

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NUMBER: 1640/2021

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

In the matter between:

KGOSHI NGOANATSOMANE JIM RANTHO N.O.

1ST APPLICANT

BAHLAKWANE BA RANTHO TRADITIONAL COUNCIL

2ND APPLICANT

-and-

LEKGEMANE JIM RANTHO

1ST RESPONDENT

**MINISTER OF CO-OPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS**

2ND RESPONDENT

THE PREMIER OF THE LIMPOPO

3RD RESPONDENT

THE MEC FOR COOPERATIVE GOVERNANCE HUMAN SETTLEMENT & TRADITIONAL AFFAIRS	4 TH RESPONDENT
THE MINISTER OF MINERAL RESOURCES AND ENERGY	5 TH RESPONDENT
FETAKGOMO TUBATSE LOCAL MUNICIPALITY	6 TH RESPONDENT
BAHLAKWANA BA RANTHO TRADITIONAL COUNCIL	7 TH RESPONDENT
SEKOTOME PETRUS RANTHO	8 TH RESPONDENT
MOOKWANE SELINA RANTHO	9 TH RESPONDENT
NGWANAMOHUBE THELMA “NGWANANGWATO” RANTHO	10 TH RESPONDENT
NTEPANE LUCY RANTHO	11 TH RESPONDENT
MANYAKU FLORAH KGOLOKO	12 TH RESPONDENT
PHOTO WILLIAM RANTHO	13 TH RESPONDENT

Delivered : 4 September 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **4 September 2025 at 10:00 am.**

Date heard : 28 May 2025

Coram : Bresler AJ

JUDGMENT

BRESLER AJ:

Introduction:

- [1] The matter before court comprised a main application for interdictory and declaratory relief, a counter application (essentially for declaratory relief), an application to strike out certain documents as well as numerous technical objections raised by the respective parties.
- [2] During the course of the proceedings, the parties agreed that the Counter Application should not be determined by the Court and same was therefore postponed *sine die*, and the costs thereof reserved.
- [3] What remained to be determined was the Main Application for interdictory and declaratory relief and the Application to Strike out the Replying affidavit.

Factual synopsis:

- [4] To have a holistic view of the matter, it is apposite to highlight the background briefly as it appears from the document filed on record.

- [5] It is the 1st and 2nd Applicant's case that they are respectively the only lawful structure representing the Ga-Rantho Village. As such, the conduct of the 2nd Respondent presenting himself as the Chief of the Ga-Rantho Community is unlawful and invalid. Appropriate relief is therefore sought on this basis. It does not appear from the Founding affidavit that the 1st Applicant is in possession of a certificate of recognition as a Chief / Traditional Leader issued by the Premier and in accordance with the current prevailing legislation.
- [6] In justification of their view that they are the legitimate structure, they submit that the 1st Applicant was appointed as Chief of the Rantho Tribe by the then Chief Minister of the Lebowa Government, Dr CNM Phatudi, with effect from 1 September 1977. The alleged letter of appointment was annexed to the Founding affidavit.
- [7] The 1st Respondent submits that the 1st Applicant is merely a Regent or Acting Chief. The 1st Respondent (with its Traditional Council) has consequently launched proceedings in this division under case number: 160/2017 seeking *inter alia* to set aside the certificate of appointment of the 1st Applicant. This application is still pending. It is also apparent from their Answering affidavit that they do not recognise the 1st Applicant as their Chief.
- [8] The 1st Respondent consequently raised the point *in liminé* that the 1st Applicant lacks the required *locus standi*. The 1st Applicant responded to this challenge by providing further documentary proof in reply. The replying affidavit also contains a copy of the Government Gazette wherein the jurisdictional area of the 2nd Applicant was confirmed as well as the identity of the 1st Applicant's predecessor.

- [9] The 1st Respondent also raised the issue that the 1st Applicant's Founding affidavit was not properly commissioned as the annexures were not initialled.
- [10] The 8th to 13th Respondent largely joined issues with the 1st Respondent.
- [11] The Applicants raised an objection against the First Respondent's conduct in filing two Answering affidavits. The Applicants submit that the filing of further affidavits can only be allowed with leave of the court. On this basis, the second Answering affidavit should be disregarded as being *pro non scripto*.
- [12] The Respondents, in return, also objected against the new matter in reply and the fact that the Applicants are now making out their case in reply. This is essentially the main subject of the Application to Strike out.

Issues that require determination:

- [13] What lies at the heart of this application is a determination of the validity of the 1st and 2nd Applicant's status as respectively Traditional Leader and Traditional Council. It must be determined if the Applicants were appropriately recognised in terms of the **Traditional Leadership and Governance Framework Act**, Act 41 of 2003 (hereinafter the 'TLGFA').
- [14] It also transpired during the proceedings that no proof of service of the application on the 2nd to the 7th Respondent. Although no relief is pertinently prayed for against them, specifically the 2nd to 4th Respondent's view on the recognition of the Applicants may be critical to a determination of the underlying dispute.

The Applicable Legal Principles:

- [15] It is a trite principle of the law of civil procedure that all the essential averments must appear in the Founding affidavit. New matter in a replying affidavit will be allowed in the discretion of the court.
- [16] In the exercise of this discretion a court should in particular have regard to: (i) whether all the facts necessary to determine the new matter raised in the replying affidavit were placed before the court; (ii) whether the determination of the new matter will prejudice the respondent in a manner that could not be put right by orders in respect of postponement and costs; (iii) whether the new matter was known to the applicant when the application was launched; and (iv) whether the disallowance of the new matter will result in unnecessary waste of costs.¹
- [17] This was confirmed by the Supreme Court of Appeal in the case of ***Mostert and Others v Firststrand Bank Ltd t/a RMB Private Bank and Another***.²
- [18] In the case of ***Trustees, Bymyam Trust v Butcher Shop & Grill CC***³ the Court stated:

¹ Van Loggerenberg DE, **Erasmus: Superior Court Practice** 3rd Edition (Vol 1), Juta (2025) on page D1 Rule 6-29

² 2018 (4) SA 443 (SCA)

³ 2022 (2) SA 99 (WCC)

'It is trite that such discretion must be exercised judicially, having regard to all the facts and circumstances of the particular matter, and in my view also having regard to the procedural history of the particular matter which such court is seized with. I say this because in a matter such as the one before me, where there were various amendments which affected and supplemented the initial relief sought by the parties, together with condonation and irregular-step applications, the material facts and circumstances relevant to the exercise of my discretion when determining the striking-out application cannot be viewed in isolation.'

- [19] In the case of **Berg v Gossyn**⁴ leave was granted to supplement the petition where the case whereupon the Applicant relied in the Founding affidavit, was not sufficiently set out but the allegations were contained in the Replying affidavit. The following was stated⁵:

'Die posisie wat ontstaan in 'n geval soos die huidige is, tenspyte van die klaarblyklike verskille, in baie opsigte soos 'n geval waar die aansoek gedoen word om 'n nuwe oorsaak van aksie gedurende of voor 'n verhoor in 'n dagvaarding te voeg. Volgens Herbstein en van Winsen in hulle werk, Civil Practice of the Superior Courts in South Africa, op bl. 125, behoort so 'n aandoek in beskikte gevalle toegestaan te word sodat die wesenlike geskilpunte tussen die partye besleg kan word. Die saak van Greyling v

⁴ 1965 (3) SA 702 (O)

⁵ At 705

Nieuwoudt, 1951 (1) SA 88 (O), is 'n goeie illustrasie van die omstandighede waarin so 'n aansoek toegestaan behoort te word – altyd onderhewig aan 'n kostebevel ten gunste van die teenparty. Op bl. 93 van die bogenoemde saak verklaar DE BEER, R.P., soos volg:

'But the argument which to my mind is conclusive against the absolution contention, is that should I accede thereto I would merely penalize plaintiff by forcing him to commence action de novo and to bear the expense thereof when the effect will nevertheless be to bring before the same Court the same parties on the same issue: whilst I am in the circumstances constrained to ensure the defendant against prejudice, this to my mind does not entail gratuitously penalizing the plaintiff. I am therefore disposed to come to his assistance.'

[20] *In casu* it cannot be denied that the 1st Respondent is well aware of the certificate of appointment issued in favour of the 1st Applicant. This appears quite clearly from the relief prayed for in case number: 160/2017. The fact that they dispute that the 1st Applicant is entitled to be so appointed is neither here. The appointment stands until set aside by a Court of law. The Respondents clearly elected not to pursue the 2017 case with vigour. This leaves considerable doubt as to the *bona fides* of their opposition to the said appointment some 8 years later and without resorting to the appropriate remedy.

[21] The Applicants did state the basis of their *locus standi* in their Founding affidavit. Additional information was merely placed before court in reply. On this basis, this

Court is inclined to exercise its discretion in allowing this information into evidence. Likewise, the further evidence merely confirms what has already been stated in the Founding affidavit.

- [22] The Applicants furthermore provided information pertaining to the further conduct of certain of the Respondents. This is information that is relevant to the determination of the proceedings and could not have been disclosed earlier simply because it had yet to transpire. The Court is therefore inclined to also accept the evidence subject to the Respondents having an opportunity to answer thereto.
- [23] The parties were specifically tasked to provide supplementary Heads with regards to *inter alia* the relevance of the Government Gazette dated the 26th of April 1968 that was annexed to the Replying affidavit.
- [24] In accordance with Section 224 of the **Criminal Procedure Act**, 51 of 1977 and Section 5 of the **Civil Proceedings Evidence Act**, 25 of 1965, it is not necessary to prove Acts of Parliament or other matters published in the Government Gazette. A court may take judicial notice thereof. This presupposes that evidence need not be formally introduced by a witness and on this basis alone, the evidence pertaining to the recognition of the 2nd Applicant and the predecessor of the 1st Applicant is admissible even in the absence of being confirmed by affidavit.
- [25] As such, this Court accepts that the Rantho tribe was established and afforded certain territorial boundaries as contemplated in the said Government Gazette. The Court furthermore accept that Mmogeng Piet Rantho was appointed as the Acting Chief.

- [26] Having said this, this does not presuppose that the Court accepts that the Applicants are entitled to the relief prayed for. In this regard it is apposite to highlight again that the application was not served on the relevant Respondents that has a vested interest in the recognition of the 1st Applicant (and the potential status of the 2nd Applicant). It also appears that, at the time of the delivery of the Replying affidavit, that this formal recognition process was still pending to a certain extent as no formal Certificate of Appointment could be presented, nor was any Government Gazette made available to the Court evidencing the publication of the said appointments.
- [27] On this basis, the Court is only satisfied that a *prima facie* right has been established, and the relief should be formulated accordingly. Insofar as the *prima facie* right has been established, it is evident that there is an infringement of the said right. Since the 1st Respondent is of the view that the 1st Applicant is not entitled to any appointment by virtue of being a regent only, the infringement of the 1st Applicants perceived functions will continue until clarity is obtained from the 3rd and / or 4th Respondent.
- [28] The balance of convenience moreover favours the granting of some form of interim relief to preserve some form of *interim* certainty for the members of the community. Limited interdictory relief being granted at this stage is therefore the only appropriate remedy that will yield an eventual dissolution of the pending dispute.
- [29] The Applicants did not succeed with the requirements for the granting of final relief – the Court however retains a discretion in this regard. If the case is simply dismissed at this stage, it would lead to a multiplicity of legal actions in the future on

the very same basis. It would also lead to considerable uncertainty in the community as to who the prevailing leaders are. The Court is thus not inclined to simply dismiss the application at this stage.

- [30] As to the numerous other technical objections raised by the parties as to the filing of additional affidavits, improper commissioning and the like, this Court is of the view that a pedantic or over-technical view do not assist in resolving the underlying dispute. None of the issues raised really addresses the proverbial elephant in the room or will lead to substantial injustice should the *in limine* objection not be upheld. On this basis, specifically the objection raised on the commissioning of the Applicants' Founding affidavit, stands to be dismissed.

Costs:

- [31] Having regard to the conclusion and consequential order granted herein, the costs must be determined in due course and on the return date.

Order:

- [32] **In the result the following order is made:**

32.1 Pending the return date stated herein after:

32.1.1 The 1st Respondent is hereby interdicted from holding himself out to be the Chief / Kgoshi / Traditional Leader of the Ga-

Rantho Community or from representing the 2nd Applicant in any capacity whatsoever;

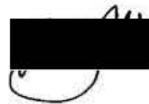
30.1.2 The 1st Respondent is hereby interdicted from concluding any agreements on behalf of the Ga-Rantho Community or binding or endeavouring to bind the Ga-Rantho Community and the 2nd Applicant in any manner whatsoever.

30.2 The aforesaid order shall serve as a *rule nisi* with immediate effect. Any Respondent and / or interested party may submit reasons on or before 22 January 2026 at 10:00 on the opposed motion roll, why the said order should not be made final.

30.3 The Applicants are hereby directed to serve a copy of this judgment and order, and a complete indexed and paginated bundle on the 2nd – 7th Respondent as well as a further copy of the judgment, order and bundle on the State Attorney, Polokwane within 20 (twenty) days from the date of this order to ensure that the 2nd – 7th Respondent is made aware of the proceedings and to consider any opposition thereto.

30.4 The 1st, 8th – 11th and 12th Respondents are entitled to deliver an affidavit in response to the Replying affidavit of the Applicant within a period of 20 (twenty) days from the date of this order.

- 30.5 The remaining relief prayed for by the Applicants is postponed for determination on the return date.
- 30.6 The Application to Strike out is dismissed, costs in the cause.
- 30.7 The point *in limine* in respect of the commissioning of the Applicants' Founding affidavit is dismissed, costs in the cause.
- 30.8 The costs of the proceedings are reserved for argument on the return date.
- 30.9 The Counter Application is postponed *sine die*, and the costs pertaining to the said postponement is reserved for argument in due course.



M BRESLER AJ

ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

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