



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION – MAHIKENG**

CASE NO: M634/22

Not Reportable

TEBOGO DESIREE KUKAMA

FIRST APPLICANT

BETHUEL GAOTINGWE RAMOKOKA

SECOND APPLICANT

EUGENE LETLAPE

THIRD APPLICANT

REGINALD NATHANIEL LETAPE

FOURTH APPLICANT

GOMOTSEGANG MOSES MOKOKA

FIFTH APPLICANT

LEBOGANG KHUMO LETLAPE

SIXTH APPLICANT

and

**THE BAPHALANE BA RAMOKOKA
PROPERTY ASSOCIATION**

FIRST RESPONDENT

**THE MINISTER OF RURAL
DEVELOPMENT AND LAND REFORM**

SECOND RESPONDENT

**THE DIRECTOR- GENERAL FOR THE
DEPARTMENT OF RURAL DEVELOPMENT
AND LAND REFORM**

THIRD RESPONDENT

Coram: Reddy J

Delivered: Judgment was handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII. The date and time for handing down of the judgment are deemed to be 14h00 on 5 January 2026.

Summary: The application of the Promotion of Administrative Justice Act 3 of 2000 - what constitutes administrative action within the context of the Communal Property Association Act 28 of 1996.

ORDER

1. The First Respondent alternatively the Third Respondent, is directed to provide the following information and documents (where such documents exist) to the Applicants within a period of ninety (90) calendar days of the date of this order:

1.1 the names and where readily available, the identity numbers and the addresses of the members of the Committee of the First Respondent elected at the Annual General Meeting purportedly held on 1 October 2022, indicating what office (if any) is held by each of them.

1.2 the names and where readily available the identity numbers and the addresses of all new members of the First Respondent whose names do not appear on the most recent membership list previously furnished by the First Respondent to the Third Respondent.

1.3 copies of:

1.3.1. all the First Respondent's annual balance sheets and financial statements from the date of registration of the First Respondent to date, save for the annual financial statements for the financial years ending 2017, 2019, 2020 and 2021.

1.3.2. the minutes of all general meetings of the members of the First Respondent which have been held since the date of registration of the First Respondent to date, including the minutes of the last Annual General Meeting purportedly held on 1 October 2022;

1.3.3 any resolutions taken by the Committee of the First Respondent at the meetings referred to in prayer 1.3.2 including any resolutions taken at the last Annual General Meeting purportedly held on 1 October 2022;

1.4. a list of all meetings in land or rights to land involving the First Respondent since the date of registration of the First Respondent, which created, altered or extinguished any right to land held by the First Respondent or any of its members;

1.5. a list of all the members of the First Respondent;

1.6. the extent of the land in hectares registered in the name of the First Respondent;

2. The First Respondent is directed to provide the following information and documents (where such documents exist) to the Applicants within a period of ninety (90) calendar days, of the date of this order:

2.1 The Memorandum of Incorporation;

2.2 The records in respect of the company's directors;

2.3. The reports to any and all annual meetings;

2.4. The notices and minutes of any and all annual meetings;

2.5. The securities register; and

2.6. The annual financial statements from 2003 to date; of Batlase Resources (Pty) Ltd, NIMA Resources (Pty) Ltd, Matlotlo Resources (Pty) Ltd and Ikhutseng.

3. The Second Respondent, alternatively the Third Respondent, is directed to provide the following information and documents (where such documents exist) to the Applicants within a period of ninety (90) calendar days of the date of this order:

3.1 a copy of all the Annual Reports submitted by the Third Respondent to the Second Respondent since the date of registration of the First Respondent to date, save for the annual reports for 2017 and 2022.

3.2. the constitutions of:

3.2.1 the Baphalane Communal Association with registration number 06/0943/A;

3.2.2 the Baphalane Ba Sesobe Communal Property Association with registration number 03/0563/A.

4. The election of the members of the Committee of the First Respondent at the Annual General Meeting purportedly held on 1 October 2022 is declared unlawful.

5. The First respondent is directed to hold a new election of the Committee of the First Respondent within a reasonable time;

6. The Third Respondent is authorised to administer the First Respondent pending the elections referred to in prayer 5;

7. Pending the election referred to in prayer 5, the members of the Committee of the First Respondent are prohibited from:

7.1 convening any annual general or other meetings;

7.2. carrying out and implicating any resolutions taken at any meetings previously held;

7.3. signing and executing any documents in connection with the transfer of immovable property or other property or rights or cessions and/or consents to cancellation of bonds, securities, leases, servitudes and other deeds and/or all other powers of attorney relating thereto and generally all documents of any kind or nature whatsoever requisite from time to time in connection with the acquisition or realisation of the assets of the First Respondent;

7.4. employing and paying out of the First Respondent funds to any person to do any act or acts, including the receipt of money;

7.5. expending such portion of the money belonging to the First Respondent;

7.6. lending moneys or leaving moneys on deposit with any company in which the First Respondent is a shareholder or any other company which is a subsidiary company of such company or on such terms and condition as may be determined;

7.7. borrowing money for the First Respondent; and

7.8. paying remuneration or allowances to any member of the Committee;

8. The First Respondent shall pay the costs of the application on Scale B of Rule 67A.

JUDGMENT

Reddy J

Introduction

[1] In this opposed motion the applicants in an amended notice of motion seek the following relief:

‘1. The First Respondent alternatively the Third Respondent, are directed to provide the following information and documents (where such documents exist) to the Applicants within a reasonable time determined by this Court:

1.1 the names and where readily available, the identity numbers and the addresses of the members of the Committee of the First Respondent elected at the Annual General Meeting purportedly held on 1 October 2022, indicating what office (if any) is held by each of them.

1.2. the names and where readily available the identity numbers and the addresses of all new members of the First Respondent whose names do not appear on the most recent membership list previously furnished by the First Respondent;

1.3. copies of:

1.3.1. all the First Respondent's annual balance sheets and financial statements from the date of registration of the First Respondent to date, save for the annual financial statements for the financial years ending 2017, 2019, 2020 and 2021.

1.3.2. the minutes of all general meetings of the members of the First Respondent which have been held since the date of registration of the First Respondent to date, including the minutes of the last Annual General Meeting purportedly held on 1 October 2022;

1.3.3 any resolutions taken by the Committee of the First Respondent at the meetings referred to in prayer 1.3.2 including any resolutions taken at the last Annual General Meeting purportedly held on 1 October 2022; and

1.4. a list of all meetings in land or rights to land involving the First Respondent since the date of registration of the First Respondent, which created, altered or extinguished any right to land held by the First Respondent or any of its members;

1.5. a list of all the members of the First Respondent;

1.6. the extent of the land in hectares registered in the name of the First Respondent;

2. The First Respondent is directed to provide the following information and documents (where such documents exist) to the Applicants within a reasonable time determined by this Court

2.1 The Memorandum of Incorporation;

2.2 The records in respect of the company's directors;

2.3. The reports to any and all annual meetings;

2.4. The notices and minutes of any and all annual meetings;

2.5. The securities register; and

2.6. The annual financial statements from 2003 to date; of Batlase Resources (Pty) Ltd, NIMA Resources (Pty) Ltd, Matlotlo Resources (Pty) Ltd and Ikhutseng.

3. The Second Respondent, alternatively the Third Respondent, is directed to provide the following information and documents (where such documents exist) to the Applicants within a reasonable time as determined by this Court.

3.1 a copy of all the Annual Reports submitted by the Third Respondent to the Second Respondent since the date of registration of the First Respondent to date, save for the annual reports for 2017 and 2022.

3.2. the constitutions of:

3.2.1 the Baphalane Communal Association with registration number 06/0943/A;

3.2.2 the Baphalane Ba Sesobe Communal Property Association with registration number 03/0563/A;

4. The election of the members of the Committee of the First Respondent at the Annual General Meeting purportedly held on 1 October 2022 is declared unlawful.

5. The First respondent is directed to hold a new election of the Committee of the First Respondent within a reasonable time;

6. The Third Respondent is authorised to administer the First Respondent pending the election referred to in prayer 5;

7. Pending the election referred to in prayer 5, the members of the Committee of the First Respondent are prohibited from:

7.1 convening any annual general or other meetings;

7.2. carrying out and implicating any resolutions taken at any meetings previously held;

7.3. signing and executing any documents in connection with the transfer of immovable property or other property or rights or cessions and/or consents to cancellation of bonds, securities, leases, servitudes and other deeds and/or all other powers of attorney relating thereto and generally all documents of any kind or nature whatsoever requisite from time to time in connection with the acquisition or realisation of the assets of the First Respondent;

7.4. employing and paying out of the First Respondent funds to any person to do any act or acts, including the receipt of money;

7.5. expending such portion of the money belonging to the First Respondent;

7.6. lending moneys or leaving moneys on deposit with any company in which the First Respondent is a shareholder or any other company which is a subsidiary company of such company or on such terms and condition as may be determined;

7.7. borrowing money for the First Respondent; and

7.8. paying remuneration or allowances to any member of the Committee;

8. The Respondents are directed to pay the costs of the application; and

9. Further and alternative relief.'

The parties

[2] The first to sixth applicants, Tebogo Desiree Kukama (Kukama); Bethuel Gaotingwe Ramokoka (Ramokoka); Eugene Letlape (Eugene Letlape); Reginald Nathaniel Letlape (Reginald Letlape); Gomotsegang Moses Mokoka (Mokoka); and Lebogang Khumo Letlape (Lebogang Letlape), are all members of the first respondent. They are at times referred to as the applicants in this judgment.

- [3] The first respondent is the Baphalane Ba Ramokoka Communal Property Association, (Baphalane Ba Ramokoka) a communal property association incorporated in terms of the provisions of the Communal Property Association Act¹ (the CPAA). The second respondent is the Minister of Rural Development and Land Reform, tasked with the implementation of the CPAA (the Minister). The third respondent is the Director- General for the Department of Rural Development and Land Reform (the Director General). Baphalane Ba Ramokoka opposes the relief.

Background

- [4] The promulgation of the CPAA was aimed at redressing discriminatory practices of the past relating to the dispossession of land. Subsumed within the architecture of CPAA are provisions which allow for communal property associations to be established to acquire, hold and manage property on behalf of members of a community for their benefit. Baphalane Ba Ramokoka is governed by a Constitution. The land which is registered in the name of the Baphalane Ba Ramokoka is fully described in its Constitution, which is substantial in size. This land of the Baphalane Ba Ramokoka is predominantly utilized for inter alia lodging, telecommunications, mining and farming.

The version of the applicants'

- [5] Baphalane Ba Ramokoka has concluded numerous lease agreements with several commercial tenants. The applicants appositely assert that due to maleficence and corruption, the almost seven hundred and seventy-eight

¹ Act 28 of 1996

members and the beneficiaries of the Baphalane Ba Ramokoka have not benefited from the commercial investments. Moreover, in almost two decades of existence, the applicants claim Baphalane Ba Ramokoka has not produced an audited annual financial statement. The applicants affirm that it stands to reason that the extent of the exclusion of the members and beneficiaries from accrued benefits is unacceptable.

- [6] On 1 October 2022, Baphalane Ba Ramokoka held an Annual General Meeting at Ramokok Wonkwang Preschool (the AGM). The applicants declare that aside from a late change in the initial venue and a late start to the meeting, the details of the election appeared to have been circulated to a closed group of community members.
- [7] In sum the holding of the meeting contravened a few of the clauses of the Baphalane Ba Ramokoka Constitution. Amongst others, the meeting itself did not quorate. Resultantly, the meeting was unlawful. On 7 November 2022, the applicants brought this to the attention of the Minister and Director General. The Director General was requested to disseminate documents and information to avert the true state of affairs of Baphalane Ba Ramokoka. The failure of the Minister and the Director General to respond triggered the relief now sought.

The version of the Baphalane Ba Ramokoka

- [8] Baphalane Ba Ramokoka contends that the applicants are all members. That being so, the applicants are clothed with the right as enshrined in the Baphalane Ba Ramokoka Constitution to access documents, minutes, reports or any information pertaining to any business of Baphalane Ba Ramokoka. Surprisingly, Baphalane Ba Ramokoka asserts that the

applicants have failed to make a request for any information. As an indicator of a constitutionally acquiescent association, Baphalane Ba Ramokoka tendered the information and invited the applicants' legal representative to peruse same at the attorneys of the Baphalane Ba Ramokoka and to make copies if so inclined.

[9] Baphalane Ba Ramokoka claims that the relief sought in prayers 3-5 is incompetent. This is predicated on a disguised review that the applicants attempt to introduce notwithstanding a failure to have adhered to the Uniform Rules of Court, the Promotion of Administrative Justice Act², (PAJA) or the common law. Moreover, an internal remedy available to the applicants was not exhausted.³ Importantly, Baphalane Ba Ramokoka contends that this application is not one for the administration, liquidation and/or deregistration of Baphalane Ba Ramokoka and to have approached the court in this fashion was simply misplaced and bad in law.

[10] Baphalane Ba Ramokoka posits that prayer 6 is a prohibitory interdict in form, for which relief the applicants have failed to meet the peremptory requirements for this relief.

[11] Insofar as the AGM is concerned, Baphalane Ba Ramokoka avers that due and lawful process was followed. By virtue of the fact that the Independent Elections Facilitators of Southern Africa were appointed by the Department of Agriculture, Land Reform and Rural Development to conduct the election process attached credibility to same. To this end, the applicants could have followed due process by compelling the Minister and the Director General to file a report of the AGM.

² 53 of 2002

³ s10 of the Communal Property Association Act 28 of 1996.

[12] On 12 April 2022, Baphalane Ba Ramokoka held a meeting at Bakubung Lodge, Pilanesberg Game Reserve. The purpose of the meeting was to mediate between the various splinter groups of Baphalane Ba Ramokoka and agree on an action plan. A working team was formed. Several meetings followed in preparation for the AGM.

[13] Baphalabe Ba Ramokoka aver that the AGM that was duly convened at Ramokok Wongkwang Preschool, which was tasked with inter alia, the election of a new executive committee, which was to include a new chairperson. Kukama was in attendance and contested for the position of treasurer. Overseeing the meeting were officials of the Department of Agriculture Land Reform and Rural Development from Limpopo and North West Provinces. Furthermore, Independent Election Facilitators were in attendance. Both bodies were seized with, ensuring due compliance and a lawful process.

[14] Kukama was unsuccessful for the position of treasurer which she had contested for securing a mere eleven (11) votes. Ramokoka did not participate in the AGM and was not cited on the ballot paper. Eugene Latlape was present and contested for the position of deputy chairperson but only secured eight votes. He was unsuccessful. Reginald Letlape was in attendance and was on the preliminary voters' roll. Mokoka was not at the AGM and did not contest for any position. Lebogang Letlape attended the AGM and was on the preliminary voters' roll.

[15] Baphalane Ba Ramokoka advance that due process was followed with the executive being duly elected. Notwithstanding the best efforts to secure the minutes of the AGM, this proved to be unsuccessful. Baphalane Ba

Ramokoka states that video footage is available in confirmation of due process. Baphalane Ba Ramokoka contends that in circumstances where the executive was duly elected the basis for the entire application and the basis for the launching of same is ill-founded and misplaced. Importantly, Baphalane Ba Ramokoka claims that the purported bona fide dispute of fact as regards the process followed at the AGM is one to be investigated by the Director General in terms of the provisions of s10.⁴ It follows that motion proceedings would be an inappropriate vehicle to resolve this dispute.

In reply

[16] In reply the applicants declare that the invitation extended by Baphalane Ba Ramokoka to present documentation in their possession was accepted. To this end, Baphalane Ba Ramokoka, presented (i) the chairperson's report dated 12 February 2017 and 10 September 2022, (ii) the audited annual financial statements of Baphalane Ba Ramokoka for 2017, 2019, 2020 and 2021, and (iii) the extent of the land in, hectares in the name of Baphalane Ba Ramokoka.

[17] Baphalane Ba Ramokoka by process of lateral reasoning the applicants aver are not in possession of the following documents, alternatively same does not exist:

- (i) A list of all committee members elected since the inception of Baphalane Ba Ramokoka.
- (ii) Any balance sheets.
- (iii) The annual financial statements for a period of ten years.
- (iv) A list of members of Baphalane Ba Ramokoka.

⁴ Communal Property Association Act 28 of 1996.

- (v) The minutes of any committee and AGM meetings.
- (vi) A list of resolutions taken by the committee and;
- (vii) A list of all land dealings affecting the rights of the members.

[18] The applicants' underscore that it is imperative for Baphalane Ba Ramokoka to have a record keeping system. Should same exist and not be in Baphalane Ba Ramokoka's possession this too would lead to the ineluctable conclusion that Baphalane Ba Ramokoka is mismanaged which would constitute grounds for liquidation.

[19] Critically, the applicants alleged that Baphalane Ba Ramokoka had failed to rebut the conclusion that the election of the executive committee contravened the Constitution. Resultantly it was unlawful. Significantly, the applicants' reason that any reliance on a report from the Independent Elections Facilitators of Southern Africa is misdirected. This the applicants continue is founded on the failure by Baphalane Ba Ramokoka to have attached same.

[20] Notably, the applicants refute any suggestion that the documentation that forms the substance of this application was not previously requested. Several written and verbal requests for same were made. On both scores the requested information was not made available. It follows; the applicants continue that any tender of these documents or that same is readily available is simply fallacious given Baphalane Ba Ramokoka's failure to attach most of these documents to the answering affidavit or making it available for inspection. Given the conduct of Baphalane Ba Ramokoka, the applicants persist with the narrative that the documentation is not in possession of Baphalane Ba Ramokoka or it simply does not exist.

[21] Remarkably, the applicants state that Baphalane Ba Ramokoka as a communal property association that oversees assets in hundreds of millions of rands ought to have a record of its annual balance sheets and financial statements since its inception. The applicants claim that Baphalane Ba Ramokoka attempts to attribute the absence of these crucial financial documents to historical inept record keeping is disingenuous. This the applicants aver illustrates the depth of the disorganization and stands as one of several reasons justifying Baphalane Ba Ramokoka's liquidation. Also, the applicants identify Mr. Peter Bosielo as being a member of the executive committee since its inception therefore he could be classified as a member with institutional knowledge.

[22] The applicants accentuate that the relief sought is not moot as Baphalane Ba Ramokoka must be directed to declare under oath that the provided documentation is the only documentation in their possession and whether the documentation provided does not exist. In so far as the contention that the applicants have approached this Court under a veiled review, the applicants claim that the election of the executive committee does not constitute administrative action within the provisions of PAJA⁵ nor a decision for the purposes of a common law review.

[23] The applicants suggest that the contention by Baphalane Ba Ramokoka that the applicants ought to have employed the remedy within the provisions of s 10⁶ before launching this application is misdirected. The applicants state that s 10 empowered the Director General to appoint a conciliator to assist an association to resolve a dispute. The provisions of s 10 were employed with no retort from the Director General forthcoming. In as much as s 10

⁵ 3 of 2000.

⁶ Communal Property Association Act 28 of 1996.

was employed the use of the word ‘may’ within the context of this provision unequivocally indicates that the Director General may appoint a conciliator.

[24] As part of the applicant’s case two supplementary affidavits were admitted by this Court.⁷ The first of which sought amongst others to justify the amended relief. The second broached the recent amendment of the CPAA which empowers the newly created Registrar of the CPA Office with the oversight duties that the Director General was previously clothed with. Further this affidavit sought to expound on why there had been a non-joinder of this party. It would be apposite to dispense with the issue of non-joinder at this juncture. The amended legislation provides that the Director General may appoint a competent officer until the post is formally filled. The applicants have delineated the difficulties in attempting to contact the Registrar of CPA or any competent officer during the transitional period of the new legislation being fully operational. Of note, the Director General has elected not to intervene nor to notify this Court of specific compliance with the amended legislation. It follows axiomatically, that the Director General remains the appropriate party to represent the state’s oversight functions. Properly understood the non-joinder of the new Registrar of CPA during the transitional phase does not denude this application where the Minister and Director General who exercise ultimate authority in these circumstances have already been cited. It probably explains why Baphalane Ba Ramokoka did not proceed with this preliminary with any gusto. The failure to join the newly established Registrar of CPA is not fatal.

[25] Afore, proceeding to address the substantive relief it would be apposite to deal with the points in limine raised by the Baphalane Ba Ramokoka.

⁷ *De Kock v Du Plessis and Others* 2024 JDR 3115 SCA.

Lack of jurisdiction

[26] The law pertaining to the jurisdiction of the court is well established and is simply this. A judgment granted in instances where the court lacks jurisdiction, is a nullity and of no force or effect. This was recognized in our early jurisprudence and has transcended into our constitutional epoch⁸. The authorities are quite clear that where legal proceedings are initiated against a party, and he is not cited to appear, they are null and void; and upon proof of invalidity the decision may be disregarded, in the same way as a decision given without jurisdiction, without the necessity of a formal order setting it aside.⁹

[27] In terms of s 21 (1) of the Superior Courts Act¹⁰, a division of the High Court has jurisdiction over 'all persons residing or being in, and in relation to all causes arising ... within its area of jurisdiction.' In terms of s 21 (2), a division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other Division.

[28] Thus, this Court is endowed with jurisdiction in relation to (i) all persons residing or being within its area of jurisdiction; and (ii) all causes arising within its jurisdiction; and (iii) over any person residing or

⁸ *Willis v Cauvin* 1904.

⁹ *Travellex Limited v Maloney and Another* (823/15) ZASCA 128 27 September 2016, *The Master of the High Court (North Gauteng High Court, Pretoria) v Motale NO & Others*, (172/11) [2011] ZASCA 238 (1 December 2011).

¹⁰ 10 of 2013.

being outside its area of jurisdiction when such person is joined as a party to any cause in relation to which the court has jurisdiction if such person resides or is within the area of jurisdiction of any other division.

[29] Applying these foundational principles that relate to jurisdiction, it follows that this Court is clothed with the necessary jurisdiction. Consequently, this point in limine is meritless and falls to be dismissed.

Is this a veiled review?

[30] As a point of departure is the consideration whether a particular matter falls within the four corners of administrative action. Pivotal to this determination two legal resources are key, namely, s 33 of the Constitution¹¹ and the definition in s1 of PAJA.

[31] In *Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amici Curiae)*¹² the apex court found as follows:

‘Where, as here, the Constitution requires Parliament to enact legislation to give effect to the constitutional rights guaranteed in the Constitution, and Parliament enacts such legislation, it will ordinarily be impermissible for a litigant to found a cause of action directly on the Constitution without alleging that the statute in question is deficient in the remedies that it provides. Legislation enacted by Parliament to give effect to a constitutional right ought not to be ignored.’

[32] Section 1 of PAJA, defines a decision as:

¹¹ 108 of 1996.

¹² 2006 (2) SA 311 (CC).

‘decision’ means any decision of an administrative nature made, proposed to be made, or required to be made, as the case may be, under an empowering provision, including a decision relating to-

- (a) making, suspending, revoking or refusing to make an order, award or determination;
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
- (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
- (d) imposing a condition or restriction;
- (e) making a declaration, demand or requirement;
- (f) retaining, or refusing to deliver up, an article; or
- (g) doing or refusing to do any other act or thing of an administrative nature, and a reference to a failure to take a decision must be construed accordingly.’

[33] In interpreting the relevant clauses of PAJA, I am guided by the approach followed by the Constitutional Court in *University of Johannesburg v Auckland Park Theological Seminary and Another*¹³:

‘The Supreme Court of Appeal famously set out the position in the following widely quoted statement in its decision in *Endumeni*:

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must

¹³ *University of Johannesburg v Auckland Park Theological Seminary and Another*[20] [2021] ZACC 13; 2021 (8) BCLR 807 (CC); 2021 (6) SA 1 (CC) paras 64 and 65. Also see *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 ZASCA 13; 2012 (4) SA 593 (SCA); [2012] 2 All SA 262 (SCA) (*Endumeni*) para 18.

be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The "inevitable point of departure is the language of the provision itself", read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."

- [34] PAJA oversees the review of administrative action, which is defined as a decision taken by an organ of state or a natural/ juristic person when exercising a public power or performing a public function. By extension the central question is whether the election of a committee within a communal association constitutes the exercise of a public power. It is relevant to point out, that CPAs are created by statute and monitored. CPAs are communal entities governed by their own Constitution. This Constitution is a founding document which forms a contract between the association and its members. Therefore, it is significant to highlight that when a community holds an AGM it is participating in a process of self-governance sanctioned by its Constitution. It is essential to underscore that a failure to comply with the intent of the Constitution of a communal entity is a breach of its Constitution rather than a failure of administrative justice. Accordingly, the applicants are correct in contending that the election process does not strictly constitute administrative action for the purposes of PAJA.

[35] Even if the election were considered to have a public gloss due to the state's oversight role or the scale of assets involved the applicants would not be barred from seeking this relief. As a failsafe our law has established the principle of legality for the review of any exercise of power that is not encompassed under the definition of administrative action in PAJA. Under this legal premise, all power must be exercised lawfully, rationally and in accordance with enabling law. The relief sought by the applicants is founded on judicial precedent for challenging the irregular proceedings of voluntary or statutory associations. By invoking the failure of Baphalane Ba Ramokoka as a failure to cohere to its own Constitution the applicants in my view of properly approached this, Court. In sum, the purported relief is not encapsulated in PAJA nor a decision for the purposes of a common law review. Therefore, this point in limine must be dismissed.

Failure to previously request information within PAJA

[35] On 6 November 2018, a member of Baphalane Ba Ramokoka submitted a written request for several documents which included audited financial statements, the minutes of members meetings and all resolutions taken from 2013 to 2018. In 2022 two of the applicants requested financial statements and any leases concluded by Baphalane Ba Ramokoka. For whatever reason Baphalane Ba Ramokoka elected not to proffer a response to the request to disclose the information requested. To contend that the applicants have failed to previously request the information is devoid of fact. It follows that an application of legal prescripts to an incorrect factual background does not serve Baphalane Ba Ramokoka. This point in limine suffers the same fate. It therefore falls to be dismissed.

The internal remedy: s 10 of the CPAA

[36] To properly consider the availability of s10 as an internal remedy, its construction must be assessed. The use of the word may in the language of s10 is a clear indicator that the appointment of a conciliator is subject to the exercise of a discretion by the Director General. The text of s 10 provides a facilitated alternative mediation platform which does not on the face of it oust the High Court's jurisdiction. It stands to reason that for an internal remedy to be at the disposal of a litigating party that remedy must be effective, available and adequate.¹⁴ The applicants in my view are irreproachable as they have attempted to use the mechanism as provided for in s10. The Minister and the Director General adopted a non-possum stance. This in turn resulted in the s10 as an internal remedy impotent. It follows that this point in limine is meritless and falls to be dismissed.

Failure to comply the requirements of a prohibitory interdict

[37] It would be more convenient that this point to be encapsulated within the main relief.

The main relief

[38] Decisive to the relief sought by the applicants is the finding regarding the AGM that was held on 1 October 2022. Several procedural safeguards for the constitution of a lawful meeting were absent. Undoubtedly this impacts

¹⁴ *Basson v Hugo and Others* (968/16) [2018] ZASCA 1; [2018] 1 All SA 621 (SCA); 2018 (3) SA 46 (SCA) (17 January 2018) paragraph 24.

on resolutions and decisions taken. I do not propose to delineate every irregularity. Conjunctively this led to the contravention of the critical clauses of the Baphalane Ba Ramokoka Constitution. First, no notice was delivered to the members by hand or post, secondly, the notice of the AGM was not delivered fourteen (14) days prior to the AGM, thirdly, no agenda was provided, and fourthly the members were not provided with written confirmation that the persons who were nominated for the election into office were in fact confirmed and verified as such by an independent organ assigned by the Department of Agriculture Land and Reform Development.

[39] It is now well established since *National Director of Public Prosecutions v Zuma*¹⁵:

‘Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities.’

[40] The most recent offering on the topic is *Wightman t/a JW Construction v Headfour (Pty) Ltd and another*¹⁶ where certain guidelines to be employed in determining whether there exists a real, genuine and bona fide dispute of fact were vocalized. The SCA held that:

‘[12] Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must, in the event of conflict, accept the version set up by his opponent unless the latter’s allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable

¹⁵ [2009] 2 All SA 243 (SCA) para 26

¹⁶ 2008 (3) SA 371 (SCA)

that the court is justified in rejecting them merely on the papers: *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984 (3) SA 623 (A) at 634E - 635C...

[13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say “generally” because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision.’

[41] Given these material irregularities any suggestion that a dispute of fact is extant is simply misplaced. To make a finding that this application must be referred to oral evidence is inconsistent with trite legal principles.

[42] After a careful consideration of the requirements that underpin the relief sought by the applicants, it is my view that a proper case has been made.

Costs

[43] There is no basis to deviate from the general principle that costs follow the result.

Order

[44] In the premises the following order is made.

1. The First Respondent alternatively the Third Respondent, is directed to provide the following information and documents (where such documents exist) to the Applicants within a period of ninety (90) calendar days of the date of this order:

1.1 the names and where readily available, the identity numbers and the addresses of the members of the Committee of the First Respondent elected at the Annual General Meeting purportedly held on 1 October 2022, indicating what office (if any) is held by each of them.

1.2 the names and where readily available the identity numbers and the addresses of all new members of the First Respondent whose names do not appear on the most recent membership list previously furnished by the First Respondent to the Third Respondent.

1.3 copies of:

1.3.1. all the First Respondent's annual balance sheets and financial statements from the date of registration of the First Respondent to date, save for the annual financial statements for the financial years ending 2017, 2019, 2020 and 2021.

1.3.2. the minutes of all general meetings of the members of the First Respondent which have been held since the date of registration of the First

Respondent to date, including the minutes of the last Annual General Meeting purportedly held on 1 October 2022;

1.3.3 any resolutions taken by the Committee of the First Respondent at the meetings referred to in prayer 1.3.2 including any resolutions taken at the last Annual General Meeting purportedly held on 1 October 2022;

1.4. a list of all meetings in land or rights to land involving the First Respondent since the date of registration of the First Respondent, which created, altered or extinguished any right to land held by the First Respondent or any of its members;

1.5. a list of all the members of the First Respondent;

1.6. the extent of the land in hectares registered in the name of the First Respondent;

2. The First Respondent is directed to provide the following information and documents (where such documents exist) to the Applicants within a period of ninety (90) calendar days, of the date of this order:

2.1 The Memorandum of Incorporation;

2.2 The records in respect of the company's directors;

2.3. The reports to any and all annual meetings;

2.4. The notices and minutes of any and all annual meetings;

2.5. The securities register; and

2.6. The annual financial statements from 2003 to date; of Batlase Resources (Pty) Ltd, NIMA Resources (Pty) Ltd, Matlotlo Resources (Pty) Ltd and Ikhutseng.

3. The Second Respondent, alternatively the Third Respondent, is directed to provide the following information and documents (where such documents exist) to the Applicants within a period of ninety (90) calendar days of the date of this order:

3.1 a copy of all the Annual Reports submitted by the Third Respondent to the Second Respondent since the date of registration of the First Respondent to date, save for the annual reports for 2017 and 2022.

3.2. the constitutions of:

3.2.1 the Baphalane Communal Association with registration number 06/0943/A;

3.2.2 the Baphalane Ba Sesobe Communal Property Association with registration number 03/0563/A.

4. The election of the members of the Committee of the First Respondent at the Annual General Meeting purportedly held on 1 October 2022 is declared unlawful.

5. The First respondent is directed to hold a new election of the Committee of the First Respondent within a reasonable time;

6. The Third Respondent is authorised to administer the First Respondent pending the elections referred to in prayer 5;

7. Pending the election referred to in prayer 5, the members of the Committee of the First Respondent are prohibited from:

7.1 convening any annual general or other meetings;

7.2. carrying out and implicating any resolutions taken at any meetings previously held;

7.3. signing and executing any documents in connection with the transfer of immovable property or other property or rights or cessions and/or consents to cancellation of bonds, securities, leases, servitudes and other deeds and/or all other powers of attorney relating thereto and generally all documents of any kind or nature whatsoever requisite from time to time in connection with the acquisition or realisation of the assets of the First Respondent;

7.4. employing and paying out of the First Respondent funds to any person to do any act or acts, including the receipt of money;

7.5. expending such portion of the money belonging to the First Respondent;

7.6. lending moneys or leaving moneys on deposit with any company in which the First Respondent is a shareholder or any other company which is a subsidiary company of such company or on such terms and condition as may be determined;

7.7. borrowing money for the First Respondent; and

7.8. paying remuneration or allowances to any member of the Committee;

8. The First Respondent shall pay the costs of the application on Scale B of Rule 67A.



A REDDY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Appearances

For the applicants:	Advocate C Louis
Attorneys for the applicants:	Padayachee Attorneys
For the first respondent:	Advocate A J Schoeman
Attorney of the first respondent:	Strydom & Bredenkamp
For the second respondent:	No Appearance
For the third respondent:	No Appearance
Date of hearing:	21 November 2024
Date of judgment:	5 January 2026