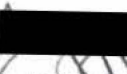


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 1929/2021

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED</u>
DATE: <u>29/4/2025</u> SIGNATURE: 	

In the matter between:

MAMOSHIANE MAGGY MATLALA

FIRST APPLICANT

SEMANG MATLALA ROYAL FAMILY

SECOND APPLICANT

SEMANG MATLALA TRADITIONAL AUTHORITY

THIRD APPLICANT

And

PREMIER OF THE LIMPOPO PROVINCE

FIRST RESPONDENT

MEC FOR CO-OPERATIVE GOVERNANCE

HUMAN SETTLEMENT AND TRADITIONAL

AFFAIRS, LIMPOPO PROVINCE

SECOND RESPONDENT

LIMPOPO HOUSE OF TRADITIONAL LEADERS

THIRD RESPONDENT

KGOSHIGADI PRIMROSE MAPITSI RAHLAGANE

FOURTH RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] On 28th May 2007 the applicants made an application to the first respondent in terms of section 3 of the *Limpopo Traditional Leadership and Institutions Act*¹ (Limpopo Act). The applicants were seeking that the first respondent recognise Semang Matlala Traditional Community in terms of the Limpopo Act and appoint the first applicant as a senior traditional leader of the community. The applicants claim was registered with the Commission on Traditional Leadership Disputes and Claims (Commission). Before the Commission, the applicants' claim was disputed by the fourth respondent.
- [2] The Commission found in favour of the applicants, and made recommendations to the first respondent that (i) the claim of the first applicant for her recognition as acting senior traditional leader of Semang Matlala Traditional Authority at Lekgwareng be granted; and (ii) the traditional community of Semang Matlala (Lekgwareng) be recognized in terms of section 2 of Act 41 of 2003 as amended. On 19th November 2019 the first respondent took a decision to decline both claims by the applicants, based on the recommendations of the third respondent. The first respondent failed to provide the applicants with the reasons for his decision despite requests by the applicants on two occasions.
- [3] The applicants have instituted a review application seeking an order to review and set aside the decision of the first respondent dated 19th November 2019.

¹ 6 of 2005

The applicants are further seeking an order that the first respondent be directed to implement the recommendations of the Commission within 30 days of the court judgment. The grounds of the applicants' review application are that the first respondent was under the statutory duty to implement the recommendations of the Commission within 30 days after receipt, and that his failure to do so, contravenes the empowering provisions. The Commission made its recommendations to the first respondent on 30th June 2014, but the first respondent took the decision to decline the applicant's claim on 19th November 2019. According to the applicants it is presumed that the first respondent took the decision without good reasons, since he had failed to furnish reasons for his decision.

- [4] The applicants submitted that they have instituted their review application during March 2021 as they were still waiting the first respondent to give them reasons for his decision, but has failed to do so. The review application was instituted without the first respondent having furnished them with the reasons for his decision. The 180 days as a matter of law cannot be said to have to run its course or to have been exhausted wherein the first respondent has failed to give any reasons for his decision. From 26th March 2020 to June 2020 there was a complete lockdown of the country wherein movements of the citizens were strictly prohibited. During this period the applicants could neither consult with their legal representatives to take any further step to pursue the matter. Therefore, there was no unreasonable delay in instituting the review application.

- [5] The fourth respondent has filed a notice to abide, whilst the first to third respondents (respondents) are opposing the applicants review application. The

respondents answering affidavit was deposed by Nnana Idah Manamela, the deputy director: corporate services in the office of the first respondent. In the answering affidavit the respondents conceded that the Commission had prepared a report dated 30th June 2014 (first report) in which it recommended that the applicants claim be accepted. The respondents concede that once the Commission had made a decision concerning a claim or dispute, it is required to forward that report to the first respondent who is obliged to implement the decision. The respondents submit that the first report of the Commission did not reach the office of the first respondent. (However, the first report formed part of the record of proceedings filed by the respondents in terms of Rule 53).

- [6] According to the respondents, on 21st December 2017 the Commission completed its second report which was sent to the first respondent. In the second report the Commission recommended that the claim of the first applicant for the recognition of the third applicant be referred to the third respondent. The first respondent referred the report of the Commission to the third respondent who initiated their own processes by holding interviews with the affected parties. The third respondent recommended that the claim of the first applicant as a senior traditional leader be declined. On 19th November 2019 the first respondent notified the applicants that he had considered the findings and recommendations of the committee of the third respondent and has decided to decline the applicants claim. The respondents have also raised several points *in limine* which they have abandoned at the commencement of the hearing of this matter.
- [7] Counsel for the respondents have filed heads of argument for first and second respondents only. Before this court, counsel for the respondents conceded that

the process which the third respondent took on receipt of the report by the Commission from the first respondent is not allowed and provided for in the Limpopo Act and *Traditional Leadership and Governance Framework Act*² (Framework Act). The Framework Act was replaced by the *Traditional and Khoi-San Leadership Act*³. However, at the time when the claim was lodged, investigated and Commission completed its reports and sent them to the first respondent, the applicable national legislation was the Framework Act. Counsel for the respondents further conceded that the third respondent had acted outside the powers conferred to it in terms of section 30 of Limpopo Act, but that the applicants have failed to review and set aside the second report of the Commission. Counsel for the respondents had submitted that the proper order to be granted was to remit the matter back to the first respondent for reconsideration.

- [8] The applicants have instituted their review application in terms of the *Promotion of Administrative Justice Act*⁴ (PAJA) seeking to review and set aside the first respondent's decision dated 19th November 2019 where the first respondent had declined the applicants' claims of the first applicant as the acting senior traditional leader of the third applicant, and also the recognition of the traditional community of Semang Matlala (Lekgwareng). The question to be decided is whether the decision of the first respondent to decline the applicants' claims was procedurally unfair or is not rationally connected to the information that was before him, and must therefore be reviewed and set aside.

² 41 of 2003

³ 3 of 2019

⁴ 3 of 2000

- [9] It is not in dispute that on 28th May 2007 the applicants have made an application for the recognition of a traditional community as well as the recognition of the first applicant as the acting senior traditional leader of Semang Matlala Traditional Authority at Lekgwareng. It is also not in dispute that on receipt of the application, the first respondent referred the applicants' application to the Commission. In terms of section 25(1) of the Framework Act the Commission had authority to investigate and make recommendations on any traditional leadership dispute. The Commission had also powers to investigate disputes or claims concerning senior traditional leadership in accordance with customary law and customs, either upon request or of its own accord.
- [10] In terms of section 26(2) of the Framework Act, the Commission must convey its recommendations to either the President and Minister or the relevant provincial government within two weeks of making the recommendations. In terms of section 30 of the Limpopo Act, the first respondent must within seven days of receipt of the decision of the Commission refer such decision to the provincial house of traditional leaders for its advice on implementation. The provincial house must submit its advice within fourteen days to the first respondent, and thereafter the first respondent must implement the decision of the Commission within thirty days of receipt of such decision from the Commission. The decision referred in the Limpopo Act will refer to recommendations referred to in the Framework Act.
- [12] On 30th June 2014 the Commission send its first report containing its decision to the first respondent. According to the respondents' answering affidavit, the first respondent did not receive the Commission's first report, but had received the Commission's second report dated 17th December 2017, which is the report

that the first respondent had acted on. However, it is surprising that the respondents when they filed the record of the proceedings in terms rule 53(3), they have filed the same first report which they allege that it did not reach the office of the first respondent. No explanation was given how they got hold of that report and what prevented that report from reaching the office of the first respondent. Since the respondents were able to file the first report as part of the record of the proceedings in terms of rule 53(3), without any explanation, the only inference to be drawn is that the report has been in their possession from the time the Commission had delivered it to them, and they deliberately ignored it and not acted on it.

- [13] Section 30 of Limpopo Act is clear on how the first respondent should implement the decisions of the Commission on receipt of them. The first respondent is required to refer the decision of the Commission to the house of traditional leaders for its advice on implementation. The section uses the word "must" which makes it peremptory for the first respondent and the house of traditional leaders. The role of the house of traditional leaders on this issue is limited to giving advice on the implementation of the decision of the Commission and not to re-open the process and hear the submissions afresh like they did in the current matter regarding the second report. The process which the house of traditional leaders has followed on receipt of the second report is not provided for in either the Framework Act or the Limpopo Act. The house of traditional leaders has given themselves the powers which they did not have and have therefore acted beyond their powers.

[14] In *Langa v Premier, Limpopo and Others*⁵ the court said:

[15]...And this where section 30 of the Limpopo Act come in. The section, which is headed "Implementation of decisions of the commission", requires the first step, that the Commission's recommendations be referred to the Provincial House for its advice on implementation.

[16] Together, section 26 of the Framework Act and section 30 of the Limpopo Act empower the Premier to take a decision on a recommendation made by the commission and to implement that recommendation, provided the requirements of each provision are met".

[15] Once the requirement of each provision is met, the first respondent is obliged to implement the recommendations of the Commission by using his discretion to either implement or decline the claim. When he declines the claim, he is obliged to give reasons to the affected parties for that, of which he had failed to do in the case at hand despite several requests. From the respondents' own evidence which is the record of the proceedings filed, the first report of the Commission has been in possession of the respondents. The respondents have failed to give an explanation as to which of the provisions has not been met which empowers the first respondent not to implement the recommendations of the Commission as contained in the first or second reports. It is not open to the first respondent to hand pick which report to implement without giving sound reasons.

[16] Even if this court was to accept that the first respondent was correct in acting on the second report, the second report recommended for the acceptance of the applicant's claim, and recommended that the claim of the applicants be referred to the Limpopo Provincial House of Traditional Leaders. The first respondent duly referred the second report to the house of traditional leaders

⁵ [2021] ZACC 38; 2022 (3) BCLR 367 (CC) (5 November 2021) at paras 15 and 16

where the house traditional leaders reopened the process by making consultation with the Kotule Royal Family. The house of traditional leaders came to the findings that contradict the findings of the Commission. Based on their findings, the house of traditional leaders recommended to the first respondent that the claim of the of the first applicant be declined. The first respondent acted on the basis of the recommendations of the house of traditional leaders and declined the applicants claim.

[17] As stated in section 30(1) of the Limpopo Traditional Act, in this regard, the role of the provincial house of traditional leaders was limited to give advice to the first respondent on the implementation of the Commission's report and not to reopen the process afresh. By reopening the process afresh, making their own investigation, findings and recommendations, the provincial house of traditional leaders have acted beyond the powers given them by section 30. They house of traditional leaders have given themselves the powers which they did not have. If the house was unhappy with the report of the Commission, the proper route to follow was to bring an application for the review of the Commission's report which they have failed to do.

[18] The recommendations of the house of traditional leaders was therefore flawed as it was not taken as empowered by the Limpopo Act or any other legislation. Since the first respondent has acted based on the flawed recommendations from the house of traditional leaders, the decision of the first respondent to decline the applicant's claim was not rationally connected to the information that was before him as contained in the Commission's reports. On that point alone the first respondent's decision to decline the applicant's claim stands to be reviewed and set aside.

[19] The first respondent did not consider the Commission's first report without any justifiable reasons. The first report was also not referred to the house of the traditional leaders for their advice on its implementation. The flawed report of the house of traditional leaders was based on the Commission's second report, and I doubt whether the house of traditional leaders was aware of the existence of the first report. It will therefore be just and equitable to remit the matter back to the first respondent in order to refer the first report to the provincial house of traditional leaders for their advice on how to implement the Commission's report, and also for the house of traditional leaders to act within the powers vested in it.

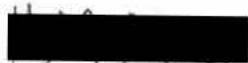
[20] In the result the following order is made:

20.1 The decision of the first respondent dated 19th November 2019 wherein he declined an application for recognition of the applicants' claim in terms of the Traditional Leadership and Governance Framework Act, 2003 (Act No 41 of 2003) is hereby reviewed and set aside.

20.2 The matter is remitted back to the first respondent to refer the first report of the Commission to the provincial house of traditional leaders and the relevant local house of traditional leaders for their advice on implementation of the Commission's report in terms of section 30(1) of the Limpopo Traditional Leadership and Leadership and Institutions Act 6 2005.

20.3 In all further decision-making in the matter the provisions of the Traditional and Khoi-San Leadership Act 3 of 2019 must be taken into account.

20.4 The first and second respondents to pay the applicants costs on party and party scale B.


KGANYAGO J

JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

Counsel for the applicant	: Adv CT Malatji
Instructed by	: Makgoba Kgomo Makgaleng Inc
Counsel for 1 st & 2 nd respondents	: Adv S Mathabathe
Instructed by	: State Attorney, Polokwane
Date heard	: 6 th March 2025
Electronically circulated on	: 29 th April 2025