



**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

Case no: LCC 39/2020

Before: Brenner, AJ

Heard on: 16 March 2026

Delivered on: 4 June 2026

- (1) REPORTABLE: Yes / No
(2) OF INTEREST TO OTHER JUDGES: Yes / No
(3) REVISED: Yes / No

DATE: 4 June 2026

SIGNATURE:

In the matter between:

MANYELETI VERIFIED LAND CLAIMANTS GROUP

Applicant

and

MANYELETI COMMUNAL PROPERTY ASSOCIATION

First Respondent

MPUMALANGA TOURISM AND PARKS AGENCY

Second Respondent

**MINISTER OF LAND REFORM AND
RURAL DEVELOPMENT**

Third Respondent

**REGIONAL LAND CLAIMS COMMISSIONER:
MPUMALANGA PROVINCE** Fourth Respondent

In re:

TINTSWALO SAFARI LODGES (PTY) LTD Applicant

and

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

THE CHIEF LAND CLAIMS COMMISSIONER Second Respondent

**THE REGIONAL LAND CLAIMS COMMISSIONER:
MPUMALANGA PROVINCE** Third Respondent

THE MNISI COMMUNITY Fourth Respondent

MANYELETI COMMUNAL PROPERTY ASSOCIATION Fifth Respondent

**THE TRUSTEES OF THE MANYELETI
CONSERVATION TRUST** Sixth Respondent

MANYELETI VERIFIED LAND CLAIMANTS GROUP Seventh Respondent

THE MPUMALANGA TOURISM AND PARKS AGENCY Eighth Respondent

**MEC FOR DEPARTMENT OF ECONOMIC DEVELOPMENT
AND TOURISM: MPUMALANGA PROVINCE** Ninth Respondent

**MEC FOR PUBLIC WORKS,
ROADS AND TRANSPORT: MPUMALANGA PROVINCE** Tenth Respondent

KHOKA MOYA WILDERNESS TRAILS (PTY) LTD

Eleventh Respondent

**THE REGISTRAR OF DEEDS, MPUMALANGA
PROVINCE**

Twelfth Respondent

ORDER

The following order is granted:

- a. the appointment of the six relevant officials by the Exco of the Manyeleti Communal Property Association as purported claimant representatives to the co-management committee is hereby set aside;
- b. the Exco of the Manyeleti Communal Property Association is directed to convene a special general meeting of the Manyeleti Communal Property Association to elect the claimant representatives to the co-management committee, this in accordance with clause 13 of the Co-management Agreement, within one calendar month from the date of this order;
- c. there is no order as to costs.

JUDGMENT

BRENNER AJ

[2] What is now known as the Manyeleti Game Reserve in Mpumalanga (“the Reserve”) was transferred on 10 May 2023 to the formerly dispossessed Manyeleti community, represented by the Manyeleti Communal Property Association (“the

Manyeleti Communal Property Association” or “the Communal Property Association” or “the Association”).

[3] This occurred in terms of a settlement agreement reached under section 42D of the Restitution of Land Rights Act, 22 of 1994 (“the Restitution Act”). The community had been removed from the land circa 1963 to 1964, and had submitted a successful land claim in August 1996, culminating in the ultimate transfer of the Reserve to them.

[4] The terms of what is referred to as “a suite of agreements” were made an order of this Court on 12 July 2023.

[5] The grievance in this case finds its genesis in a subsequent administrative dispute, post restitution under the settlement agreement, which arose in 2023 between the Manyeleti Verified Land Claimants’ Group, (“the Manyeleti claimants”), and the executive committee of the Manyeleti Communal Property Association (“the Exco”) and, by extension, the Association.

[6] The Exco of the Association under clause 10 of the constitution consists of eleven members who are direct descendants of originally dispossessed individuals whose names appear on the verification list, and who hold office for five years.

[7] It is common cause that the intention was that an Exco to manage the Reserve would be formed, to consist of six of the Manyeleti claimants, coupled with six members from the Mpumalanga Tourism and Parks Agency (“the Agency”). The documents indicate that it was intended that they would actively participate in the pivotal role of managing the general operations of the Reserve, redounding to the benefit of the Manyeleti Communal Property Association as a whole, and all of its members, in particular.

[8] The applicants, the Manyeleti claimants, consider themselves to have been ignored in an allegedly irregular election process which would otherwise have legitimately empowered six of their members to form part of the co-management committee to assist with jointly managing the Reserve with the Agency.

[9] Excluding those who retracted their support, 101 out of 172 verified claimants (that is, some 59 percent), approved of this application in a list of signatories which is not in dispute. It is argued, however, that the majority of the Manyeleti Communal Property Association members approved the election by its Exco of the six members at a second meeting of claimants. This is disputed by the aggrieved applicant.

[10] The subject-matter of complaint involved the manner of election of six representatives to serve on the twelve-member Manyeleti co-management committee ("the co-management committee), to co-manage the Reserve, jointly, with six other members representing the Agency.

[11] The Manyeleti claimants maintain that their six representatives should have been elected from the claimants' broader membership, at a special general meeting of all Manyeleti claimants, convened by the co-management committee. They rely on clause 13 of the co-management agreement mentioned below.

[12] The Manyeleti Communal Property Association and the Agency, the first and second respondents, ("the respondents", the remaining respondents not opposing the relief), maintain that it is legally tenable that the Exco of the Communal Property Association could make this appointment, that the appointment complies with clause 13.4 of the co-management agreement. They argue that this appointment is a *fait accompli* and should be accepted as such. They rely on the constitution of the Association for the source of this power. They argue that clause 13.4 of the co-management agreement should be read conjunctively with the Association's constitution.

[13] Reliance is also placed by the respondents on clause 13.6 of the co-management agreement which mentions that the parties must ensure that their representatives carry the requisite authority to decide matters put to vote at meetings of the co-management committee. It is the respondents' view that courts should be hesitant to interfere in internal management processes, especially where other remedies can be explored. On the other hand, however, this term supports the stance that all members of this committee have the requisite authority. This authority is derived from the prescribed manner in which such representatives are required to be elected.

[14] The Manyeleti claimants are therefore at variance with the Exco of the Communal Property Association, whom they consider to have arrogated to the Exco the power to appoint six members from the claimants to the co-management committee, instead of the appointment of the six members being made by the vote of all claimants in a special general meeting, as ostensibly contemplated by the co-management agreement.

[15] The distinction between the functions of the Exco appointed under the constitution of the Manyeleti Communal Property Association, to manage its affairs, on the one hand, and the Manyeleti co-management committee, appointed to manage the reserve, on the other, is germane.

[16] Other issues include whether there was substantial compliance with the implementation of alternative dispute resolution mechanisms in clause 16 of the co-management agreement, and whether the applicant had been disestablished and was no longer extant. Thus, so it was argued, to recognize the applicant would be to promote disunity and perpetuate disputes amongst the claimants. This despite the fact that disunity already exists as a result of the alleged breach of clause 13.4.

[17] It is also contended that the applicant launched its application on 18 July 2025, at a very late stage, over a year after the Association's second meeting on 8 June 2024, and should be dismissed on this ground simpliciter. It is common cause that subsequent efforts were made over several months post this meeting to resolve the dispute. It therefore appears that the applicant was not unduly dilatory in launching the application on 18 July 2025.

[18] The pivotal dispute requires an interpretation of several documents, namely: the settlement agreements mentioned below, the co-management agreement, and the constitution of the Manyeleti Communal Property Association.

[19] It warrants mention that the only active parties to this dispute are: the applicant, being the Manyeleti claimants, the first respondent, the Manyeleti Communal Property Association, and the Mpumalanga Tourism and Parks Agency ("the Agency"), who elected to associate themselves with the conduct of the Association's Exco.

[20] As indicated above, the latter two respondents, the only parties who opposed the relief, will, where the context requires, be referred to as “the respondents”. None of the other cited respondents opposed the application.

[21] The relief sought in the application is:

“

- a. to hold the Exco and Agency in contempt of court for establishing the co-management committee in violation of clause 13 of the co-management agreement to co-manage the reserve, which was made an order of court on 12 July 2023;
- b. setting aside the appointment of the six relevant officials by the Exco of the communal property association as purported claimant representatives to the co-management committee;
- c. ordering the Exco of the communal property association to convene a special general meeting of this association to elect the claimant representatives to the co-management committee in accordance with the co-management agreement, within one month of the date of the order;
- d. costs if opposed...”

[22] The operative clauses of agreements and the constitution which require interpretation are traversed below, chronologically, in the order in which they were executed.

[23] Of relevance is the constitution of the Manyeleti Communal Property Association. It is this document which, according to the respondents, allegedly accords the Exco itself the right to appoint six of the claimants as members to the co-management committee, thus dispensing with the need for an election in a special general meeting of all of the Manyeleti claimants.

[24] The constitution was registered on 3 October 2019 with the Department of Rural Development and Land Reform Communal Property Associations. The registration occurred in terms of the Communal Property Association Act, 28 of 1996.

[25] The preamble and clause 4.1 of the Constitution give an indication of its rationale. It provides for the need for citizens and communities deprived of their land rights to come together and acquire immovable property in common and in the interest and welfare of such citizens and communities, for the benefit of all of its members.

[26] Conspicuous by its absence is any mention of the formation of the co-management committee once the Reserve was transferred to it. This is because, patently, the constitution had as its main duty the representation and protection of all verified land claimants in transactions relating to the future resolution of their land claims under the Restitution Act.

[27] In clause 9, the powers of the Association enable it, as a representative body, to step into the shoes of the members it represents, regarding matters affecting the Reserve, consistent with the usual powers of an association. Clause 11 specifies functions relating to the appointments of the chairperson, deputy chairperson, secretary, deputy secretary, and treasurer. Clause 12 accords the Exco the power to form subcommittees to “effectively manage the affairs of the Association”.

[28] Clause 14 of the constitution also places strict limitations on its Exco’s powers, making it clear that important transactions are reserved for approval at special general meetings by the majority of members.

[29] Clause 25.1 of the constitution, relating to rural economy transformation, is helpful. The association is obliged to create a development structure responsible for socio-economic development, with the purpose of the model to “ensure that there is separation between the governance of the Association business activities in order to give effect to transparent accountability”.

[30] Clause 25.1.2 states that “the socio-economic structure must have its own committee members which will be separate from the CPA Executive Committee.” It was therefore contemplated that the discrete nature of the two structures was to ensure the separation between affairs of the Association and affairs of the co-management committee.

[31] About five months post registration of the Association, on 11 March 2020, the section 42D settlement agreement was executed (“the first settlement agreement”). The parties were: the Department of Agriculture, Land Reform and Rural Development, the Department of Economic Development and Tourism, Mpumalanga, the Manyeleti Communal Property Association, and the Agency. The purpose of the first settlement agreement pertained to the restitution of land to the community of certain delineated portions of land identified on a map (“the Reserve”). It expressly contemplated the execution of a co-management agreement.

[32] Clause 7 of the first settlement agreement provides for the formation of a co-management agreement. For ease of comprehension, reference in this clause to “Claimants” is all persons represented by the association who had successfully claimed land within the Manyeleti nature reserve, “Claimed Properties” constitute the Reserve, “Economic Activities” is defined to include “economic, commercial and related nature-based community activities....as authorized by the Management Authority”, with the “Management Authority” defined as the Agency.

[33] As part of the enquiry concerning the purpose of co-management, clauses 7.1 to 7.3 of the settlement agreement are quoted verbatim:

“7. CO-MANAGEMENT AGREEMENT

7.1 The State has agreed to facilitate the restoration of the Claimed Properties to the Claimants, provided that it is assured that the financial viability, as well as the Conservation and economic integrity of the Claimed Properties shall be maintained and that those Economic Activities implemented in respect of the Claimed Properties do not degrade the Claimed Properties or impact overtly on the Conservation status in perpetuity of the Claimed Properties.

7.2 In order to achieve the objective referred to in clause 7.1 above, the Management Authority and Claimants have negotiated and concluded a Co-management Agreement relating to the Claimed Properties (Annexure “C”), on the basis contemplated in section 42 of the National Environmental Management: Protected Areas Act (No 57 of 2003).

7.3 the Claimed Properties shall be managed in accordance with the provisions of the Co-Management Agreement and applicable Protected Areas Legislation and the Co-Management

Agreement may not be varied or amended without the written consent of both the Management Authority and Claimants.”

[34] It is plain from the above that the co-management agreement was integral in its design to sustain the financial viability and economic integrity of the Reserve for the benefit of all of the Manyeleti claimants.

[35] A second settlement agreement was signed on 19 May 2023, the parties being: the Manyeleti Verified Land Claimants’ Group, the Association, the Commission on Restitution of Land Rights and the National Department of Agriculture, Rural Development and Land Reform. This agreement identified 172 verified claimants; required an AGM to be convened within 90 days of the agreement being made an order; where an election of the leadership of the Association would occur; and they would be elected by the 172 verified claimants or representatives. An independent audit and re-verification process would take place. The first two sentences of clause 6.5 are relevant:

“6.5 Post the election of the new MCPA at the AGM, there shall no longer be two groups of claimants. All the claimants shall be represented under the new MCPA Executive Committee.”

[36] The respondents aver that, post the above agreement, there were no longer two groups of claimants. The verified claimants were allegedly subsumed under the umbrella of the Association. This does not derogate from the fact that a breach by the Association, whether via itself or Exco, vis a vis its member/representatives, could never vitiate the latter’s legal right to challenge any action taken by their representative Association. A fortiori a breach which encroaches on their legal rights, including the rights provided for in the “suite of agreements” and, especially, the co-management agreement. This would apply even if all claimants became represented by the Association and there were no longer two groups of claimants.

[37] The document which carries significant weight is the co-management agreement because its purpose is to provide for the process by which members of the co-management committee are elected, affording these 172 verified members the power and authority to cater for direct supervision of the overall management of the affairs of the Reserve, the entire rationale for taking transfer of the land. This

agreement was executed on 21 May 2023, more than three years after settlement of the claim.

[38] The co-management agreement was executed on 21 May 2023, the three parties being: the Agency, the Manyeleti Communal Property Association, and the “Manyeleti Verified Land Claimants Group”. It is a sui generis type of co-management agreement. The text provides that the actual day-to-day management is run by the Agency and not the Association, which is vested with powers of a consultative and supervisory nature. This does not militate against its role in the overall management of the Reserve. Clause 14.6 of this agreement expressly provides for the duty by the Agency to consult with the co-management committee on material matters including the management plan for the Reserve.

[39] Reference to “Claimants/Mnisi Community Claimants” means those persons who had successfully claimed land, while the “Effective Date” is defined as the date of registration of transfer of the Reserve into the name of the Association. The “Co-Management Committee” is the committee established under clause 13, formed to exercise co-management functions in respect of the Reserve. The “Manyeleti Verified Land Claimants Group” is the group of persons who successfully pursued land claims in the Land Court. The “Management Authority” means the Agency. Finally, the “MCMC Executive Committee” means the discrete executive committee established under clause 15.

[40] Part H of the preamble spells out that the Agency is to remain the management authority of the Reserve following transfer of the land to the association. And clause 1.5.21 defines the “management authority” as the organ with authority to manage and use the Reserve under certain legislation, which it is obliged to exercise “exclusively” for the purpose for which the Reserve is declared.

[41] Part J of the preamble expressly provides that co-management of the Reserve is contemplated, including the prescript that “co-management may not lead to fragmentation and duplication of management functions”. Part L (iii) of the preamble states that “carefully defined co-management of Protected Areas involving claimants must take place in a manner that is sustainable, effective and compatible with the conservation and development mandates governing Protected Areas.”

[42] To succinctly paraphrase clause 2.2, the parties agreed that, from the date of transfer, the Reserve would be co-managed by the Agency and the Association, through the co-management committee. Clause 13.1 unequivocally states that it is the co-management committee which is to co-manage the Reserve. No mention is made of the involvement of its own Exco.

[43] Clause 13 of the co-management agreement is headed “Constitution of the Co-Management Committee”. No mention is made of the involvement by the Association’s Exco in the appointment of six representatives to the co-management committee, nor was the Exco itself a party to the agreement. Throughout, mention is made of “claimant representatives” and not appointees of claimant representatives by the Exco. Certain clauses are germane to the dispute:

“13.3 The Management Authority and the MCPA shall both appoint six (6) representatives each, representing respectively the MTPA and the Claimants.

13.4 The MCPA shall ensure that the Claimant representatives are duly elected as such from its members, and that they represent, as far as is reasonably practicable, the divergent interests and make-up of the Claimants, with equal representation for females and males.

13.5 The Parties shall inform each other within thirty (30 days from date of signature of this C-Management Agreement of the names and particulars, including email addresses, of their respective representatives and designated officials.....

13.6 the Parties shall ensure that their representatives carry the requisite authority to decide matters put to the vote in any meeting of the Co-Management Committee.....

13.16 All decisions of the MCMC must be unanimous, to be voted for by both the MTPA and Claimant representatives. To the extent the MCMC deadlocks on any decision to be taken by it, such deadlock shall be resolved by an appropriate expert agreed upon by the MCMC as set out herein.”

[44] Clause 14 comprehensively describes the functions of the co-management committee which are primarily supervisory and pertain to the overseeing, monitoring and evaluation regarding the “overall strategic management of the Manyeleti Game

Reserve”. Clause 14.1 states that this committee shall not be involved in the “day-to-day operational Management” of the Reserve. And yet, clause 14.6 requires consultation between the Agency and the co-management committee on a plethora of matters of strategic importance to the claimants, including an annual concession fee beneficiation payment to the Association, for the claimants’ benefit.

[45] Clause 14 omits to accord the Association’s Exco any derivative powers. This is an important aspect of the enquiry and is inconsistent with the argument that the Exco of the Association had the power to appoint members to the co-management committee. Moreover, clause 13.3 expressly states that the six representatives of the co-management committee are to be appointed by the Association and not by its Exco.

[46] It merits mention that, under clause 15, the co-management committee was in turn required to have its own Exco, consisting of two members from the Agency and two members from the Association. The co-management committee’s Exco is accorded no authority to appoint members to this committee who are nominated by their Exco. The agreement contains no description of this co-management committee’s Exco’s functions, apart from requiring regular meetings.

[47] A dispute resolution methodology is provided for in clause 16. This will be traversed later.

[48] Some salient events followed the co-management agreement. Five months later, on 21 October 2023, the members of the Association’s Exco were elected. Then, on 6 April 2024, no resolution occurred regarding the election of six claimants to the co-management committee. This repeated itself on 8 June 2024. The respondents aver that the majority of members present favoured not voting in the general meeting for members of the co-management committee. The applicant disputes this.

[49] On 10 October 2024, the Agency’s attorneys asserted that the co-management agreement does not require members of this committee to be elected and that they can be appointed from the ranks of elected members of the Association. On 17 October 2024, the applicant’s attorneys asked the Agency not to constitute the co-management committee until an election was held. The Agency responded that this

issue was a matter of internal disunity within the Association and should be internally resolved.

[50] According to the applicant, between 8 June 2024 and 12 November 2024, its attorneys tried, without success, to persuade the Association and Agency to call a general meeting to elect the six claimant representatives.

[51] Attempts from 13 November 2024 to 4 April 2025 to refer the dispute to mediation proved an exercise in futility. This left the claimants in these proceedings, who form the majority of members, with the legitimate apprehension that an alternative dispute resolution process would come to nought.

[52] It is established practice for courts to interpret contracts using the unitary exercise which considers their text, context and purpose. The stance is taken by the test of how a reasonable person would have regard to them. One has regard to the ordinary grammatical meaning of the relevant text, then the entire contract and related contracts for context, and finally, the purpose giving rise to the text and indeed, context. See *University of Johannesburg v Auckland Park Theological Seminary* 2021(6) SA 1 (CC).

[53] Context would include our prevailing constitutional jurisprudence, and purpose would include the constitutional rights protecting the claimants in this case. Several subsections of section 25 of the Constitution, Act 108 of 1996, pertain to the rights afforded to the claimants. Under s 25(1), it provides that no one may be deprived of property except under law of general application, and no law may permit arbitrary deprivation. Under s 25(2) and s 25(3), property may only be expropriated for a public purpose and compensation must be just and equitable.

[54] Section 25(7) requires that persons or communities dispossessed of property after 19 June 1913 as a consequence of past racially discriminatory laws are entitled to restitution or equitable redress. The source of this case was a restitution claim involving restitution of land.

[55] The above comprehensive analysis of the “suite of agreements” draws one to the ineluctable conclusion that it was always unambiguously intended that the six

members of the co-management committee were to be elected by all Manyeleti verified claimant members in a general meeting.

[56] The importance of this is that a general consensus will be achieved by all verified claimants concerning the suitability of critically important appointments of members who will make decisions which will, inter alia, serve to generate income, grow the business, sustain its future viability, monitor the Reserve's finances and accountability for same, and approve beneficiation packages, for the ultimate benefit of all claimants, including their individual economic empowerment.

[57] If otherwise, and contrary to all of the agreements and the constitution, without the power or authority to do so, and in wilful disregard of the rights of all claimants to vote in members in whom they repose trust and confidence to sustain the Reserve, in the interests of the entire community, the Association's Exco is foisting six members on them when this was never agreed to.

[58] In *Beadica 231 CC and others v Trustees for the time being of the Oregon Trust and others* 2020 (5) SA 247 (CC), at para 71:

“..... The impact of the Constitution on the enforcement of contractual terms through the determination of public policy is profound. A careful balancing act is required to determine whether a contractual terms, or its enforcement, would be contrary to public policy.”

[59] Also at para 71, quoting from the Barkhuizen SCA decision, the *Beadica* judgment proceeds to confirm that the Constitution requires the courts to

“..... employ the Constitution and its values to achieve a balance that strikes down the unacceptable excesses of 'freedom of contract', while seeking to permit individuals the dignity and autonomy of regulating their own lives.”

[60] Finally, at para 76:

“..... The development of new doctrines must also be capable of finding certain, generalized application beyond the particular factual matrix of the case in which a court is called upon to develop the common law. While abstract values provide a normative basis

for the development of new doctrines, prudent and disciplined reasoning is required to ensure certainty of the law.”

[61] In conclusion, I am satisfied that the election of the six Manyeleti claimants by the Exco of their Association, and not in a general meeting by all its members, offended clause 13.4 and that redress should follow.

[62] The arguments that it is heedless to disturb the status quo and that the courts should refrain from intervening in internal affairs ring hollow when compared with the importance of protecting the rights of all claimants to use their best endeavours to ensure that the six members who are elected by their community have the requisite representation as contemplated, as also the necessary integrity, and are competent enough to assist with running the Reserve at a profit, to facilitate future beneficiation amongst all of the Manyeleti claimants, so as to economically empower them in their own right.

[63] It is a known fact that the restitution of land to disempowered claimants is not the end of the matter. The need to maintain and work the land at a profit which benefits an entire dispossessed community is equally paramount. The need for the ongoing protection of the claimants beyond the fight for the restitution of their land cannot be underestimated.

[64] I turn to the prayer for an order to hold the Exco and Agency in contempt of court for establishing the co-management committee in purported violation of clause 13 of the co-management agreement. This agreement was made an order of court on 15 July 2023. The requirements for satisfying such an order are that:

- a. an order was granted against the alleged transgressor;
- b. the alleged transgressor was served with the order or had knowledge of it;
- c. the alleged transgressor failed to comply with the order.

[65] Once these requirements are met, wilfulness and mala fides are presumed and the alleged transgressor carries the evidentiary burden to establish reasonable doubt

concerning his guilt. There is sufficient case law to sustain these legal precepts. See *Fakie NO v CCI Systems (Pty) Ltd* 2006 (4) SA 326 (SCA), and *Pheko v Ekurhuleni City Council* 2015(5) SA 600 (CC).

[66] The terms of the documents were made an order of court. It is undisputed that the respondents had knowledge of this order and the documents. But failure to comply with clause 13.4 of the co-management agreement was in dispute because of a different interpretation by the respondents.

[67] However, the declarator for an order for contempt of court is fraught with insurmountable hurdles, both procedural and substantive.

[68] The respondents more than adequately discharged the evidential burden to negate the presumption of wilfulness and mala fides. Reasonable doubt concerning any guilt was patent from the facts.

[69] An order to declare a generic group of unidentified individuals as being in contempt of an order of court is legally untenable. None of the members of the Exco of the Association, nor the Agency, has been personally cited, even though they would be directly impacted by a contempt order. This is fatally defective. See *Matjabeng Local Municipality v Eskom Holdings Ltd and others* 2018(1) SA 1 (CC) at para 103.

[70] Moreover, despite having accepted the Exco's appointment of six of the Association's members, the Agency has never been a direct participant in the dispute. Simply by virtue of its alignment with the Association's interpretation of the documents, the Agency cannot be considered to have acted wilfully and with mala fides.

[71] Even if sustainable, the order as framed is arguably ineffectual and largely academic. Based on prevailing practice, a standard contempt order would carry consequences such as the issue of a warrant of arrest for payment of a fine and/or a service of a term of imprisonment for a defined period, but be suspended pending the alleged offender being allowed a final opportunity to comply with the order within a defined period, failing which, the warrant could be executed. The order as framed provides no ramifications for non-compliance at all.

[72] This case involved an interpretation of the agreements and the constitution. Albeit that the respondents' interpretation was wrong, this falls short of willfulness and mala fides, and the issue becomes all the more attenuated when one considers that both the Association and the Agency were represented by lawyers throughout the period of the dispute.

[73] Paragraph 1 of the relief sought in the applicant's notice of motion must fail. Entitlement to the relief in paragraphs 2 and 3 has been established on a balance of probabilities.

[74] The final question is one of costs. The Land Court deals with social and constitutionally entrenched legislation. Legal costs are only justifiable if conduct during litigation is deemed vexatious, unreasonable, frivolous or an abuse of the process of Court.

[75] Both the Association and the Agency opposed the application and answering affidavits were filed. Argument was advanced on behalf of all parties at the hearing.

[76] The Agency had no direct interest in the outcome of the case. It had no duty to ensure that the inner functions of the Association were duly honoured in the election process of its six members and that the Association complied with its obligations under the co-management agreement.

[77] The applicant confined its application for a costs order only against those who opposed same. Had it omitted relief for an order for contempt of court, then it would have proved unnecessary for the Agency to oppose the application. The Agency could have abided the outcome of the case. But the applicant sought an order for contempt against the Agency as well. The Agency was therefore constrained to oppose the application and in so doing, it was obliged to deal with the factual matrix giving rise to the application for a contempt order. This essentially involved the interpretation dispute. However, there has been substantial success for the applicant.

[78] The main argument hinged on an interpretation of a miscellany of documents. Concerning both the Agency and the Association, and despite the fundamental flaws

in claiming for a contempt order, the applicant has been substantially successful. But this fact simpliciter is not determinative of the enquiry as to costs in this Court.

[79] The applicant's purpose was to protect and enforce the rights of a large number of claimants who are the communal owners of a Game Reserve, and to ensure that the entire community was given the right to vote for members of their choice to help to manage it and generate profits for their collective and individual benefit.

[80] They were entitled to vote in the people instrumental in achieving this critically important purpose by general consensus, and democratically so.

[81] Taking all of the above facts into account, and noting that the conduct of none of the parties was beyond reproach, it is inappropriate to grant a costs order in this application.

[82] The following order is granted:

- a. the appointment of the six relevant officials by the Exco of the Manyeleti Communal Property Association as purported claimant representatives to the co-management committee is hereby set aside;
- b. the Exco of the Manyeleti Communal Property Association is directed to convene a special general meeting of this Association to elect the claimant representatives to the co-management committee in accordance with clause 13 of the co-management agreement, within one calendar month from the date of this order;
- c. there is no order as to costs.



TD BRENNER
Acting Judge, Land Court

APPEARANCES:

For the Applicant: Adv Sarel van Vuuren

Instructed by: Attorneys Webber Wentzel

For the First Respondent: Adv Z Bhero-Manentsa

Instructed by: WDT Attorneys Inc

For the Second Respondent: Adv J G C Hamman

Instructed by: Savage Jooste and Adams