IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA

CASE: 3348/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED

11 March 2026 [redacted]
DATE SIGNATURE

In the matter between:

DIRECTOR GENERAL FOR THE DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT	**APPLICANT**
And	
THE N'WANDLAMHARI COMMUNAL PROPERTY ASSOCIATION	**1ST RESPONDENT**
MHLANGANISWENI COMMUNITY	**2ND RESPONDENT**
MAVHURAKA COMMUNITY	**3RD RESPONDENT**
JOHAN MTHABINI	**4TH RESPONDENT**
THOMAS MTHOMBENI	**5TH RESPONDENT**
SYLVIA TONGA	**6TH RESPONDENT**
FREDDY MTHOMBENI	**7TH RESPONDENT**
HENRY HLABANE	**8TH RESPONDENT**

FREDDY MATHEBULA **9TH RESPONDENT**
HELLEN MKANSI **10TH RESPONDENT**

RICHARD MANGALISO NGOMANE **11TH RESPONDENT**

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 11 March 2026 at 15h00.

JUDGMENT

MANGENA AJ:

[1] This is yet another case where the beneficiaries of a land restitution claim are fighting each other. The stakes are high when measured against the value of the land acquired and the costs incurred by the government in settlement of the land claim reported to be the largest in the country. The fight amongst the beneficiaries has invited the attention of the Department of Agriculture, Land Reform and Rural Development which seeks to place the Communal Property Association (CPA) under judicial administration. The application is opposed by all the respondents except 3rd and 11th respondents.

[2] At the centre of the dispute shorn off unnecessary details is whether the Mavhuraka community should benefit from the income generated out of Malamala farm. The contention by the other community is that the Mavhuraka community never occupied Malamala and were therefore never removed from it. It was never restituted to them.

[3] The dispute has previously received the attention of several courts on few occasions including this Division, Gauteng High Court and the Land Claims Court. It is for that reason that the respondents have pleaded *lis pendens* and *res judicata* as their defences to the

application by the Department over and above their denial that there is any legal basis justifying the placement of the CPA under judicial administration.

[4] The case for the Department is predicated on section 11 of the Communal Property Association Act and is simply that the CPA is marred by conflict amongst the beneficiaries to an extent that others are excluded from enjoying the benefits flowing from the land claim. This is more pronounced in the case of the Mavhuraka community which is the constituent member of the CPA. The Department argues that this failure to allocate the benefits equitably does not accord with the provisions of the CPA and indicate strongly that there is maladministration in the management of the finances.

[5] The Department further relies on the Mediation Report filed by Mr Georghiades where the challenges of the CPA are highlighted. The report gives a diagnostic assessment of the issues which require attention, if the CPA were to be able to fulfil its obligations and function optimally. It concludes with a suggestion that *"in order to provide for a robust and lasting outcome to the issues in dispute, a thorough process of engagement needs to be undertaken, where these disputes are explored and unpacked".*

[6] It needs to be stated outright that the Department's reliance on the Mediation Report to support its contention that there is maladministration in the CPA is misplaced. The report significantly highlights areas of concern raised by various stakeholders interviewed but nowhere does it recommend the placement of the CPA under judicial administration. The decision to place the CPA under judicial administration was borne out of frustration and anger that an AGM that was scheduled for February 2022 was interdicted through a properly obtained court order. This application is therefore a feeble attempt on the part of the

officials to circumvent the court order, and it should not be allowed. I say so because in the memorandum submitted to the Director-General motivating for judicial administration nowhere does the author make reference to the Mediation Report and the issues raised other than the need to split the CPA, which process he says will take long.

[7] In the application the DG selectively quotes examples mentioned in the mediation report and describes them as findings made by Mr Georghiades. This is misleading because those were not findings but examples of what is regarded as a collapse of the chain of communication within the CPA. A collapse of communication cannot be equated with maladministration warranting judicial administration. The full court of Gauteng Division, in the matter brought by Mr Wellington Mathebula involving substantially similar issues as raised here said the following in relation to the powers of the Director-General to inspect and monitor records of the CPA as contemplated in section 11 of the CPAA, read with section 9(e)(ii) of the Act. It said the Director-General, as part of his/her monitoring and investigative functions (as set out in section 11 of the CPAA) is entitled to various documents and financial records. The CPAA requires the Director -General to ensure that the objects of the Act are realised and further for the Director-General to intervene even if an association is not placed under administration. It expressed itself as follows:

> *"[17] As part of its continuous monitoring function, the Director-General is required to inspect the affairs of the association ensuring that it complies with the CPAA and its constitution. In performing this function, the Director-General is further entitled to various relevant information. The Director -General may peruse and make copies of any document relating to the affairs of the association and may also subpoena any person with relevant information".* NCPA v Mathebula and Others, (A265/2020) [2024] ZAGPPHC 588 (28 June 2024).

[8] The full court further found that the association was not faulted for the manner in which it dealt with the monies held in the trust account. It found that the allegations regarding the embezzlement of funds were without substance as no evidence was presented to support them. It consequently refused to place the CPA under judicial administration on the basis that there was no maladministration in the management of the affairs of the CPA. The significance of this finding by the High court in Gauteng is that these allegations have been made before and there is a court finding made on them. Will it be appropriate for this court to rule on them again just because this time around the Department is the applicant? The respondents say I shouldn't because the matter is *res judicata*. The Department contends otherwise.

[9] The requirements for res judicata are trite. The dispute must be between the same parties, arise out of the same cause of action and for the same relief. The approach to determine the applicability of *res judicata* is;

> *"whether, as a matter of fact, the same issue of fact or law which was determined by the judgment of the previous court is before another court for determination. This is so because if the same issue was not determined by the earlier court, an essential requirement for a plea of res judicata in the form of issue estoppel is not met. There is then no scope for upholding the plea. It does not, however, necessarily follow that once the inquiry establishes that the same issue was determined, the plea must be upheld. That is so because the court considering the plea of issue estoppel is, in every case concerned with the relaxation of the requirements of res judicata. It must therefore, with reference to the facts of the case and considerations of fairness and*

equity, decide whether in that case, the defence should be upheld". Democratic Alliance v Brummer, [2022] ZASCA 151(3 November 2022).

[10] Applicant contends that the matter under case number 90356/2016 adjudicated by Khumalo J in Gauteng Division of the High Court was not initiated by the Department but multiple individuals and for this reason *res judicata* does not arise. As I understand the submission by Mr Vukeya, counsel for the applicant, it is not sufficient that the Department was a party to the proceedings, it must have initiated the proceedings in order to be affected by *res judicata.*

[11] The submission by the Department cannot be supported. The requirement is that the dispute must have been between the same parties. In relation to this case, the question is simply whether the Director-General was a party in the proceedings before Khumalo J regarding the same cause of action and relief as the one being sought in these proceedings.

[12] On the facts, it is indisputable that Mr Mathebula and his co-applicants are members of the CPA and have approached a court of law for an order to place the CPA under judicial administration in terms of section 13 of the CPAA. The cause of action and the averments made in support thereof is in all material respects similar to the one raised by the Director-General in this case. The DG was a party to those proceedings, and, in my view, it is immaterial that the DG was not the initiator of the proceedings. Khumalo J has already made a judicial pronouncement on the veracity of the allegations regarding maladministration and the need to place the CPA under judicial administration. Her finding was that there was no maladministration and she refused to grant the relief sought by the applicants to place the CPA under judicial administration. Her findings in this regard were

not appealed and remain extant. The point on res judicata is well taken and should be upheld.

[13] Based on the findings made both on the facts and the law, applicant has not satisfied the requisite threshold to prove maladministration in the management of the affairs of the CPA and in any event and as found above, Khumalo J has already ruled on the matter.

[14] The Director -General is given wide ranging powers to ensure that the CPA functions in line with the constitution. I have already quoted extensively from the full court judgment in Gauteng where the powers of the DG are explained. The DG has not availed herself of these powers to demand accountability from the executive committee of the CPA but instead chose to rely on a mediation report which was selectively quoted out of context to support an ill-fated application.

[15] It was surprising that even after the full court has expressed itself on the affairs of the CPA and rejected the allegations of maladministration as unsubstantiated, the DG still chose to pursue this application. This shows disregard for judicial authority and constitutes an unjustified waste of state resources. The Land Court is also seized with this matter and there was clearly no need to institute parallel proceedings. The conduct of the Department is an abuse of process because quite clearly this application was unmeritorious.

[16] The following order is made:

1. The application is dismissed.
2. The applicant is ordered to pay respondents costs on a party and party scale C of the High Court tariffs including costs one senior counsel.

[redacted]

M I MANGENA

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

APPEARANCES:

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Date of Hearing:	03 March 2026
Date of delivery:	11 March 2026