from this marriage his son and successor Motsheudi was born.

32.2 Motsheudi also married his candle wife, Mamaphoko, from the Maake (Maupa) family and from this marriage his successor Mamakobe was born in approximately 1870. Motsheudi's first born son, Kiletsa, born from another wife of Mamakobe, led a rebellion against the heir, Mamakobe, who was sheltered at Maake (Maupa). The rebellion was unsuccessful and Mamakobe was installed as Kgoši. Mamakobe passed away in 1922 before he had married a candle wife who could bear him a successor. After his death, his

son William Matsorane I took over the leadership position as a Regent. He could not be installed as Kgoši since he was not born from a candle wife.

- 32.3 Following the rituals explained above, the Royal Council, with the approval of the Community, selected a candle wife from the Maake (Maupa) family, namely Ngate also known as Mmamasemola or Mmamaake. She gave birth to four girls and one male, namely Motsheudi II who unfortunately died young before he could ascend the throne. He would have been the heir of Mamakobe had he not died in infancy. As a result of his passing away, a supplementary wife was married from the Maake (Maupa) family, namely Mapitso Margaret Maake. She gave birth to William and according to Sekgopo customary law, he is regarded as the successor of Mamakobe.
- 32.4 It was submitted by William that in the meantime, the Regent, Matsorane 1, was committed to a sentence of imprisonment for a criminal offence against a man accused of witchcraft, which disqualified him from the position as acting traditional leader. The Sekgopo Royal Council requested his son, Piet Motshotsho to act on his behalf, a decision which was supported by the Government at the time since Piet Motshotsho was a favorite of the apartheid Government for showing his support for the establishment of a tribal authority.
- 32.5 Piet Motshotsho was born from the marriage between Matsorane I and his wife from the Mailula family. He in turn married the second respondent, Josephine, who is also from the Mailula family. As she admitted during her evidence before the Kgatla Commission, and as is also confirmed by Prof. Van Vuuren in his report and supporting affidavit, the Mailula's are not royals and for that reason the Sekgopo candle wife cannot be married from this family.
- 32.6 It was submitted by William that Josephine's claim that she was in fact Piet Motshotsho's candle wife, is not supported by customary law. Piet Motshotsho himself, was born from a marriage of his father and a wife from

the Mailula family and he also therefore did not qualify to succeed Mamakobe as Kgoši.

- 32.7 Piet Motshotsho passed away on 13 October 1990. On 2 March 1992 the Cabinet of the Lebowa Government approved the appointment of Josephine as acting Kgošigadi of the Sekgopo tribe “*on behalf of her minor son K[...]* *D[...]* *S[...]*” who, according to the Cabinet, was the heir apparent by virtue of the fact that his mother was allegedly Piet Motshotsho’s candle wife.
- 32.8 William submitted, and as confirmed by Prof. Van Vuuren in his supporting affidavit and expert report, this mistake by the Lebowa Government was partly based on two previous genealogies which were drawn up by State ethnologists, namely a Mr. Verryne who drew up a genealogy in 1980 when Piet Motshotsho was still the acting Kgoši, and a genealogy drawn up in 1991 by an ethnologist, Lombard, on whose genealogy the Lebowa Government placed reliance. It was submitted that the late Piet Motshotsho’s spokespersons ensured that the genealogists were not given the true facts. Lombard also did not speak to the royal family. These genealogies also incorrectly listed Mamakobe’s candle wife, Ngate / Mmamaake as the fourth wife of Matsorane I, which she was not.
- 32.9 According to William the Revised Record and the founding papers show, that he and the Sekgopo Royal Family objected to Josephine’s appointment from the outset. It was reiterated that several magistrates who investigated the matter, the then Commission on Traditional Authorities, the Ralushai Commission and the anthropological services in the Premier’s office in 2010, all confirmed the correctness of the Sekgopo history and customs as set out above, and came to the conclusion that William is the rightful heir of the Sekgopo Senior Traditional Leadership position.

[33] William’s claim was lodged with the old Commission on 20 June 2005. William lodged further claim documents with the new Commission on 10 October 2012. The

Kgatla Commission's public hearing of this dispute was scheduled for 29 October 2015. Josephine attempted to delay the hearing of the claim by the Kgatla Commission. It was submitted that in November 2015 for example, she relied on the pending case under case number 560 / 2011 in which she sought orders that her son Koma be declared the rightful heir to the leadership position. That application was opposed by the Premier of the Limpopo Province who was cited as first respondent. The answering affidavit was deposed to by Namanetona Joel Shai on behalf of the Premier. In that affidavit Mr. Shai, an ethnologist in the traditional affairs section of the Department of Co-operative Governance, Human Settlement and Traditional Affairs in the Limpopo Provincial Government, set out the correct history of the Sekgopo, advised the Court that William is the rightful heir and that Piet Motshotsho only acted as Kgoši since he did not qualify for the position. He also pointed out that Piet Motshotsho and his father Matsorane I were born from mothers who hail from the Mailula family who did not qualify to become candle wives. It was submitted that this affidavit supports William's claim before the Kgatla Commission. It was submitted that after the filing of this affidavit by the Premier, Josephine's application was either dismissed or abandoned.

THE KGATLA COMMISSION'S INVESTIGATION AND RECOMMENDATION AS PER THE APPLICANT (WILLIAM):-

[34] The public hearing and the evidence that was led by William and by Josephine appear from the transcript as well as the discussion in paragraph 47 of the supplementary founding affidavit, Bundle 2 at pages 161 to 167, which need not be repeated herein, save for highlighting the following:

34.1 Josephine's version of the Sekgopo customary law of succession, and in particular the marrying of a mmakgoši (mother of the chief), allegedly from the family of a paternal uncle, as a marriage transaction concluded by the royal family, which also supplies the cattle used as dowry, was clearly not in accordance with the Sekgopo customary law. Her spokesperson was also

very unclear on the rituals that were followed when she married Piet Motshotsho from the Mailula family.

34.2 The William's evidence correctly explained the procedure in selecting a candle wife or mmasetšaba (mother of the nation) who is married in a social contract between the traditional community (tribe) and the royals from the Maake (Maupa) family. The dowry, according to Sekgopo customary law is provided by the Community and not by the royal family.

34.3 The Josephine also confirmed that the Mailula family is not royals, but only headmen. William confirmed that the Maake family on the other hand is a royal family.

34.4 When questioned by the Commissioners on the candle wives of Sephomolo and Motsheudi, it was clear that Josephine was unfamiliar with this part of the Sekgopo history although she did confirm that Mamakobe's mother was from the Maake (Maupa) family and that she was named Mmaphoko Maake. William contended that this was fatal to Josephine's opposition to his claim. It was submitted that the Kgatla Commission also correctly held that she could not explain how and why the family from which the candle wife is selected thereafter changed from the Maake to the Mailula family in her version. She also incorrectly testified that Ngate / Mmamasemola was the youngest wife of Matsorane I, whereas she was the candle wife married for Mamakobe by the tribe.

[35] The Kgatla Commission's report, in detail discussed the evidence and as submitted by William, correctly came to the conclusion that he is indeed the rightful heir of Mamakobe.

[36] It was submitted that in *Mamone v Commission* 2015 3 BCLR 268 (CC) the Constitutional Court stated in paragraph [79] of its judgment, with reference to the CTLDC, that a "level of deference is necessary – and this is especially the case

where matters fall within the special expertise of a particular decision-making body. We should, as this Court counselled in Bato Star, treat the decisions of administrative bodies with “appropriate respect” and “give due weight to findings of fact . . . made by those with special expertise and experience”. (See *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* [2004] ZACC15; 2004 (4) SA 490 (CC) at para 48.) The Constitutional Court also took into account that the Commission had to investigate what the customary law was at the relevant time, that the Commission did so, and concluded in paragraph [87] by stating:

“This Court may not neglect its duty to scrutinise the rationality of the Commission’s decision. But, in doing so, it must be cognisant of the Commission’s special expertise as well as the wealth and complexity of the factual evidence it considered in its wide-ranging enquiry. The fairness of that process, where representations were solicited from interested parties, was not challenged.”

- [37] It was submitted that in the present case the respondents did not challenge the fairness of the Kgatla Commission’s proceedings and with the withdrawal of Josephine’s own review application against the Kgatla Commission’s recommendation, there is no longer a challenge to the Kgatla Commission’s proceedings. (Josephine however only in 2024 instituted review proceedings against the Kgatla Commission’s report – I will deal with this later herein under case number 2950/2024). William therefore submitted that the Premier also had a duty to pay some deference to the findings and recommendations of the Kgatla Commission. His reasons for rejecting those findings and recommendations have to be scrutinised against that background.

THE PREMIER’S DECISION ON REVIEW AS PER THE APPLICANT:-

- [38] The Premier did not approve the Kgatla Commission’s recommendation and made the following handwritten note on 23 April 2018 when he took this decision:

“It is clearly stated in the report that all customary rituals were followed when Mokgadi J Sekgopo was married. Her late husband’s mother also hailed from the Mailula’s but she was not contested”.

[39] The Premier’s reasons in terms of Rule 53(1)(b) are bound into the Revised Record at pages 218 to 221. In this document he stated that the stands by his reasons as stated in the letter of 11 June 2018 to the applicant, which were then repeated as follows:

“3.1 I have considered and satisfied my self that all customary rituals and processes were followed by the Sekgopo Traditional Community when marrying Kgošigadi Josephine Mokgadi Sekgopo. Josephine was properly married as a candle wife.

3.2 It has been custom to the Sekgopo family that they marry their cousins, the Mailula’s are also cousins to the Sekgopos. The seed raiser should also be from their cousins.

3.3 Josephine was identified and appointed by the Sekgopo Royal Family to be the acting Senior Traditional Leader” (sic).

[40] It was submitted that these reasons illustrate the irrationality of the decision taken by the Premier on 23 April 2018. It is also submitted that no reasonable person could have taken such decision, giving these reasons, on the information that was before the Premier when he took the impugned decision. In this respect the following is emphasized:

40.1 The handwritten reason given by the Premier in the report, does not appear from the Kgatla Commission’s report at all. There is no statement in the report that the customary rituals, let alone *“all customary rituals”* were followed when Josephine married Piet Motshotsho. There is similarly no statement in

the Record or in any of the evidence that this was not disputed. The Record shows the opposite.

40.2 The Premier clearly ignored the reasons given by the Kgatla Commission for rejecting the second respondent's evidence and their cogent reasons for accepting the applicant's evidence.

40.3 As to the second reason given by the Premier in his reasons in terms of Rule 53, namely that it has been the custom of the Sekgopo family to marry their cousins and that the Mailula's are "*also cousins to the Sekgopos*", there is no historical evidence that the previous Magoši of the Sekgopo, namely Koma, Sephomolo, Motsheudi and Mamakobe married a Mailula wife as a candle wife. It was in fact common cause that Mamakobe's mother, who was the candle wife of his father Motsheudi, was a Maake and not from the Mailula family.

40.4 Prof. van Vuuren also pointed out in paragraph 7.2 of his expert report and in his confirmatory affidavit that the second reason, namely that the seed-raiser should be from the Mailula, is preposterous as this would exclude any Sekgopo royal blood in the future Sekgopo heir to the throne. Prof. Van Vuuren put it as strongly as to say that this statement is ludicrous and against customary law, not only of the Sekgopo but as well as that of other African royal houses in the rest of South Africa.

[41] It was submitted that the Premier's decision not to approve the Kgatla Commission's recommendation directly contradicts his predecessor's decision in 2010 that William should be recognised as Senior Traditional Leader of the Sekgopo and that Josephine should be removed from her position. The Premier was, it is submitted, *functus officio* in that he is bound by the decision of his predecessor. His impugned decision therefore also fails the legality test. As was confirmed by the SCA in *Minister of Home Affairs and others v Scalabrini Centre, Cape Town and others* [2013] 4 All SA 571 (SCA) at par 61:

"It is by now axiomatic that the exercise of all public power must comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of the rule of law" relying on Ngcobo CJ in *Albutt v Centre for the Study of Violence and Reconciliation and others* 2010 (3) SA 293 (CC) par [49].

THE APPLICANT'S (WILLIAM'S) GROUNDS OF REVIEW:

[42] William relies on the following grounds for review:

- 42.1 Section 6(2)(e)(iii) of PAJA in that relevant considerations and the evidence before him were not considered, instead relying on irrelevant reasons which vitiated the decision;
- 42.2 Section 6(2)(e)(iv) of PAJA in that the decision was arbitrarily or capriciously taken, having regard to all the facts of this matter.
- 42.3 Section 6(2)(f)(ii)(cc) and (dd) of PAJA in that it was not rationally connected to the information before the Premier or the reasons given by him for this decision. In *Mamone supra*, it was held that the review threshold is rationality. The Court continues as follows: "*The test is an objective one and the reviewing court asks if there is a rational objective basis justifying the connection made by the administrative decision-maker between the material made available and the conclusion arrived at. Administrative action that fails to pass this threshold is inconsistent with the requirements of the Constitution and is unlawful. It matters not that the decision-maker acted in the belief, in good faith, that the administrative action was rational" (Applicant's emphasis). It is submitted that the Premier's decision failed the rationality test.*
- 42.4 Section 6(2)(h) of PAJA in that the way in which he exercised his powers and performed his functions under the Framework Act and the Limpopo Act in pursuance of which this decision was taken, was so unreasonable that no

reasonable person could have so exercised the power or performed the function. As stated above, no reasonable person could have taken this decision with the information that was before the Premier. He should have conceded William's claim and should have approved the recommendation of the Kgatla Commission.

[43] It was further submitted that rejecting the recommendation of the Kgatla Commission, which re-confirmed the standing decision of the previous Premier, is also reviewable under section 6(2)(a)(i), section 6(2)(d), section 6(2)(f)(i) and 6(2)(i) of PAJA in that the Premier was not authorised by the empowering provision in the Limpopo Act to overrule his predecessor, and thinking that he may do so, was materially influenced by an error of law, contravened the well-known legal principle that an administrative action remains binding until such time as it is set aside by a Court of law and, in thinking that he may overrule the previous decision in this manner, this rendered his decision unconstitutional and unlawful.

SUBMISSIONS BY APPLICANT ON THE ORDERS SOUGHT:-

[44] Section 8 of PAJA provides that a Court may in proceedings for judicial review in terms of section 6(1) of PAJA grant any order that is just and equitable, including orders:

“(a) directing the administrator-

(i) to give reasons; or

(ii) to act in the manner the court or tribunal requires;

(b) prohibiting the administrator from acting in a particular manner;

(c) setting aside the administrative action and-

- (i) *remitting the matter for reconsideration by the administrator, with or without directions; or*
- (ii) *in exceptional cases-*
 - (aa) *substituting or varying the administrative action or correcting a defect resulting from the administrative action; or*
 - (bb) *directing the administrator or any other party to the proceedings to pay compensation;*
- (d) *declaring the rights of the parties in respect of any matter to which the administrative action relates;*
- (e) *granting a temporary interdict or other temporary relief; or*
- (f) *as to costs.” (See Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency and Others 2014 (1) SA 604 (CC).)*

[45] Since the issuing of the present review application, the Framework Act has been repealed and replaced by the Traditional and Koi-San Leadership Act, 3 of 2019.

[46] It was submitted that this Court, when considering appropriate relief in this application, therefore has to consider the provisions of section 8 of PAJA, which section sets out the orders that a Court may grant in an application for judicial review, read with the provisions of the Leadership Act of 2019 and, to the extent that the Limpopo Act can be reconciled with the provisions of Act 3 of 2019, also with the provisions of the Limpopo Act.

- [47] It was further submitted that the Notice of Motion in the present review application was therefore amended in accordance with the provisions of Rule 53(4) of the Uniform Rules of Court to take into account the changed legislative scheme.
- [48] It was submitted that in respect of **Prayer 1** - The first order that the applicant seeks is to review and set aside the decision by the Premier not to approve the recommendation by the Kgatla Commission, namely that his claim for the restoration of the Sekgopo Senior Traditional Leadership to the rightful lineage of Mamakobe be granted. As contended above, the Premier should have approved the recommendation.
- [49] In respect of **Prayer 2**, that in terms of section 8(1) of PAJA this Court may grant any order that is just and equitable and that in terms of section 8(1)(c) this Court may set aside the administrative action (in this case the decision of the Premier not to approve the recommendation) and (i) remit the matter for reconsideration to the Premier or, (ii) in exceptional cases substitute or vary the administrative action or correcting a defect resulting from it.
- [50] It was submitted by William that in this matter it would serve no purpose to remit the matter back to the Premier for reconsideration. The decision that he had to take was clearly to accept the Kgatla Commission's recommendation and to act upon it. With the withdrawal of the Premier's opposition to the review application, it is reasonable to assume that he has realized his mistake. It was further submitted that referring the matter back to him would only waste further time when the outcome of the decision is inevitable. It would also cause further unjustifiable prejudice to William and the Sekgopo Traditional Community. It was submitted that William therefore seeks an order replacing the decision of the Premier with a decision to approve the recommendation of the Kgatla Commission.
- [51] It was submitted in respect of **Prayer 3** that in view of all the evidence and in view of the deep division within the royal family between the broader representative royal family and the supporters of the current acting traditional leader (Josephine) who

effectively are in charge, that this is a matter where it is just and equitable for this Court to declare the rights of the parties in respect of the dispute which served before the Kgatla Commission, as is specifically provided for in section 8(1)(d) of PAJA.

[52] For this reason, it was submitted that William is entitled, as prayer 3 of the amended Notice of Motion provides for, for the following declaratory orders:

52.1 That it is declared that the second respondent (Josephine) does not qualify to be the candle wife / mmasetšaba of the late Piet Motshotsho Sekgopo;

52.2 That according to the Sekgopo customary law the candle wife / mmasetšaba of the Sekgopo Traditional Community is married from the Maake/Maupa families;

52.3 That the senior traditional leadership of the Sekgopo Traditional Community should be restored to the rightful lineage of the late Mamakobe Sekgopo who passed away in 1922, more in particular to a successor born from the said Mamakobe Sekgopo's candle wife / mmasetšaba or her surrogate from the Maake family;

52.4 That the applicant, William Matsorang Sekgopo II, is the rightful heir to the position of senior traditional leader of the Sekgopo Traditional Community.

[53] In respect of **Prayer 4** it was submitted that Section 15(4) of the Limpopo Act states that the Premier must upon request by the royal family remove any person appointed in an acting capacity. The Sekgopo Royal Family has already taken such resolution on 7 April 2010 and has already identified William in terms of section 12(1) of the Limpopo Act as the person to be recognised as senior traditional leader of the Sekgopo Traditional Community. As appears from the facts above, the Premier's predecessor, Premier Mathale, had already taken such decision on 7 September 2010. William therefore seeks an order enforcing this decision and therefore seeks

an order against the Premier that he should forthwith remove Josephine as acting Senior Traditional Leader of the Sekgopo Traditional Community in terms of the provisions of section 15(4) of the Limpopo Act.

[54] It was submitted in respect of **Prayer 5** that the Sekgopo Royal Family has already identified William as rightful successor on several occasions, including in its resolution dated 7 April 2010, as the rightful person to be recognised as senior traditional leader for the Sekgopo Traditional Community, which accords with the findings and recommendations of the Ralushai Commission and again of the Kgatla Commission that he is the rightful person to be recognised as such. The Premier has already complied with the provisions of section 30(1) of the Limpopo Act by seeking the advice on implementation from the Limpopo Provincial House of Traditional Leaders and does not have to do so again. It was submitted that William therefor seeks an order that the Premier be compelled to recognize him as senior traditional leader of the Sekgopo Traditional Community within one month after date of this order and in terms of section 8(3)(a), (b) and (c) of the Traditional and Koi-San Leadership Act, 3 of 2019, read with section 12(1)(b) of the Limpopo Traditional Leadership and Institutions Act, 6 of 2005 be ordered to:

54.1 publish a notice in the Limpopo Provincial Gazette recognizing William as senior traditional leader of the Sekgopo Traditional Community;

54.2 issue a certificate of recognition to William as senior traditional leader of the Sekgopo Traditional Community;

54.3 inform the Provincial House of Traditional Leaders of William's recognition as senior traditional leader.

[55] **Prayer 6** relates to costs. It was submitted that William is entitled to the costs of this application to be paid by the first to third respondents. Although the withdrawal of their opposition to the application by the first and third respondents is appreciated, the Premier should have self-reviewed his own decision when he realized that he

made a mistake. It is submitted that the applicant is also for another reason entitled to a costs order against the first and third respondents. As stated by the Constitutional Court in *Mphephu-Ramabulana and Another v Mphephu and Others (Ravhura Royal Kingship Council and another as intervening parties)* 2022 (1) BCLR 20 (CC), the review and exercise of public power by courts always raise a constitutional issue. Applying the *Biowatch* principle, the Constitutional Court ordered the President to pay Ms Mphephu's costs in the SCA and the Constitutional court.

[56] As to Josephine, it is submitted that her two answering affidavits disclosed no defence to the relief sought by William herein.

THE 2nd AND 10th RESPONDENT'S SUBMISSIONS:-

[57] It was submitted that the Kgatla Commission was established to probe and determine the validity of the claim by William, that the current ruling lineage of Matsorang Sekgopo I is not the legitimate one and that he is the rightful heir to the throne and as such should be appointed as the Senior Traditional Leaders of the Sekgopo Traditional Community.

[58] Josephine in this matter was the respondent before the Kgatla Commission. The Kgatla Commission concluded its work on 17 December 2017 and handed over its report to the 5th Respondent for approval. The Premier did not approve the Kgatla Commission's findings.

[59] It was submitted that William challenges the Premier's refusal and failure to approve and implement the Kgatla Commission's Report. Josephine and the 10th Respondents on the other hand in a separate court application, challenge the Kgatla Commission's jurisdiction to investigate the Sekgopo Traditional Leadership dispute, on the basis that the mandate of the Commission on traditional dispute and claims, is all claims commencing on 1 September 1927. The dispute relating to the Senior Traditional Leadership of Sekgopo Traditional Community would have arisen before

1927, when Kgoshi Mamakobe Sekgopo died in 1922 and his son Matsoroane Sekgopo I was appointed in 1923.

THE 2nd AND 10th RESPONDENT'S SUBMISSIONS AD THE ESTABLISHMENT OF THE SEKGOPO TRADITIONAL COMMUNITY:-

[60] It was submitted that the Mohale or Sekgopo is an off shoot of the Bakwebo or Vhakwevho who are commonly known as the rain Queen Modjadji's tribe. The off-shoot tribe was founded by Kgoshi Koma Mohale or Sekgopo I, who was one of the sons of Phetole, the son of Mohale, who is said to have brought the Bakwebo tribe to the rain Queen Modjadji's country. After Phetole's death a dispute arose between his sons as to who should succeed as Kgoshi ("the Senior Traditional Leader") with the result that Sekgopo I or Koma and Ntahene, the progenitor of the present Kgoshi Mamaila tribe, left with their respective adherents and set up their own settlements.

[61] Whilst Kgoshi Koma Mohale or Sekgopo, Seepe, Monyethabeng left the rain Queen Modjadji's country on or around the 1810's with his followers and settled around Sekhukhune at a place known as Maroteng. During the death of Kgoshi Koma at Maroteng, Kgoshi Sephumolo Mohale or Sekgopo and his followers left Maroteng in the Sekhukhune country and returned to the rain Queen Modjadji's country and eventually settled at their current place which is known as the Sekgopo's location which is constituted by the following farms; Jakhalsdraai No. 49, Zwagershoek No. 50 and Koppie Alleen No. 51 having an area of approximately 2, 900 morgens of which a large portion of the farms is unusable, because is very steep and stony.

THE 2nd AND 10th RESPONDENT'S SUBMISSIONS AD THE RULERS OR MAGOSI OF THE SEKGOPO TRADITIONAL COMMUNITY:-

[62] According to Josephine and the 10th Respondent, the founder Kgoshi Koma Mohale or Sekgopo was succeeded by his heir and successor Kgoshi Sephomolo. Kgoshi

Sephomolo was succeeded by his heir and successor Kgoshi Mocheudi. Kgoshi Mocheudi was succeeded by his heir and successor Kgoshi Mamakobe, (Kgoshi Mamakobe was interviewed by the Native Location Commission on or around 5 April 1907 with regards to the allocation of land to be demarcated and registered as the 'Sekgopo Location').

[63] It was further submitted that Kgoshi Mamakobe was succeeded by his heir and successor Kgoshi Matsorang. Kgoshi Matsorang was succeeded by his heir and successor Kgoshi Motshotsho. Kgoshi Motshotsho was succeeded by his Mma-setshaba ("the Candle Wife") Mokgadi Josephine Sekgopo, who act on behalf of the rightful heir and successor Kgoshi K[...] D[...] S[...].

[64] It was submitted that it is apparent that the genealogical tree and the succession lineage was never disturbed from the founder Kgoshi Koma to his descendants Kgoshi Motshotsho albeit that during the reign of Kgoshi Mamakobe a dispute on the chieftaincy was declared on or around 9 October 1906 by his brother who was known as Ngoako who was the rightful heir and successor to Kgoshi Mocheudi, who also had his own followers, the disputes was resolved on the grounds that Ngoako was dethroned of his chieftaincy because he refused to follow the customs and traditions of marrying his cousin as a Mma-setshaba ("the Candle Wife"), and as a result Kgoshi Mamakobe remained as Kgoshi ("the Senior Traditional Leader") of the Sekgopo traditional community.

THE 2nd AND 10th RESPONDENTS' SUBMISSIONS AD THE MARRIAGE SYSTEM OF SEKGOPO

[65] It was submitted that the marriage systems of the Sekgopo dates as far back as 1810, where the founder Kgoshi Koma Sekgopo of the Sekgopo traditional community informed his royal family members that they will only marry their aunt daughters ("the Cousin's") in order to preserve the bloodline. This message has been passed from one generation to the other hence the custom is still been practised within the Sekgopo ruling lineage to this day. Indeed, the founder Kgoshi

Koma got married to Mma-setshaba (“the Candle Wife”) Molatelo Shobana who was the eldest daughter of his aunt who married Mr Shobana.

[66] It was further submitted that his heir and successor Kgoshi (“the Senior Traditional Leader”) Sephomolo also got married to his cousin Mma-setshaba (“the Candle Wife”) Khwinana who was also from the Shobana’s family. Kgoshi Sephomolo was succeeded by his heir and successor Kgoshi Mocheudi. Kgoshi Mocheudi also got married to his cousin as his Mma-setshaba (“the Candle Wife”) Khwinana, who was also from the Shobana family. During the reign of Kgoshi Mocheudi, the Shobana family only had the last daughter Khwinana and the rest were males and as a result he advised that, ‘they should now marry from the Mailula family because the youngest aunt from the Sekgopo royal family married Mr Mailula.

[67] It was further submitted that his rightful heir and successor to the throne, Ngoako and his brother Kiletsha refused to follow the system and as a result he dethroned them of the chieftaincy and gave it to Maphoko Maake’s son Mamakobe who agreed to get married to his cousin from the Mailula family. According to Josephine, the system has been practised for two hundred and thirteen (213) years and it has not been altered to date.

THE 2nd AND 10th RESPONDENTS’ SUBMISSIONS AD MAAKE MAUPA:-

[68] Josephine submitted that the marriage of Maphoko Maake of the Maupa family was not arranged. Maphoko was an ordinary wife of Kgoshi Mocheudi since he had a Mma-Setshaba (“the Candle wife”) Khwinana Shobana who was his cousin who had the following issues; Ngoako (m) and Kiletsha (m). In terms of the Sekgopo customs Mma-setshaba Khwinana Shobana was a Mma-setshaba (“the Candle Wife”) who bear an heir and successor to the chieftaincy wherein Ngoako should have succeeded his father as Kgoshi (“the Senior Traditional Leader”) albeit that he was dethroned on the grounds that he refused to follow the marriage system hence

Kgoshi Mocheudi took the chieftaincy to Maphoko Maake's son Mamakobe who agreed to follow the marriage system to the latter by getting married to his cousin.

[69] Ngate was married as a Mma-setshaba ("the Candle Wife") to Kgoshi Matsorang William Sekgopo since he was already married to Mma-setshaba Motshidi Mailula who had the following issues; Malahlane (f), Mohale (m) predeceased, Mochocho (m) and Molatelo(f).

[70] The marriage of Mamolatelolo Mapijo Maake of Maupa family by Ngate who was also from the Maupa family, the 3rd wife of Kgoshi Matsorang William Sekgopo was something unheard of and/or foreign within the Sekgopo royal family since Ngate had the following issues; Maupi (f), Mahlogo (f), Malehu (f), Dipitsi (f) and Mocheudi (m).

[71] It was furthermore submitted, on the grounds that Mamolatelolo Mapijo Maake/Sekgopo was selected and married by Ngate the 3rd (third) wife of Kgoshi Matsorang William Sekgopo, instead of the Sekgopo royal family, such a marriage is invalid in terms of the customary law hence they could not select a selepe ("the most senior councillor from the Sekgopo royal family") whom she would consort with and bear children.

THE 2nd AND 10th RESPONDENTS' SUBMISSIONS AD SELECTION OF AN HEIR:-

[72] It was submitted that a selection and an appointment of a Kgoshi ("the Senior Traditional Leader") is done by members of the 'Royal Family' and now that it has been established why Mr Matsorang William Sekgopo ("the Claimant") or his descendants could not qualify to ascend or inherit the Sekgopo traditional leadership or chieftaincy and the Sekgopo traditional community.

[73] It was further submitted by Josephine that, according to Balobedu customary law, traditional leadership or chieftaincy is a sacrilegious position that ought to be regarded in high rankings. A Kgoshi ("the Senior Traditional Leader") is not elected

into office by a popular vote like politicians, but determined through the correct ruling lineage within the royal family.

- [74] Josephine submitted that the Balobedu customary law of succession, just like many various people in the Republic of South Africa (“RSA”), practise the patrilineal system of inheritance. Succession to any traditional leadership or chieftaincy position follows the patrilineal descent line, in which both males and females belong to their father’s kin group but not their mother’s. When it comes to issues pertaining to succession, the Balobedu people place a high premium on the patrilineal descent group.
- [75] It was further submitted that the issue of being a ‘true blooded royal’ or not is important amongst the Balobedu to such an extent that society keeps an eagle eye on women married to royals. In other words, women who are married to royals should not be found having extra marital relations with none royals, otherwise children born to such women and out of that relationship would be tagged as being none-royals and will not be eligible for inheritance within the royal family.
- [76] The most important eligibility criterion to become a Kgoshi (“the Senior Traditional Leader”) of any kin is to be 1st of all, to be a true blooded royal. Thus, any person said to be a none-royal vying for any title is fiercely resisted by the royal family and most importantly, by the society as well.
- [77] In terms of the customary law and the Balobedu cultural practises, a Kgoshi (“the Senior Traditional Leader”) is selected and appointed by the royal family from the great house of Mma-setshaba only, and Kgoshi Mochocho Piet Sekgopo was duly selected and appointed and there was no dispute whatsoever until his death on or around 19 October 1990. The dispute only occurred on 23 June 2005, from Mr Matsorang William Sekgopo who is not even a direct descendant of Kgoshi Matsorang William Sekgopo but a nephew to his ordinary 3rd (third) wife, Ngate Maake became a mother in law of Mamolatelo Mapijo Maake (“the Claimant Mother”).

[78] By virtue of Mr Matsorang William Sekgopo ("the Claimant") being a nephew to Ngate Maake of the Maupa family the 3rd (third) wife of Kgoshi Matsorang William Sekgopo, automatically disqualifies him to submit a claim for the chieftaincy of the Sekgopo ruling lineage.

THE 2nd AND 10th RESPONDENTS' SUBMISSIONS AD A DISPUTE OF FACTS:-

[79] The 2nd Respondent (Josephine) submit that from the reading of the papers before court, it is apparent that there is different versions relating to the following-

- 79.1 Customary practice of marriage of mmasechaba;
- 79.2 Customary practice of the house from whence mmasechaba must come from?(Whether it is the Maake Maupa or Shobana or Mailula families)
- 79.3 Whether the Maake- Maupa are Balobedu or Bakgaga;
- 79.4 Whether the Kgoshi of Sekgopo, Mocheudi and royal family shifted and diverted bogoshi from Ngoako's lineage or not? If yes, whether such diversion to Mmamakobe by default elevated Mmakobe's mother to be mmasechaba?
- 79.5 Whether Mamakobe had married a mmasechaba or not? Whether such mmasechaba had any issue or raised an heir?
- 79.6 Whether Matsoroane Sekgopo I married Ngate Masemola as mmasechaba or not? Whether Matsoroane Sekgopo I married Ngate Masemola as a masechaba for his late father Kgoshi Mamakobe?
- 79.7 Whether Mamasemola Ngate had children or not? Whether when Ngate married the William's mother, was she married as a surrogate? Who in the

Royal family and where is the resolution evidencing the decision to marrying a tlhatswadirope for Mamasemola Ngate.

79.8 Whether, Kgoshi Mamakobe is the last undisputed chief of the Sekgopo traditional community?

79.9 Whether, Kgoshi Matsoroane Sekgopo I was a regent or acting Kgoshi?

79.10 Whether, Kgoshi Piet Mochocho was a regent or acting Kgoshi?

79.11 Who constitute the Royal Family of Sekgopo to make a decision to appoint Kgoshi? Was this body properly constituted when Kgoshi Matsoroane Sekgopo I and subsequently Kgoshi Piet Mochocho and subsequently the 2nd Respondent to act for K[...] D[...] S[...]?

79.12 Is there a decision of a properly constituted meeting of the Royal Family of Sekgopo Traditional Community, appointing the Applicant, Matsoroane William Sekgopo II?

[80] Josephine further submitted that the above issues and questions are answered differently by William. It was submitted that Josephine also places before court a different version. According to her this raises a genuine dispute of facts relating to the bogoshi ba ga Sekgopo, and this makes it incompetent for the court to grant the declaratory orders in paragraph 3 of the Amended Notice of Motion.

[81] In the result, it was submitted that the matter should be referred to trial as it involves serious customary issues and has an impact of creating social instability within the Sekgopo Traditional Community if each of the parties is not afforded an opportunity to have his day in court to ventilate the issues.

[82] It was submitted that in such an instance, the court ought to consider the well known *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* [1957] (4) SA 234 (C) where the court held that:

“where there is a dispute as to the facts, a final interdict should be granted in motion proceedings only if the facts as stated by the respondents, together with the admitted facts in the applicant’s affidavit, justify such an order, or where it is clear that the facts, although not formally admitted, cannot be denied and must be regarded as admitted.”

[83] It was submitted that this principle was clarified with approval by the Appellate Division as it then was in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] (3) SA 623 (A), the Appellate Division (now known as the Supreme Court of Appeal) found per CORBETT JA, that the rule formulated in *Stellenbosch Farmers' Winery* required clarification and qualification where final relief was sought in motion proceedings.

83.1 *The general rule is still that in proceedings where disputes of fact have arisen on affidavits, a final order, whether an interdict or some other form of relief, may be granted if the facts averred in the applicant’s affidavits, which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order.*

83.2 *The power of the court to give such final relief on the papers before it is, however, not confined to such a situation.*

83.3 *In certain cases denial by a respondent of a fact alleged by an applicant may not raise a real, genuine or bona fide dispute of fact. If the respondent in such a case has failed to apply for the deponent(s) concerned to be called for cross-examination under Rule 6(5)(g) of the Uniform Rules of Court, and if the court is satisfied as to the inherent credibility of the applicant’s averments, the*

court may decide the disputed fact in the applicant's favour, without hearing oral evidence. (2nd and 10th Respondent's emphasis)

THE 2nd AND 10th RESPONDENTS' SUBMISSIONS ON REMITTAL OR SUBSTITUTION OF DECISION

[84] Josephine and the 10th Respondent submitted that the remaining question is what the court should do with the decision of the Premier once set aside. Josephine and the 10th Respondent submitted that the Premier's decision if remitted back would require the Premier to implement a decision of the Kgatla Commission which is a subject of review and contestation. On the other hand the Kgatla Commission's term of office has expired. Josephine and the 10th Respondent submitted that it would be near impossible to refer the matter back to the Kgatla Commission for a decision, lest the court direct that the Premier reconstitute the Committee once more.

[85] It was submitted by Josephine and the 10th Respondent that this is a case in which the 5th to 9th Respondents' conduct is not only marred with malice, but also gross dereliction of duties and abdication of duties to officials.

[86] It was submitted that Plasket J cautioned in *Intertrade Two (Pty) Ltd v MEC for Roads and Public Works Eastern Cape and Another* (1790/04) [2007] ZAECHC 149, and Section 8(1) of the PAJA makes clear, overzealous judicial intervention is not the panacea for all cases of administrative breakdown:

"[C]ourts, when considering the validity of administrative action, must be wary of intruding, even with the best of motives, without justification into the terrain that is reserved for the administrative branch of government. These restraints on the powers of the courts are universal in democratic societies such as ours and necessarily mean that there are limits on the powers of the courts to repair damage that has been caused by a breakdown in the administrative process."

[87] It was submitted further that it is a generally accepted principle of our common law that a court will be reluctant to assume decision-making power for itself where the discretion has been entrusted to another functionary.

[88] It was submitted that in *Erf One Six Seven Orchards CC v Greater Johannesburg Municipal Council 1999 (1) SA 104 (SCA)*, the Court held that:-

“When setting aside such a decision, a Court of law will be governed by certain principles in deciding whether to refer the matter back or substitute its own decision for that of the administrative organ ...

The general principle is therefore that the matter will be sent back unless there are special circumstances giving reason for not doing so. Thus, for example, a matter would not be referred back where the tribunal or functionary has exhibited bias or gross incompetence or when the outcome appears to be forgone.”

[89] The 2nd and 10th Respondent submit that in this case, the 5th to 9th Respondent, conduct in the hearing of the Sekgopo dispute was bias. (In my view this speaks to the issue under case number 2950/2024 and not the present matter.) It was arbitrary and capricious. The 5th to 9th Respondents abdicated their responsibility and handed the investigation and research of the matter to the 3rd Respondent's officials who demonstrated gross incompetence as they failed to find available documentary records from the archives and the libraries.

[90] Josephine and the 10th Respondent referred to *Gauteng Gambling Board v Silverstar Development Limited & Others 2005 (4) SA 67 (SCA)*. In that case, the Supreme Court of Appeal confirmed the legal principles as follows:-

“The legal principles

[28] *The power of a court on review to substitute or vary administrative action or correct a defect arising from such action depends upon a determination that a case is 'exceptional': s 8(1)(c)(ii)(aa) of the Promotion of Administrative*

Justice Act 3 of 2000. Since the normal rule of common law is that an administrative organ on which a power is conferred is the appropriate entity to exercise that power, a case is exceptional when, upon a proper consideration of all the relevant facts, a court is persuaded that a decision to exercise a power should not be left to the designated functionary. How that conclusion is to be reached is not statutorily ordained and will depend on established principles informed by the constitutional imperative that administrative action must be lawful, reasonable and procedurally fair. Hefer AP said in Commissioner, Competition Commission v General Council of the Bar of South Africa and Others 2002 (6) SA 606 (SCA):

'[14] . . . (T)he remark in Johannesburg City Council v Administrator, Transvaal, and Another 1969 (2) SA 72 (T) at 76D - E that "the Court is slow to assume a discretion which has by statute been entrusted to another tribunal or functionary" does not tell the whole story. For, in order to give full effect to the right which everyone has to lawful, reasonable and procedurally fair administrative action, considerations of fairness also enter the picture. There will accordingly be no remittal to the administrative authority in cases where such a step will operate procedurally unfairly to both parties. As Holmes AJA observed in Livestock and Meat Industries Control Board v Garda 1961 (1) SA 342 (A) at 349G

". . . the Court has a discretion, to be exercised judicially upon a consideration of the facts of each case, and . . . although the matter will be sent back if there is no reason for not doing so, in essence it is a question of fairness to both sides". [See also Erf One Six Seven Orchards CC v Greater Johannesburg Metropolitan Council (Johannesburg Administration) and Another 1999 (1) SA 104 (SCA) at 109F - G.]

[15] I do not accept a submission for the respondents to the effect that the Court a quo was in as good a position as the Commission to grant or refuse exemption and that, for this reason alone, the matter was rightly

not remitted. Admittedly Baxter Administrative Law at 682 - 4 lists a case where the Court is in as good a position to make the decision as the administrator among those in which it will be justified in correcting the decision by substituting its own. However, the author also says at 684:

"The mere fact that a court considers itself as qualified to take the decision as the administrator does not of itself justify usurping that administrator's powers . . . ; sometimes, however, fairness to the applicant may demand that the Court should take such a view."

This, in my view, states the position accurately. All that can be said is that considerations of fairness may in a given case require the court to make the decision itself provided it is able to do so."

[91] Josephine and the 10th Respondent submitted that the sentiments in the above quoted judgement are apposite, sometimes, however, fairness to the applicant may demand that the Court should take such a view. Further, that considerations of fairness may in a given case require the court to make the decision itself provided it is able to do so.

[92] Josephine and the 10th Respondent submitted that this court is in as good a position as the 5th to 9th Respondent to hear oral evidence, receive documentary evidence and evaluate such to make a finding of fact.

[93] Josephine and the 10th Respondent submitted that exceptional circumstances exist, for the above honourable court to substitute the decision of the Respondents and grant an order in the following terms-

"(1) To review and set aside the decision of the 5th to 9th Respondent;

(2) To refer the dispute over Senior Traditional Leadership of the Sekgopo Traditional Community to trial;

(In my view, once again this has a bearing on Case Number 2950/2024 and not really on the present matter under Case Number 5799/2018.)

THE 11th RESPONDENT'S SUBMISSIONS:-

- [94] It was submitted that the 11th Respondent is the Royal Family as defined by the provisions of the Traditional Khoi-San Leadership Act 3 of 2019, read with the applicable Limpopo Traditional Leadership and Institutions Act 6 of 2005. They are all related to Josephine, who currently is appointed as the acting senior traditional leader. (I pause here to state from the onset that there is a dispute as to who the core Royal Family is. William has his fraction of a Royal Family supporting him and the 11th Respondent is a fraction of the Royal Family supporting Josephine. The 11th Respondent is the fraction of the Royal Family supporting Josephine.)
- [95] It was submitted that William and his immediate family have been pursuing his claim to be appointed as the Senior Traditional Leader of the community since 1990.
- [96] It was submitted that initially, William and his group approached the Ralushai Commission, which issued a report in favour of William in 1997. A copy of this report, although incomplete, is in the record at pages 37 to 41. It was submitted that no steps were ever taken by William to have these recommendations finally implemented, and they have never been implemented as a result.
- [97] According to the 11th Respondent, the matter was thereafter referred by William to the Nhlapo Commission on or around 23 June 2005. Who received and acknowledged the claim. The Nhlapo Commission however failed to deal with the claim.
- [98] William also utilised the provisions of section 15(4) of the Limpopo Traditional Leadership and Institutions Act 6 of 2005 to request for Josephine's removal and his appointment, but this request was never processed by the Premier.

- [99] According to the 11th Respondent, it is evident that it was considered by the then Premier, and pages 59 to 74 appear to contain extracts of this process, but in the end, no final decision was made before the matter was considered by the Kgatla Commission, and no application was ever brought to have such a decision made.
- [100] It was submitted that William then referred the matter to the Kgatla Commission, who received and acknowledged the claim on the 25th of May 2012.
- [101] The Nhlapo Commission and the Kgatla Commission were enacted in accordance with the Traditional Leadership and Governance Framework Act 41 of 2003. It must be borne in mind, however, that their mandates were not identical.
- [102] The Kgatla Commission operated subsequent to amendments which were made to the Traditional Leadership and Governance Framework Act 41 of 2003, which were made in terms of Act 23 of 2009, which took effect from 25 January 2010.
- [103] The Nhlapo Commission, which never dealt with this matter, made decisions on traditional leadership disputes and claims, whereas the Kgatla Commission was tasked with doing investigations and making recommendations to the Premier.
- [104] It was submitted that the Kgatla Commission made recommendations to the Premier in a twelve-page report dated 4 December 2017. The recommendation of the Kgatla Commission was that the claim of the Applicant (William) *“for restoration of Sekgopo Senior Traditional Leadership to the rightful lineage of Mamakobe”* be granted.
- [105] The premier, however, on the 23rd day of April 2018, did not approve this recommendation, but instead rejected the recommendation and decided to reject the claim of William, on the basis that Josephine’s late husband’s (the last appointed Kgoshi) mother was also from the Mailula family, and his lineage was not contested. The Premier held to the belief that all rituals were followed when Josephine was appointed in an acting capacity.

[106] It is this decision of the Premier that is under review in this matter. Subsequent to this decision of the Premier, Josephine has also taken the report of the Kgatla Commission on review.

THE 11th RESPONDENT'S SUBMISSIONS ON THE FACTUAL DISPUTE:

[107] It was submitted that the bundles in this matter are voluminous, laden with report and with factual material. The true factual and legal issue between the parties, however, is simple and can be summarised within two pages.

[108] Essentially, the parties disagree on what the customs of the Sekgopo Community were during the time that Matsorane William Sekgopo 1 was appointed as senior traditional leader of the Community, and how and by whom he was appointed to this position.

[109] They also disagree on the capacity in which he was appointed, and whether he was appointed as the Senior Traditional Leader, or just an acting senior traditional leader.

[110] A corollary to this dispute, is whether his mother, who hailed from the Maiula Family, was a candle wife of the late chief Mamakobe or not.

[111] Accordingly, the dispute centres on the customs and events, and the customary law of the Community as it was in 1922, which is 102 years ago now.

[112] The 11th Respondent submitted that it has given their exposition on what the customs of the Community was at this time, and since then, it can be summarised below:

112.1 The marriage systems of the Sekgopo date as far back as 1810.

112.2 The founder Kgoshi Koma Sekgopo of the Sekgopo Traditional Community informed his Royal Family members that they will now only marry their aunt daughters (the cousins) in order to preserve the Royal bloodline.

112.3 This message has been passed on from generation to generation since. The Applicants and his entourage are far removed from the Royal Family and are therefore not aware of its customs.

112.4 The founder Kgoshi Koma married a Mma-setshaba (the candle wife) Molatelo Shobana who was the eldest daughter of his aunt who was married to Shobana.

112.5 His heir and successor Kgoshi Sephomolo also got married to his cousin Mma-Setshaba (the candle wife) Kwinana who was also from the Shobana family.

112.6 In this regard, without doing any investigation, the Commission seemed to have assumed that the Maake's were always the providers of candle wives to the Royal Family, but the above information shows they were clearly mistaken.

112.7 It was submitted by the 11th Respondent that they would have corrected them if it were apparent that this was what they were trying to establish, but as the Court would see from the 26-page record, they appeared to be in a rush to finalise the matter, and did no proper investigation.

112.8 It was submitted that Kgoshi Mocheudi succeeded Sephomolo and married his cousin, also Kwinana, also from the Shobane family.

112.9 During the reign of Kgoshi Mocheudi, the Shobane family advised that the Sekgopo should now marry from the Mailula family, as they do not have any

more daughters and the youngest aunt from the Sekgopo Royal Family married Mr. Mailula.

112.10 According to the 11th Respondent there was at this point an argument between the rightful successor to the throne, Ngoako and his brother Kiletsha, who refused to follow the system, and as a result, the chieftaincy was given to Maphoko Maake's son, Mamakobe, who agreed to get married to his cousin from the Mailula family, as was initially agreed.

112.11 From this point on the Royal Family continued with the Mailula family for the next 80 years. The Second Respondent was married as the candle wife of Piet Motshotsho Sekgopo.

[113] It was submitted that William, on the other hand, contends that the Royal family has always married its candle wife from the family of Maake.

[114] According to the 11th Respondent, his version, very shortly, can be summarised as follows:

114.1 William agrees that Mamakobe passed away in 1922 but disagrees that he married a candle wife. According to William, Mamakobe married no candle wife.

114.2 After his death, William alleges that Mamasemola Ngate was married as a candle wife after the death of Mamakobe, but she failed to bear an heir despite having five children. The only boy that was borne, however, died very young. As a result, Mapitso Margaret Maake was married as a candle wife, and she gave birth to William on the 19th of March 1976 with the assistance of a seed raiser.

114.3 It was submitted that, accordingly, on William's version, it took the Royal Family 54 years to marry a candle wife and birth an heir for Mamakobe.

114.4 The people who had been appointed in the meantime to rule over the community, were not appointed as senior traditional leaders, but were rather acting.

114.5 It was submitted that William therefore avers that Matsorane William Sekgopo 1 and Piet Motshotsho Sekgopo were only acting as senior traditional leaders and were not genuine senior traditional leaders.

114.6 It was submitted that William also denies Josephine is a candle wife, on the hand due to the above dispute, but they also deny the necessary customs were followed when Josephine was married, as they are of the view that the Royal Family must always marry a candle wife from the Maake house or community.

[115] It was submitted by the 11th Respondent that considering the above, the Commission had to look into the question of who the rightful heir was of Mamakobe Sekgopo, who died in 1922, was it Matsorane 1, who ruled shortly after Mamakobe's death until 1958, and subsequent to him Piet Motshotsho, or was it William, who was borne five decades after his passing.

[116] It was further submitted that it is important to note that the dispute is one of lineage, and the claim is a claim that was lodged by William. William must therefore prove that his lineage is the correct one.

[117] To do so, William had to prove who Mamakobe's candle wife was, whether the candle wife was correctly married in terms of the customs of the community, and whether he was the son of that candle wife or her representative.

THE 11th RESPONDENT'S POINT OF DEPARTURE:-

[118] It was submitted that Josephine was recognised by the cabinet of the Lebowa Government as the acting Kgosigadi on behalf of her minor son K[...] D[...] S[...] following investigation of the state ethnologist.

[119] Along with such recognition, she was given jurisdiction in terms of section 12(1)(a) and 20(1)(a) of the Black Administration Act 38 of 1927 to try civil and criminal cases.

[120] The tribal authority was formally declared on the 25th of November 1959 under chief William Madzorane Sekgopo.

[121] It was submitted that Josephine was therefore recognised by way of administrative action, and it appears her predecessors were as well.

[122] It was submitted that the point of departure in this regard as per the common law, is the presumption of regularity in terms of the maxim *omnia praesumuntur rite esse acta donec probetur in contrarium*. (See *Phillips v SA Reserve Bank and Others* 2013 (6) SA 450 (SCA).)

[123] The 11th Respondent submitted that the maxim states that, in the absence of evidence to the contrary, it will be assumed by a Court that all legal requirements were complied with in the performance of official acts. (See *Beyers v Chin* 1928 AD 332)

[124] It was submitted that in this instance, it must therefore be assumed that Josephine was correctly appointed, until evidence to the contrary is provided.

[125] It was further submitted that the mechanism that the legislature promulgated to allow parties to investigate the correctness of such administrative actions, was by allowing them an opportunity to submit their claims to a provincial or national commission established in terms of the Framework Act of 2003, and its subsequent amendments.

- [126] William submitted its claim to the Kgatla Commission, who was tasked with the responsibility to investigate his claim and make recommendations to the Premier in terms of section 26 of the Framework Act.
- [127] It is the Premier who must decide on the recommendation, within 60 days of receiving same.
- [128] The commission must therefore investigate and state reasons as to whether the past administrative actions, recognising Josephine and her predecessors, must be overturned, and William identified instead.
- [129] It was submitted that in this regard, it is important to consider the purpose of the Committee's actions, in relation to the decision of the Premier. As stated in the matter of Premier of the Eastern Cape and others v Hebe and Others (2018) 1 All SA 194 (ECB), *"the purpose of the actions of the Committee is the determination of a claim or the resolution of a dispute, the outcome of which is likely to affect rights and to have a direct external effect. Although the Premier is empowered to make a decision that differs from the recommendation of the Committee, he or she is obliged to act on the recommendation. Section 26(3) of the Framework Act dictates that a decision regarding the recommendation must be taken within 60. That decision is informed and limited by the nature of the claim made or the dispute raised, and the investigation and recommendation of the Committee. While the actions of the Committee may be said to only have the "capacity to affect legal rights" during the course of the investigation, they impact directly on the rights of a person where the Premier, as in the present matter, decides to accept the recommendation of the committee. If the Committee's role in the decision making process was flawed, the entire process will be tainted. The recommendation and the decision, accordingly, constitute administrative action within the meaning of PAJA."*
- [130] It was further submitted that the terms of reference of the Kgatla commission were set out in section 25(2)(a)(i)-(x) of the Framework Act. Sections 2, 3, 4, 5 and 6 of

the Commissions Act apply, with the necessary changes, to the Kgatla Commission as per section 25(7) of the Framework Act.

- [131] The 11th Respondent submitted that as per the matter of President of the *Republic of South Africa v South African Rugby Football Union 2000 (1) SA 1 (CC)*, the purpose of making the Commissions Act applicable to a commission of inquiry assumes that a commission can call witnesses and obtain the production of documents and objects at pain of punishment. A Commission is an investigative body whose responsibility is to report to the president (read Premier) on its findings.
- [132] It was further submitted that the purpose of a Commission generally, is to investigate and find answers on certain questions or issues that were referred to it. The Commission must gather evidence, take witnesses statements, and test the veracity of such evidence through an inquisitorial investigation. A commission of inquiry is not a Court of law, and there are no issues that need to be subjected to a hearing before it. There is no Plaintiff and there is no Defendant in such proceedings.
- [133] It was submitted that in the matter of *Mahonisi Royal Family & 2 others v Premier of the Limpopo Province & 6 others, heard under case number 1366/2017*, and judgement granted on the 26th of May 2020, it was stated by Muller J that “a commission of inquiry does not function as a court of law. It is a body tasked to investigate facts in terms of an inquisitorial process and to apply customary law and traditions of the relevant communities, at the time that the events occurred. There are no adversaries as one would find or expect in a civil trial. In a civil trial disputes are crisply defined by way of pleadings between predetermined parties. Put differently, the commission must establish what the facts are and what the law was and then make a recommendation to the premier.”
- [134] The 11th Respondent submitted that it is therefore the case, that it was the task of this Commission of inquiry, the Kgatla Commission, to lodge an independent investigation into the history of the matter, with a view of establishing the true or most likely state of affairs in so far as it relates to the time when William’s alleged

claim to chieftaincy was lost. That is why the commission, in principle, is compiled out of individuals who are supposed to be experts in their field.

[135] It was submitted that in order to do so, the Kgatla commission could at pain of punishment call for the presence of witnesses, delve into the archives, request the production of documents, and perform any other information gathering exercises they may have felt necessary to investigate the matter properly.

[136] It is submitted, however, that when the report and the record is considered, they did no such thing, instead viewing themselves as a Court of law which had to determine and decide between the probability and credibility of two versions.

[137] The 11th Respondent further submitted that because this report was so tainted and insufficient, the Premier cannot be faulted for refusing to implement same. Indeed, as the point of departure is that the recognition of Josephine was done correctly, there was no information before the Premier and offered by the Commission, as to why her recognition should be overturned.

THE 11th RESPONDENT'S SUBMISSIONS ON THE COMMISSION'S REPORT AND THE DECISION OF THE PREMIER:-

[138] It was submitted that the investigative process followed by the Kgatla Commission is apparent from the record of proceedings, as well as the report that they submitted to the premier.

[139] It was submitted that the Commission correctly summarised the issue for investigation at page 197, namely that they must establish (1) the validity of the Applicant's claim (2) the circumstances that led to the derailment of the senior traditional leadership position if the claim by Matsorang William is valid (3) verification of the lineage to which the Applicant belongs and whether it is the legitimate lineage and to (4) establish the relationship between the two lineages in question and their statuses.

[140] Under methods of investigation the Commission claims that they “analysed written submissions”, conducted a public hearing and interviews, and a literature review.

[141] It was submitted that the transcript of the public hearing can be seen at pages 226 to 250 of the record. The record is only 24 pages, after translations from Pedi to English is included. The hearing was therefore extremely short, and there are no subpoenas on record. Accordingly, the Commission called no witnesses of their own.

[142] It was submitted that the following is also apparent from the written record:

142.1 William and Josephine is questioned first;

142.2 Josephine indicates that Motshibudi Lawrence Sekgopo will respond on her behalf and he is sworn in;

142.3 William then indicates that Peter Maloba Mohabe will respond on his behalf and he is sworn in;

142.4 According to the 11th Respondent, 20% of the public hearing was therefore spent on welcoming the parties and swearing in the witnesses.

142.5 It is submitted that the mode of questioning is vague and general, at page 232 Dr Shilubane for the commission asks Mr Lawrence “what is your customary law of succession” in an unspecified way, and Mr Lawrence immediately responds that he is not sure he understands the question, but then ventures an answer in any event (page 232).

142.6 The 11th Respondent submitted that Shilubane appears to be questioning Lawrence on the practices of today, and not those of 1922 (see pages 232 to 234).

142.7 It was submitted that at page 235, William then states his version in a general way, again referring to the practice according to him as it is today. Dr Shilubane's style of questioning is quite different with William, and he appears to be leading him and rephrasing his answers.

142.8 According to the 11th Respondent, the commission then starts scrutinising the founding of the community only at page 238.

142.9 The commission asks who Mamakobe's mother was, and who he married as a candle wife at page 238. The Commission nowhere asks for an explanation why his mother was from Maake, and he married Mailula.

142.10 About 8 pages is then spent on confirming the family trees which were provided by both parties, and at page 246, 4 pages before the end of the record, the commission merely asks William to place his version of how the diversion occurred on record.

142.11 William does so, saying the royal councillors sought a new surrogate mother from Maake, and then states "one of the councillors" took care of her. This is how William was borne.

142.12 The 11th Respondent submits that it is not stated on record who the councillors were who took this decision, who the seed raiser was, or when this occurred, although one must accept that this must have been around 1976 when William was borne.

142.13 It is also not explained how it came to be that Matsorane 1 was appointed instead, and how government had a hand in this process, if at all.

142.14 Lawrence is questioned and he states that they follow Bolabedu culture and not baroka culture, and after this, the meeting is closed (pages 248 to 250).

- [143] It was submitted by the 11th Respondent that the above public hearing was extremely superficial. The Committee does not once confront the parties with its concerns, or test the evidence, or inform the parties which aspects require attention, or even ask the parties to elaborate on certain issues that may be problematic, or where there is disagreement. The committee could not have conducted the public hearing in a more abbreviated way.
- [144] It was furthermore submitted that it appears that only four people were questioned - two from each side. The Commission does not ask which other witnesses would be able to attest to William's mother's marriage, for example. Such information would obviously be very useful, and should be subjected to scrutiny, but they do not do so.
- [145] It was further submitted that, there is no evidence on record that any further interviews were conducted, or that an independent literature review was done.
- [146] The only documents on record which are relevant to the dispute, i.e the history of this community, is the written submissions of each party.
- [147] It is not apparent that anything was done to investigate the veracity of both sets of submissions.
- [148] When summarising the evidence in their report (pages 198 to 203) the Committee appears to blend and summarise the written submissions of both sides, and what was said at the public hearing. There is no independent literature, or witnesses, or investigations.
- [149] It was submitted that at page 203, the Commission unfairly states "*Kgoshigadi Mokgadi Josephine vouchsafed no answer as to why the masechabas suddenly came from Mailula families, yet they initially hailed from the Maake families.*"

[150] As is clear from the oral testimony and the record in this regard, the commission never asked her for clarification, but what is more, the written submission of Josephine at page 144 of the record states that it is disputed that the Royal Family marries from the house of Maake only. It appears that the commission did not read all the written submissions.

[151] The 11th Respondent submitted that the Commission had the duty to investigate these discrepancies and failed to do so.

[152] It was submitted that the way in which the Commission settles this dispute, is by way of their “analysis” which the Court will see at page 203 and 204 of the record, which succinctly lists only five points, namely: (1) two royal families are associated with the production of Sekgopo senior traditional leaders, Mailula and Maake (2) the allegation of the Claimant that Maake was also used is “uncontested” because Lawrence did not know the name of all the preceding candle wives. The commission therefore has no reason to doubt the assertion of the claimant (3) the commission states that Josephine failed to explain the diversion from Maake to Mailula and therefore, they accept the “version” of the claimant and lastly, they state (4) Matsorane should have been a regent as a result.

[153] It was submitted that the above “analysis” refers to the “versions” of the parties and what aspects are “contested” and “not contested.” With respect, it is therefore clear that they misunderstood their mandate, completely.

[154] It was submitted that it was their job, as the commission, to do an independent investigation into the merits of the matter, and determine what happened, not to hold a quasi-hearing and distinguish between versions like a judge would do in a Court case.

[155] Their assertion that that the Second Respondent’s entourage failed to establish certain things, treats the Second Respondent like a plaintiff in a case that bears the burden of proof.

[156] The 11th Respondent further submitted that the Commission is tasked with not only applying the relevant customary law to the case before it, but also with determining what that law was at the relevant time. *This latter question depends primarily on historical and social facts, which the Commission must establish through evidence led before it and its own investigation.* (11th Respondent's emphasis).

[157] The 11th Respondent questions the probative value of William's testimony, along with his spokesperson, as well as Josephine and her spokesperson, for that matter, where the hearing is held 100 years after the events. It was submitted that one would expect a proper study to be conducted, to make a fair determination in this matter, but this never happened.

[158] It was further submitted by the 11th Respondent that the Commission also nowhere discusses how the erstwhile government officials performed their duties, or how the alleged chieftaincy was diverted.

[159] It was submitted that accordingly, the report of the Commission is of minimal value. In fact, it holds no value whatsoever. It contains no actionable information on which the Premier could take a decision and is merely an expression of the Committees opinion on the credibility of William and Josephine. One would expect the Commission to have had recourse to other evidence, which it did not do.

[160] The 11th Respondent referred to the matter of *Sokhela v MEC Agriculture and Environmental Affairs (Kwazulu-Natal) 2010 (5) SA 574* at paragraph 55 where it was stated as follows:-

"If the occasion identified as the opportunity to make representations is a meeting, but the participants are unaware that it was intended to serve the purpose of enabling representations to be made, and the ultimate decision maker does not disclose the concerns that might lead him to take an adverse decision, it seems to

me that no opportunity to make representations has been given.” (11th Respondent’s emphasis)

[161] The 11th Respondent submitted that it is against this context that the Premier’s decision should be viewed. The Premier makes the decision that the *status quo* should remain, as Josephine’s predecessors were not contested, and all customary rituals and processes were followed when she was married.

[162] The report of the Kgatla Commission contains no investigation as to how she was recognised, what went wrong from the side of government and when, how the government departments appointed the wrong person, or which mistakes were made by the government at which point.

[163] The presumption of regularity therefore demands that these decisions be left intact, since the “recommendation” of the commission does not even speak to them.

THE 11th RESPONDENT’S SUBMISSIONS ON THE GROUNDS OF REVIEW AND THE APPROPRIATE ORDER THAT SHOULD FOLLOW:

[164] It was submitted by the 11th Respondent that the founding affidavit in this matter contained no grounds of review, but the supplementary affidavit was rather used to set out all grounds of review.

[165] It was further submitted that William also makes some submissions that a decision was already taken by the previous Premier to remove Josephine in 2010 and appoint him. It is submitted that this internal intention, which was never actuated, is irrelevant to these proceedings. That the Premier never issued the necessary recognition certificate, nor did he publish the appointment in the government gazette and inform the house of traditional leaders of such.

[166] The 11th Respondent submitted that nothing was done with regards to those proceedings, which William lodged in terms of section 15(4) of the Limpopo Act, and

when no action was taken by the Premier, William up to today, has brought no administrative review to compel him to take a decision as envisaged in PAJA, in terms of the Act.

[167] The 11th Respondent submitted that accordingly, the review under case number 5799/2018 must be dismissed with costs, including costs of counsel on scale B, owing to the complexity of the matter and the prolixity of the papers.

[168] It was however further submitted by the 11th Respondent that should the Court find that the Premier's decision is in fact reviewable, on any of the grounds raised by the Applicant, the question would then be what the appropriate remedy is in these circumstances.

THE 11th RESPONDENT'S SUBMISSIONS ON AN APPROPRIATE REMEDY SHOULD A REVIEW BE GRANTED:-

[169] It was submitted that William seeks an order that the Premier's decision is set aside. In the event of grounds of review having been established, such an order will be granted given the nature of this matter, and consequently, as submitted by the 11th Respondent, this remedy will not be discussed further.

[170] Following on that, however, William seeks that the Court, instead of remitting the matter to the Premier, should substitute the Premier's discretion with its own discretion.

[171] William also seeks a declaratory order in relation to the rights of the parties in so far as the disputes which served before the Kgatla Commission.

[172] It is submitted by the 11th Respondent that the Court has no jurisdiction to grant prayer 4 as that order is sought outside of the 180-day statutory period in which the Applicant was duty bound to bring their administrative review or should have brought such review.

- [173] In this regard, it is important to note that in terms of PAJA and specifically section 6(2)(g) thereof, an administrative action susceptible to review is also an action which consists of a failure to take a decision.
- [174] By 2012, when their claim was submitted to the Kgatla Commission, William must have known, at the latest, that their request to the Premier was not acted upon.
- [175] It was submitted that William does not seek extension of that period to institute a review. The 11th Respondent submitted further that the consequent prayers also follow on this prayer and was not submitted on further as they are dependent on the ordering of prayer 4.
- [176] In addition, it was submitted by the 11th Respondent that the Limpopo Act states that a removal in terms of section 15 is carried out on request of the Royal Family as defined in the Act.
- [177] At the time the section 15 request was made by William and his entourage, no member of William's entourage or he himself had an acting or permanent appointment which complies with section 15(1)(c) or any transitional provision in terms of any legislation. This is apparent from the papers.
- [178] The 11th Respondent submitted that as a matter of law, they were not the Royal Family, and had the Premier acted on their recommendation, his actions would have been unlawful. It was submitted that if the "ruling family" could be someone else than the recognised senior traditional leader in terms of legislation, then there is no need or purpose in setting aside such appointments, which is exactly what William tries to do in this application.
- [179] It is submitted that in one breath, he seeks a certificate of recognition to be issued to him, and at the same time, he states that he and his followers sought the removal of Josephine in 2010 already.

[180] According to the 11th Respondent, these assertions are mutually destructive. The prayers in relation to the internal memos of the Premier in 2010, are therefore clearly included as a backstop and an afterthought.

[181] The 11th Respondent submitted that the main question is therefore, should the Court, in the event that it decides to review the Premier's decision in 2018, remit the matter or substitute the decision of the Premier and should the Court grant the declaratory orders sought.

THE 11th RESPONDENT'S SUBMISSIONS ON REMITTAL AND SUBSTITUTION:-

[182] It was submitted that substitution of an Administrators decision, should only be granted in the presence of *exceptional circumstances*, as stated in PAJA section 8(1)(c)(ii).

[183] The 11th Respondent further submitted that as a general proposition and as enunciated in *Johannesburg City Council v Administrator, Transvaal 1969 (2) SA 72 (T)*, a Court is slow to assume a discretion which has by statute been entrusted to another tribunal or functionary. Generally, the Court will not substitute its discretion for that of the functionary, but rather remit the issue with appropriate instructions.

[184] The 11th Respondent submitted that as stated by Heher JA in *Gauteng Gambling Board v Silverstar Development Ltd 2005 (4) SA 67 (SCA)*, a remittal is almost always the prudent and proper course when granting the order for review of an administrative decision, because the administrator "*is generally best equipped by the variety of its composition, by experience, and its access to sources of relevant information and expertise to make the right decision, the Court typically has none of these advantages and is required to recognise its own limitations.*"

[185] The 11th Respondent further submitted that in the matter of *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd 2015 (5) 245 (CC)*

the Constitutional Court notes that it is relevant to consider whether the Court has all the relevant information before it, and whether the administrator has already applied its specialised skills and knowledge, but even where a Court has all the relevant information before it, and the administrator already applied its specialised knowledge or skill in a instance, the nature of the decision may dictate that the Court must still defer to the administrator despite having all the relevant information before it.

[186] It was submitted that the Court must determine, ultimately, whether a substitution is just and equitable, which involves a consideration of what is just and equitable to all implicated parties.

[187] According to the 11th Respondent, William from the outset in applying for this order, understood that the report of the Kgatla commission and the contents of the record cannot stand on their own two feet. The deficiencies in this report are apparent on a cursory reading and that is obviously why they hired Professor Van Vuuren to compile his own report, which contains literature, interviews and research which is not found in the record.

[188] It was submitted that Van Vuuren goes much wider than the record, and the bulk of his report and the evidence that he has gathered, whatever its probative value, was not on record, but should be considered new material. The 11th Respondent submitted that it is off course the case, those copies of the material that he relies on is not at this stage before Court. He references such material in his bibliography to his report and in the report itself, but it is not on the papers before the Court.

[189] It is submitted that the content of his interviews with the “*elders*” whoever that may be, which was conducted on the 7th and 8th of April 2021, is also not before the Court. It was further submitted that none of these people who were interviewed by either experts, has ever been subject to cross examination in so far as where they disagree with each other, not at the Kgatla Commission, and not at this Court.

[190] The 11th Respondent submitted that when assessing whether there is a dispute of fact on the papers of an application, the Court will apply the test in *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd*, which states that a dispute of fact can only be present when (1) the Respondent denies the allegations made by the Applicant and offers positive evidence to the contrary (2) when the Respondent admits the allegations in the founding affidavit but offers other evidence to the contrary and (3) When the Respondent concedes he has no knowledge of the facts, but gives evidence as to why the facts alleged by the Applicant is not reliable.

[191] It was submitted that the factual disputes in this matter, are in abundance. The conflicting expert reports make that clear. It was submitted that the Court cannot possibly accept the one report or reject the other, without making sweeping judgements on credibility without having had the benefit of cross examination and other real and documentary evidence presented to it, and subject to scrutiny.

[192] It was further submitted that hitherto, for some reason, William has also elected not to apply to have these issues referred to trial. This is probably not a case where they can be referred to oral evidence, as the disputes are too far ranging. It was submitted that accordingly, if the matter proceeds as is, it must be adjudicated on the facts of the Respondent's in so far as the declaratory order is concerned, and the substitution for the decision.

[193] The 11th Respondent submitted that a Court should, in deciding disputed facts in application proceedings, always be cautious about deciding probabilities in the face of conflicts of facts in the affidavits. This is so because affidavits are settled by legal advisers with varying degrees of experience, skill and diligence, and a litigant should not pay the price for an adviser's shortcomings. Judgment on the credibility of the deponent, absent direct and obvious contradictions, should be left open.

[194] Lastly, the 11th Respondent submitted that the Premier obviously did not have any of these reports before him when his decision was made. He has never been given an opportunity to apply his resources, skills and expertise on the matter in relation to

what is stated in the reports of Mr's Mkhari and Van Vuuren. According to the 11th Respondent, it would therefore appear that the matter must be remitted.

THIS COURT'S ANALYSIS OF THE FACTS:-

[195] In my view, neither of the Respondents (Josephine, 10th, nor the 11th Respondents) put forward any defence to William's application for review. They only vehemently opposed the ancillary declaratory orders sought by William. Most of the 2nd, 10th and 11th Respondent's opposition was rather a support of the application under case number 2950/2024.

[196] What is however clear is that also Josephine, the 10th and 11th Respondents to some extent accept that the Premier's decision should be reviewed and set aside. They however do not agree that the ancillary declaratory orders should be granted and that the matter should rather be remitted back to the Premier.

[197] From a reading of the papers, the records and considering the Premier's decision and reasons for his decision, the Premier failed to consider relevant considerations and the evidence before him (Section 6(2)(e)(iii) of PAJA).

[198] The Premier further took the decision arbitrarily and capriciously if regard is had to all the facts that should have served before him (Section 6(2)(e)(iv) of PAJA) and his decision was not rationally connected to the information before him or the reasons given by him for his decision (Section 6(2)(f)(ii)(cc) of PAJA.)

[199] The way in which the Premier exercised his powers and performed his functions under the Framework Act and the Limpopo Act in pursuance of which this decision was taken, was so unreasonable that no reasonable person could have so exercised the power or performed the function. No reasonable person could have taken this decision with the information that was before the Premier. (Section 6(2)(h) of PAJA).

- [200] In my view, if the Premier did not agree with the recommendation by the Kgatla Commission or could not have made an informed decision, which he could not, he should have acted in terms of the empowering provisions of **Section 59 of the Traditional and Khoi-San Leadership Act, 3 of 2019**, read with the **Limpopo Traditional Leadership and Institutions Act, 6 of 2005**.
- [201] In my view, William has succeeded to allege and prove that the Premier has acted contrary to the provisions of **Section 6(2)(e)(iii), 6(2)(e)(iv) and 6(2)(f)(ii)(cc) and (dd), as well as Section 6(2)(h) of PAJA**. William has therefore, in my view succeeded to make a proper case for judicial review of the Premier's administrative action and the decision of the Premier stands to be set aside.
- [202] The only question remaining is therefore whether the matter should be remitted back to the Premier and whether this Court should make the ancillary declaratory orders.
- [203] In terms of **Section 8(1)(c)(ii) of PAJA**, a court is empowered to give an order that is just and equitable, including, in exceptional cases, an order substituting the Court's decision for that of the administrator. Circumstances under which a substitution order may be granted are not defined or identified in statute, however, the Constitutional Court has held in **Trencon Construction (Pty) Ltd v Industrial Development Corporation of SA Ltd & another 2015 (5) SA 245 (CC) at para 35** that this is principally an inquiry into what is just and equitable in the circumstances.
- [204] In **Gauteng Gambling Board v Silverstar Development Ltd & Others 2005 (4) SA 67 (SCA) at para 28** it was held that where upon a proper consideration of all the facts, a Court is persuaded that a decision to exercise a power should not be left to the designated functionary, the Court should order substitution.
- [205] If a Court is in as good a position as the administrator to make the decision, the Court should not hesitate to do so, particularly where the administrator is shown to prefer a particular outcome, and a remittal to it will only lead to further delay and expense. It was held by the Constitutional Court in **Trencon Construction (Pty)**

Ltd v Industrial Development Corporation of SA Ltd & another 2015 (5) SA 245 (CC) at para 47 that the enquiry entails the following:-

“In conducting this enquiry there are certain factors that should inevitably hold greater weight. The first is whether a court is in as good a position as the administrator to make the decision. The second is whether the decision of an administrator is a foregone conclusion. These two factors must be considered cumulatively. Thereafter, a court should still consider other relevant factors. These may include delay, bias or the incompetence of an administrator. The ultimate consideration is whether a substitution order is just and equitable. This will involve a consideration of fairness to all implicated parties. It is prudent to emphasize that the exceptional circumstances enquiry requires an examination of each matter on a case-by-case basis that accounts for all relevant facts and circumstances.”

[206] In my view, this court does not have all the relevant information before it. It is clear there is a dispute of facts as to the history of the Sekgopo's and in addition the respective expert reports are contradictory. Needless to say that the enquiry done by the Kgatla Commission, leaves much to be desired. In this regard, I am in agreement with the 11th Respondent's submissions that if the Kgatla-Commission's report was sufficient to stand alone, it would not have been necessary to appoint a further expert.

[207] This is a classic example where the State Respondents' failed the Sekgopo Community and I find it unreasonable and might I add unacceptable that this dispute has been dragging on for more than 30 years.

[208] It needs to be stated that in my view, all the parties lose sight of the relevant legislation and the position in dispute. The dispute is about the position of a Senior Traditional Leader, not a King or a Queen. In terms Section **Section 12(1) of the Limpopo Traditional Leadership and Institutions Act, 6 of 2005** stipulates as follows:-

“Recognition of senior traditional leader, headman or headwoman

(1) Whenever a position of a senior traditional leader, headman or head woman 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”

[209] Having considered **Section 12 of the Limpopo Traditional Leadership and Institutions Act, 6 of 2005**, in my view, this court is not in the position to declare

William the Senior Traditional Leader because the Royal Family has to identify a person who qualifies in terms of customary law of the traditional community concerned to assume the position in question and 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. In the present matter there is a clear dispute as to who the Royal Family is who should identify the relevant Senior Traditional Leader.

[210] In my view, there can be no recognition of William as Senior Traditional Leader prior to the establishment of who the real Royal Family is and the appointment of William as Senior Traditional Leader by the real Royal Family. This court will be bypassing the Royal Family's role if this court is to issue a declaratory order in this regard.

[211] In terms of **Section 59 of the Traditional and Khoi-San Leadership Act, 3 of 2019**, states as follows:-

"59. (1) (a) This section applies to any traditional leadership dispute other than a dispute that was dealt with or is being dealt with by the CTLDC contemplated in section 63(23).

(b) (i) Provincial legislation may provide for a mechanism to deal with traditional leadership disputes, excluding any dispute relating to a king or a queen or a kingship or a queenship: Provided that such legislation may not be inconsistent with this section.

(ii) Notwithstanding the relevant provisions of provincial legislation contemplated in subparagraph (i), a Premier may apply subsection (3).

(c) In the absence of provincial legislation as contemplated in paragraph (b)(i), a Premier must apply the provisions of this section.

(2) Any traditional leadership dispute relating to a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, kingship, queenship, principal traditional community, traditional community, headmanship or headwomanship, must be dealt with by the President in the case of a king, queen, kingship or queenship and by the Premier concerned in the case of any other dispute and the President or Premier, as the case may be, must—

(a) cause an investigation to be conducted by an investigative committee designated by him or her which committee must, in the case of a dispute concerning a king, queen, kingship or queenship include at least one member of the National House and in the case of any other dispute include at least one member of the relevant provincial house, to provide a report as well as recommendations on the matter in dispute within 60 days from the date of designation of the investigative committee; and

(b) refer the report to the relevant royal family or, where applicable, relevant traditional council for its written comments which must be submitted to the President or Premier, as the case may be, within 60 days from the date of such referral.

(3) The President or the relevant Premier, as the case may be, may refer any dispute, including any report, recommendations and comments contemplated in subsection (2), to the Minister for written comments and advice which must be submitted to the President or Premier, as the case may be, within 60 days from the date of such referral.

(4) After having considered the report and recommendations of the investigative committee, the comments of the royal family or traditional council and, where applicable, the comments and advice of the Minister, the President or relevant Premier, as the case may be, must take a decision on

the matter in dispute and inform the parties to the dispute in writing of his or her decision.”

[212] In my view, it would be in the interest of justice that the matter be referred back to the Premier and for the Premier to exercise his powers in terms of **Section 59 of the Traditional and Khoi-San Leadership Act 3 of 2019**, read with the **Limpopo Traditional Leadership and Institutions Act, 6 of 2005**. I pause here to state that in *Mogale and Others v Speaker of the National Assembly and Others [2023] ZACC 14* the Constitutional Court on 30 May 2023 declared the Traditional and Khoi-San Leadership Act 3 of 2019 invalid, however the order declaring the Act invalid was suspended for a period of 24 months to enable Parliament to re-enact the statute in a manner that is consistent with the Constitution or to pass another statute in a manner that is consistent with the Constitution. Therefore, currently, the Traditional and Khoi San Leadership Act, 3 of 2019 is still applicable.

COSTS:-

[213] William applied for costs only against the 1st, 2nd and 3rd Respondent's, however the 11th Respondent joined at a later stage and opposed the application. Also the 10th Respondent elected to proceed to oppose the application. In my view, there is no reason why the general rule applicable to costs in that the costs should follow the event, should not be applicable in the present matter. In the result the 1st, 2nd, 3rd, 10th and 11th Respondents should be ordered to pay the costs, jointly and severally, the one to pay, the other to be absolved.

CASE NO 2950/2024:-

[214] This then brings me to the second matter, Case No 2950/2024. In this review application, the question on the merits is whether the Applicants (the Sekgopo Traditional Council and Josephine) have shown that the Kgatla Commission has misdirected itself and whether its proceedings should be reviewed.

[215] The Applicants have however instituted this “2024 review” application approximately 5 years late. The Applicants apply in their Notice of Motion for the following relief:-

215.1 Condonation of the late filing of this review application, outside the prescribed 180 days as provided for in Section 7(2) of the Promotion of Administrative Justice Act, 2000;

215.2 Reviewing and setting aside the First (The Commission on Traditional Leadership Disputes and Claims (“CTLDC”), Second (Limpopo Provincial Committee on Traditional Leadership Disputes and Claims) and Sixth (Mr. T. Mahosi N.O.) Respondents’ decision to accept the dispute referral by the Seventh Respondent (William Matsorang Sekgopo (“William”) without due compliance with Section 21(2)(a) and (b) read with Section 26 of the Traditional Leadership Framework Act, 41 of 2003.

215.3 An order reviewing and setting aside the final recommendations and findings of the Second and Sixth Respondents;

215.4 An order directing that the dispute regarding the Senior Traditional Leadership of Sekgopo Traditional Community, be referred to trial or for oral evidence before the Limpopo High Court; and lastly

215.5 That the Eight and Ninth Respondents be ordered to pay the costs of this review application, together with any party opposing the application.

[216] Before dealing with the merits of the application, I deem it necessary to deal with the application for condonation first.

CONDONATION APPLICATION:

[217] The Applicants submitted that they acknowledge that the review application is brought more than 180 days after the report of the 2nd and 6th Respondents were issued on August 2017.

[218] In their explanation, the Applicants submit that on advice from their legal team, on 12 November 2019, they instituted review proceedings against the findings and recommendations of the Kgatla Commission under Case No 7700/2019.

[219] It was submitted that on or about 8 March 2021, Adv. Monyela, acting on their behalf, received communication for William's attorneys in which they proposed consolidation of the matters under Case Number 5799/2018 and 7700/2019. On the same day, Adv. Monyela responded to William's attorneys and indicated that he is of the same mind and thus amenable to the proposition in which they proposed consolidation of the matters.

[220] William's attorneys proceeded to issue an application for consolidation of the matters under case number 5799/2018 and 7700/2019 on 31 May 2021. On the 8th of June 2021, Adv. Monyela however proceeded to file a Notice of Withdrawal of the Review application under Case Number 7700/2019. The Notice of Withdrawal reads as follows:-

"Kindly take notice that the Applicants hereby withdraw their application in the above Honourable Court against the Respondents."

[221] The Applicants submit that they cannot explain why, and how it came about that Adv. Monyela withdrew the review application. They however wish to submit that the only time they consulted with Adv. Monyela regarding the consolidation, and after his explanation, they were of the view that the matters should not be consolidated and William must prove his case and they will proceed to prove their own case separately.

- [222] The Applicants submit that throughout their engagement with Adv. Monyela since June 2021, they were not aware that the review application under case number 7700/2019 was withdrawn. It was only around June/July 2023, when Josephine was unhappy with the attention and the service the matter was receiving, she approached her current legal representatives, HLM Mamabolo Attorneys, who accepted the instruction and proceeded to assist her in preparation for the court date of 30 October 2023.
- [223] Josephine submitted that Messrs HLM Mamabolo Attorneys indicated that she needed to open a file and as this matter involved a review application under Case Number 5799/2018, they will require a substantial amount of money as a deposit. She submitted that she was also informed that Counsel will have to be briefed in the matter.
- [224] Josephine further submitted that the Sekgopo Traditional Community is not financial affluent, and as such, in order to provide funding for the litigation, she needed to pay for the litigation from the funds she received as a stipend from the Limpopo Provincial Government paid to Senior Traditional Leaders.
- [225] HML Mamabolo Attorneys proceeded to send a notice of termination of mandate and request that the contents of the Applicants file be provided to Adv. Monyela on 7 August 2023. The court file contents were obtained around mid-August 2023. Counsel was subsequently briefed and consulted at around the end of August 2023.
- [226] The Applicants submitted that during the consultation with Counsel, he advised them that they should have brought a review application to set aside the KGatla Commission's report. The Applicants indicated that a review application was indeed issued. It was only then that they realized that the documents under case number 7700/2019 was not provided to Counsel.
- [227] The Applicants submitted further that it was only then that their attorneys of record sent a letter to Adv. Monyela requesting the documents under case number

7700/2019. It was also agreed that an expert report would be required in this matter to ensure that the Applicants are able to place before court and independent opinion which would deal with all the customary practices of the Sekgopo Traditional Community.

[228] On 27 September 2023 a consultation was held with Counsel and Mr. Mkari wherein Counsel raised the confusion regarding the application for Joinder and the Notice of Withdrawal of the review application under case number 7700/2019.

[229] On or about 28 September 2023, Joubert & May Attorneys wrote a letter to the Applicants legal representatives advising them that the application under Case Number 7700/2019 was withdrawn. According to Josephine, this was the first time she became aware with confirmation of this sad state of affairs.

[230] According to Josephine, Mr. Mamabolo on advice of Counsel contacted Adv. Monyela to ascertain the veracity of the withdrawal of the review application under case number 7700/2019. Mr. Mamabolo phoned Adv. Monyela and joined the Applicants to the call. Adv. Monyela confirmed that the Applicants instructed him to withdraw the review application under case number 7700/2019.

[231] According to Josephine, she was not aware that the review application was withdrawn. An urgent application was then brought to reinstate the review application which was struck of the roll for lack of urgency and a defective Founding Affidavit, on 6 February 2024.

[232] On the 22nd of February 2024, the Applicants attorneys addressed a letter to Joubert & May Attorneys requesting consent to reinstate the review application under case 7700/2019.

[233] On the 4th of March 2024, the Applicants decided that it would be in their best interest to re-institute the review proceedings a fresh, instead of trying to reinstate the proceedings under case number 7700/2019. According to the Applicants there

was no wilful disregard of the rules and timeframes of the court nor the provisions of PAJA to bring the review within 180 days.

THE RESPONDENTS' SUBMISSIONS:-

- [234] The Respondents submitted that in the present application (“**the 2024 review**”) the applicants not only bear the onus to show that condonation should be granted for the late institution of the review application, but they also have to prove that the grounds upon which they wish to review and set aside the Kgatla Commission’s proceedings, have merit. In this respect they have the additional burden of convincing this Court that, despite the deference that must be paid to specialist bodies such as the Kgatla Commission, those proceedings were so flawed that they are to be reviewed.
- [235] It was submitted that the Applicants should fail in both respects and that their review application should be dismissed with costs.
- [236] The Respondents submitted that Section 7(1) of the Promotion of Administrative Justice Act, 3 of 2000 (“**PAJA**”) provides that any proceedings for judicial review must be instituted “without unreasonable delay and not later than 180 days” after the date on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it, or might reasonably have been expected to become aware of the action and the reasons.
- [237] It was further submitted that Section 9(1) of PAJA provides that the period of 180 days referred to in section 7 may be extended for a fixed period by a Court on application. Section 9(2) of PAJA provides that the Court may grant an application for an extension of this time “*where the interests of justice so require*”.
- [238] The Respondents submitted that to put these time periods in perspective, the following dates are relevant:

238.1 The Kgatla Commission signed off its report and recommendations on 4 December 2017.

238.2 The Premier declined to approve the report and recommendations on 23 April 2018 and made his decision known to the respective parties.

238.3 The applicant in the claim before the Kgatla Commission, William Matsorang Sekgopo ("**William**"), took the Premier's decision on review already on 26 September 2018 in the 2018 review application which was served on Mokgadi Josephine Sekgopo ("**Josephine**") shortly thereafter.

238.4 Josephine filed her first answering affidavit in the 2018 review application already on 25 October 2018.

238.5 The Applicants therefore knew since at least October 2018 of the Kgatla Commission's administrative decision and the reasons for it, with the result that the present review application should have been instituted by no later than April 2019.

238.6 The Applicants did institute review proceedings in an application issued on 12 November 2019 under case number 7700/2019, more than a year after Josephine became aware of the Kgatla Commission's report and findings. In that review application no condonation was sought in the Notice of Motion for the late institution of the proceedings and the application was also not proceeded with. That application was withdrawn by a notice of withdrawal filed on 7 June 2021 by her erstwhile legal representative. On the date of the hearing of the 2018 review on 16 October 2023 the applicants brought an application for reinstatement of the review application under case number 7700/2019. This application was struck from the roll by the Judge M.G Phatudi J(as he then was) in his judgement dated 6 February 2024 on the basis that it was not urgent and secondly that it was fatally defective. Both the reinstatement application

and the 2019 review application had since been abandoned and replaced by the present application.

[239] It was submitted that the present application, which was issued on 26 March 2024 is therefore approximately 5 years out of time.

[240] The Respondents submitted that a delay in challenging administrative action may serve as a bar to such challenge. As pointed out by Hoexter and Penfold, Administrative Law in South Africa (3rd edition) at page 720 there are two main reasons for what is often referred to as the “*delay rule*” namely: “*to curb potential prejudice arising from the delay; and the value of finality and certainty in respect of public decision-making. As Khampepe J remarked in Tasima, delay ‘can prejudice the respondent, weaken the ability of the court to consider the merits of a review, and undermine the public interest in bringing certainty and finality to administrative action’.*”

[241] The Respondents further submitted that Section 7(1) of PAJA has been interpreted, and is certainly open to such interpretation, that a delay may be unreasonable even if proceedings are brought within the 180-day limit.

[242] The Respondents further submitted that once the 180-day limit is reached, the delay is taken to be unreasonable. In *Opposition to Urban Tolling Alliance v South African National Roads Agency Limited* [2013] 4 All SA 629 (SCA) at par 26 the Court stated the position as follows:

“At common law, application of the undue delay rule required a two-stage enquiry. First, whether there was an unreasonable delay and, second, if so, whether the delay should in all the circumstances be condoned (see eg Associated Institutions Pension Fund and others v Van Zyl and others 2005 (2) SA 302 (SCA) at paragraph 47 [also reported at [2004] 4 All SA 133 (SCA) - Ed]). Up to a point, I think, section 7(1) of PAJA requires the same two-stage approach. The difference lies, as I see it, in the Legislature's determination of a delay exceeding 180 days as

per se unreasonable. Before the effluxion of 180 days, the first enquiry in applying section 7(1) is still whether the delay (if any) was unreasonable. But after the 180-day period the issue of unreasonableness is pre-determined by the Legislature; it is unreasonable per se. It follows that the court is only empowered to entertain the review application if the interest of justice dictates an extension in terms of section 9. Absent such extension the court has no authority to entertain the review application at all. Whether or not the decision was unlawful no longer matters. The decision has been "validated" by the delay (see eg Associated Institutions Pension Fund (supra) at paragraph 46). That of course does not mean that, after the 180-day period, an enquiry into the reasonableness of the applicant's conduct becomes entirely irrelevant. Whether or not the delay was unreasonable and, if so, the extent of that unreasonableness is still a factor to be taken into account in determining whether an extension should be granted or not (see eg Camps Bay Ratepayers' and Residents' Association v Harrison [2010] 2 All SA 519 (SCA) at paragraph 54)" (my underlining).

[243] The Respondents referred to *Campsbay Rate Payers' and Residents' Association v Harrison* [2010] 2 All SA 519 (SCA) at para 54 the SCA discussed the requirements for the granting of an extension under section 9(2) of PAJA as follows: "The question whether the interests of justice require the grant of such extension depends on the facts and circumstances of each case; the party seeking it must furnish a full and reasonable explanation for the delay which covers the entire duration thereof and the relevant factors include the nature of the relief sought, the extent and cause of the delay, its effect on the administration of justice and other litigants, the importance of the issues to be raised in the intended proceedings and the prospects of success".

[244] The Respondents submitted that this is similar to the test applied by the Constitutional Court in applications for condonation where the Rules of the Court were not complied with. See in this respect *Mphephu-Ramabulana v Mphephu* 2022 (1) BCLR 20 (CC) at para 33 where it was put as follows: "The question in each case is 'whether the interests of justice permit' that condonation be granted. Factors such

as the extent and cause of the delay, the reasonableness of the explanation for the delay, the effect of the delay on the administration of justice and other litigants, and the prospects of success on the merits if condonation is granted, are relevant to determining what the interests of justice dictate in any given case” (footnotes excluded in the quotation).

[245] The Respondents submitted that in applying this test and taking into account the factors referred to above, the Applicants have not made out a case for the extension of time that they seek (presumably an extension of time from April 2019 to 26 March 2024 when this application for review was issued).

[246] The Respondents submitted that there is firstly no reasonable or full explanation for the delay and it certainly does not cover the entire duration of the delay:

246.1 They knew of the administrative decision and the reasons therefor by October 2018 at the latest.

246.2 It is clear from paragraph E.(f) of the founding affidavit at page 39 that the applicants were already advised on 12 November 2019 that they had to institute review proceedings against the findings and recommendations of the Kgatla Commission, which they did under the now abandoned case number 7700/2019.

246.3 They make no attempt to explain why that application did not even reach the stage where they complied with Rule 53(3) by delivering such portions of the record as may be necessary to the registrar and each of the other parties, with the result that the time within which to file answering affidavits, never commenced by the time that the review application was withdrawn on 7 June 2021. No explanation was given in that application why it was instituted late, save to state that they were not provided with the Kgatla Commission's report until the Premier's decision was taken on review.

246.4 The statement in paragraph E.(m) at page 41 of the paginated papers is also for another reason significant. In this paragraph Josephine confirms that she has throughout and since William launched his review application in 2018, consulted with her attorneys in the presence of those members of the royal family who support her. Although the intervention application brought by those same persons was granted in the 2018 review application by this Honourable Court, it is clear from the answering affidavit which the eleventh respondent filed in that application, that the true motive for this intervention was to have a proverbial second bite at the cherry attempting to supplement the weak defence raised by Josephine in the 2018 review application.

246.5 The further statement in this paragraph however, namely that Josephine and those members of the royal family were unaware that her review application under case number 7700/2019 was withdrawn, has conclusively been shown to be false. William's supplementary founding affidavit in the 2018 review application was delivered on 30 March 2022. In several places in that affidavit, he mentioned that the review application under case number 7700/2019 had been withdrawn.

246.6 Josephine delivered an answering affidavit, in which she dealt with the supplementary founding affidavit and Prof van Vuuren's report, on 6 June 2022. She and the members of the royal family who accompanied her during consultations, therefore not only read those statements regarding the withdrawal, but also filed an answering affidavit to those allegations which was delivered on 6 June 2022.

246.7 The Applicants were therefore aware since at least June 2022 that the previous review application had been withdrawn, but tender no explanation for waiting almost a further two years before the present application was instituted.

246.8 The repeated statements that Josephine and her supporters were therefore unaware of the withdrawal of her own review application, including the statement that she issued instructions to proceed with the present application “as soon as” she was “made aware of the fact” that the findings and recommendations of the Kgatla Commission “*exist in fact and remain binding unless set aside by a Court of law*”, are not only patently incorrect, but offers no reasonable explanation for the delay to wait with the issuing of this application until 26 March 2024, shortly before the 2018 review application was again enrolled for hearing in this Court on 15 May 2024. This, and the very late application for intervention by the very same persons who consulted with her throughout this dispute, caused yet another postponement of the 2018 review application.

[247] It was submitted by the Respondents that the effect of this delay on the administration of justice and the other litigants, including the seventh and eleventh respondents, the CTLDC (the second respondent) and the Commissioners of the Kgatla Commission (third to sixth respondents), are profound:

247.1 The CTLDC had a limited lifespan. The Limpopo Provincial Committee of the CTLDC was established in Provincial Gazette 2071 of 11 May 2012 with effect 14 May 2012 and had a lifespan up to 31 December 2015. Due to its workload, the public hearing into William Matsorang Sekgopo’s claim only took place on 14 July 2017 and, as stated above, the provincial committee signed off on its report on 4 December 2017.

247.2 This was a case where any review application against such report had to be launched without any delay and doing so within the 180-day time period, would have been reasonable. To expect these Commissioners, six years down the line and years after the Commission’s mandate terminated, to defend their decision, is unreasonable and prejudicial. It is not even clear if they had been properly served with the application.

247.3 As to William Matsorang Sekgopo, he and the Sekgopo Royal Family already lodged the first dispute into the appointment of Josephine as acting traditional leader on behalf of her son Koma in 1992, more than three decades ago. Before the lodgement of his claim before the CTLDC in 2005, their complaints were considered by the Commission on Traditional Authorities in 1995 who met with all the interested parties, including Josephine, and held in favour of William. Thereafter the Ralushai Commission again heard evidence on this dispute in 1997 and again found in favour of William. Interestingly Josephine's spokesperson who gave evidence before the Ralushai Commission, Lawrence Motcheudi Sekgopo, and who still supports her, conceded before the Ralushai Commission that no rituals such as *timamellô* were performed when Josephine was married, one of the reasons why the Ralushai Commission held against her.

247.4 In 2010 after the lodgement of an application by the royal family in terms of section 12(1) of the Limpopo Act, this dispute was again considered and decided in favour of William when the previous Premier granted this application. That is a binding administrative decision that has not been set aside on review.

247.5 William's claim which was lodged with the original Commission in 2005 was relodged, with further supporting documents with the second Commission in May 2012. It is now 12 years later and William is still waiting for justice to be done, despite the many findings in his favour, including the finding of the Kgatla Commission in December 2017 which is only now taken on review by the applicants. He is with respect entitled to finality.

[248] The Respondents submitted that as to the merits of the review application, it is submitted that the merits are weak. The grounds upon which the applicants rely for

the review of the Kgatla Commission's proceedings are extremely limited and without any merit.

CASE LAW AND THE COURT'S ANALYSIS:

[249] In my view, the Applicants' application for condonation is tainted with explanations and reasons so unreasonable, implausible and improbable that it is to be regarded as being false.

[250] I find the Applicants' submissions that they were not aware that the review application under case number 7700/2019 was withdrawn on 7 June 2021, until only 4 October 2023, to be highly improbable and false beyond any doubt.

[251] William in his supplementary founding affidavit which was filed on the 30th of March 2022 at paragraph 7.2 thereof stated as follows:-

"...The Premier filed the same defective Record in that review. The second respondent's review application was subsequently withdrawn."

[252] William further stated in his supplementary founding affidavit at paragraph 7.11 as follows:-

"I also sought an order that the two review applications be heard together, but prior to the hearing of the joinder application, the second respondent withdrew her own review application in which she sought the setting aside of the KGatla Commission's findings and recommendations. The Honourable Court will be addressed on the implications of this withdrawal at the hearing of this application."

[253] The Applicants deposed to a supplementary answering affidavit on 6 June 2022 in which they stated as follows:-

“4. In this affidavit, wherever I make submissions of legal nature, I do so on the advice of my legal representative which advice I verily accept.

5. ...

6. I do not intend to deal with every allegation made by the applicant in his founding affidavit and supplementary founding affidavit and my failure to deal with allegations therein is not an admission of their correctness but denied to the extent of their inconsistency with what is set out in the first answering affidavit and this affidavit.....”

And further at AD PARAGRAPH 7:-

“10. To an extent that the applicant narrates the genesis of this application to this point where he deposed to the supplementary affidavit, I respond thereto on this affidavit only to relevant matters. My failure to respond to irrelevant matters is not an admission of same.”

[254] What is clear from the above response by the Applicants is that they have read William’s supplementary founding affidavit, they took notice of the contents thereof, but chose to only respond to relevant matters. The Applicants further confirmed that they verily accept the advice of their legal representative.

[255] The Applicants therefore at least in two instances were made aware, at the latest on or about June 2022, had to be aware that their review application was withdrawn, yet the Applicants chose to sit idle and do nothing until March 2024.

[256] Furthermore, considering the on-going litigation, the filing of further documents and affidavits, the set down of the matter and the fact that the Applicants were throughout represented by legal representation, I find it highly improbable and in fact false that they did not know for approximately 3 years that their application was withdrawn.

- [257] In addition, the Applicants, after according to their version having become aware that their application was withdrawn on or about 4 October 2023, waited until March 2024 to bring this review application – a further 5 months.
- [258] In my view, the Applicants argument is plainly implausible and misconceived and underscores the wanton disregard displayed by the Applicants for the rules of the court.
- [259] In any event, in my view, where non observance has been flagrant and gross, as in this case and no reasonable and acceptable explanation for the delay has been advanced, an application for condonation should be refused whatever the prospects of success might be. (See **Chetty v Law Society, Transvaal 1985 (2) SA 756 (A) at 765 A-C; National Union of Mineworkers & Others v Western Holdings Gold Mine (1994) 15 ILJ 610 (LAC) at 613 E.**) Having regard to the above, there is in my view no reasonable and cogent explanation proffered by the Applicants.
- [260] Having regard to the history of litigation, as well as the importance of the matter to the Applicants, it would be inconceivable and incomprehensible why the Applicants would not have had any interest in obtaining information from their attorneys regarding the conduct of their review for approximately 2 years. The Applicants cannot hide behind their counsel's remissness or ineptitude, if there were indeed any, in these circumstances. Whilst there are cases where the court will show great reluctance to penalize a litigant for the conduct of his attorneys, this is not such a case. The Applicants, in my view cannot be held to have been without blame for the delay in approaching the court for condonation and the blame for the delay must not only fall on their previous counsel but must be ascribed to them as well, if there is any truth in their submissions in this regard. In any event, the remissness and negligence of the Applicants' counsel is so inexcusable to warrant the refusal of an application for condonation notwithstanding the blameworthiness of the Applicants. Even if no blame can be ascribed to the Applicants but to their legal representation, it is accepted that in deserving cases such as this one:

“There is a limit beyond which a litigant cannot escape the results of his Attorney’s lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of this Court”
(Salojee v and Another NNO v Minister of Community Development 1965 (2) SA 135 (A) AT 14 C)

[261] Even if the Applicants might have had a good prospect of success, the non-observance of the rules has been flagrant and gross in this case, and the Applicants submissions are so far removed from the possible truth that an application for condonation should not be granted whatever the prospects of success.

[262] In this case I adopt the view that whatever sympathy the Court might have shown for the Applicants must yield to the more important principle that a flagrant disregard for the court rules should not be countenanced. (See **Moraliswani v Mamili 1989 (4) SA 1 at 10E-F, Ferreira v Ntshingila 1990 (4) SA 271 A at 281J-282A, Blemmenthal & Another v Thomson NO [1993] ZASCA 190; 1994 (2) SA 118at 121I-122 B.**)

[263] In the result, the condonation application stands to be dismissed. The only issue remaining is the issue of costs. As in case number 5799/2018, there is no reason why costs should not follow the event. In the result, the Applicants (Sekgopo Traditional Council and Josephine, should bear the costs, jointly and severally, the one to pay, the other to be absolved.

[264] In the result, I therefore make the following order:-

CASE NUMBER: 5799/2018:-

264.1 The decision of the First Respondent (The Premier) taken on 23 April 2018 not to approve the recommendation that the Applicant’s (William’s) claim for the restoration of the Sekgopo Senior Traditional Leadership be granted, as

contained in a report by the Provincial Committee of the Commission on Traditional Leadership Disputes and Claims (the Fifth Respondent) dated 4 December 2017, is reviewed and set aside.

264.2 The matter is remitted back to the Premier for his consideration and to be dealt with in accordance with the empowering provisions of Section 59 of the Traditional and Khoi-San Leadership Act, 3 of 2019, read with the Limpopo Traditional Leadership and Institutions Act, 6 of 2005.

264.3 The 1st, 2nd, 3rd, 10th and 11th Respondents are ordered to pay the costs of the application, jointly and severally, the one to pay the other to be absolved, including the costs of two counsels (One Senior and One Junior) only in the event where so employed. The costs of the application are to be taxed and paid on Scale B, except in respect of the Senior Counsel's costs, which costs are to be taxed and paid on Scale C.

CASE NUMBER 2950/2024:-

264.4 The application for condonation is dismissed and consequently, therefore the application for review under Case Number 2950/2024 is also dismissed.

264.5 The Applicants are ordered to pay the costs of the application, jointly and severally, the one to pay, the other to be absolved, including the costs of two counsels (One Senior and One Junior) only in the event where so employed. The costs of the application are to be taxed and paid on Scale B, except in respect of the Senior Counsel's costs, which costs are to be taxed and paid on Scale C.

M. NAUDÈ-ODENDAAL
JUDGE OF THE HIGH COURT,

**LIMPOPO DIVISION,
POLOKWANE**

APPEARANCES:

HEARD ON : **26 JULY 2024**
JUDGMENT DELIVERED ON : **21 JANUARY 2025.**

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be **21 JANUARY 2025 at 10h00**

FOR THE APPLICANT IN CASE NUMBER 5799/2018

AND THE 7th AND 11th RESPONDENTS IN

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FOR THE 2nd and 10th RESPONDENTS IN

CASE NUMBER 5799/2018 AND

THE APPLICANTS IN

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FOR THE 11th RESPONDENT IN

CASE NUMBER 5799/2018 AND

THE 11th RESPONDENT IN

CASE NUMBER 2950/2024 : Adv. A.C. Diamond
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