



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

Reportable

Case No: 2409/2025

In the matter between:

BAPHALANE BA MANTSERRE TRADITIONAL COUNCIL	First Applicant
SINAH. M DIALE	Second Applicant
TSHOLOFELO. P MOLEFE	Third Applicant
THALITA. S MOABI	Fourth Applicant
MICHEAL. S TAU	Fifth Applicant
NELSON. P MPELA	Sixth Applicant
SELLO. L MOGALE	Seventh Applicant
MOLATLHAGI. J RAMOKOKA	Eighth Applicant
BAPHALANE BA MANTSERRE COMMUNITY DEVELOPMENT TRUST (Registration No. IT 7821/02)	Ninth Applicant
SELLO S. RAMOKOKA	Tenth Applicant
ITSHEKENG A. MAITSAPO	Eleventh Applicant
DINEO P. PETE	Twelfth Applicant
ANNAH M. RANGWETSI	Thirteen applicantt

THABO S. SELEKE

Fourteen Applicant

and

KGOSI MANOTSHE JAMES E. RAMOKOKA

First Respondent

OUPA. J RAMOKOKA

Second Respondent

SAMANCO CHROME LIMITED

Third Respondent

LIMBERG

Fourth Respondent

ANGLO AMERICAN

Fifth Respondent

SIYANDA BAKGATLHA PLATINUM MINE (Pty) Ltd

Sixth Respondent

MEC FOR THE NORTH WEST DEPARTMENT

OF COOPERATIVE GOVERNANCE,

HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS

Seventh Respondent

PREMIER OF THE NORTHWEST PROVINCE

Eighth Respondent

PHETO PETRUS RAMOKOKA

Ninth Respondent

Corum: MORGAN AJ

Heard: 23 February 2026

Delivered: This judgment was circulated electronically to the parties' representatives by email. The date and time of hand-down are deemed to be 10:00 am on Thursday, 28 August 2026.

JUDGMENT

MORGAN AJ

[1] This application arises from a dispute concerning the appointment, status and functions of a Kgosana within the Baphalane Ba Mantserre community. The applicants seek both final and interim interdictory relief against the first respondent, the Kgosi, and the second respondent, Mr Oupa Joseph Ramokoka. The second respondent was appointed or designated as Kgosana by the first respondent. The applicants contend that the appointment was not made in accordance with the applicable customary and statutory processes and that the second respondent has not been lawfully recognised as Kgosana.

[2] In substance, the applicants seek orders:

- a) interdicting the second respondent from representing himself as the lawfully appointed and recognised Kgosana of the Baphalane Ba Mantserre community;
- b) interdicting the first and second respondents from interfering with the affairs of the Traditional Council and the Community Development Trust;
- c) appointing the ninth respondent, Mr Pheto Petrus Ramokoka, as interim Kgosana pending investigation and the appointment of a lawful successor; and
- d) directing the opposing respondents to pay the costs of the application on the terms set out in the notice of motion.

[3] The first, second and ninth respondents oppose the application.

[4] The applicants do not challenge the lawfulness of the first respondent's own recognition or position as Kgosi. Their challenge is directed at the appointment or purported recognition of the second respondent as Kgosana, and at conduct allegedly undertaken pursuant to that status.

[5] This application extends beyond the second respondent's status. The applicants allege that the first and second respondents have interfered with the affairs of the Baphalane Ba Mantserre Traditional Council, the Baphalane Ba Mantserre Community Development Trust, mining stakeholders and community recruitment processes. They contend that this conduct has caused continuing harm and warrants both prohibitory relief and the installation of an interim leader.

[6] The central questions for me to determine are whether the applicants have established a proper basis for final or interim interdictory relief; whether the disputes concerning traditional leadership can be determined on the papers; whether this Court may appoint the ninth respondent as interim Kgosana; and what costs order should follow.

FACTUAL BACKGROUND

[7] The Baphalane Ba Mantserre community relocated to Mantserre from Schildpadnest following land-claim disputes. A successful land claim resulted in the restoration of the farm Schildpadnest to the community. The restored land is held through the Baphalane Ba Mantserre Community Development Trust ("the Trust").

[8] During or about June 2022, the Traditional Council and the Trust concluded a collaboration agreement concerning aspects of community development and economic participation, including engagement with mining stakeholders. The agreement regulates the relationship between its parties. It does not constitute a source of customary or statutory power to appoint, recognise or remove a traditional leader.

[9] The applicants allege that, during November 2022, the first respondent appointed the second respondent as Kgosana without proper consultation with the royal family and without compliance with the applicable customary and statutory processes. They further allege that the appointment was not recognised or confirmed by the competent provincial authority.

[10] The applicants allege that, notwithstanding the disputed status of his appointment, the second respondent has held himself out as Kgosana in engagements with mining companies and other stakeholders. He is also alleged to have participated

in unauthorised protests and attempted to influence recruitment and community processes contrary to the collaboration agreement.

[11] The first and second respondents dispute the material allegations of unlawful interference and misconduct. Those disputes concern, amongst other matters, what was said to stakeholders, the authority under which engagements occurred, the character and purpose of community gatherings, and the extent to which the first or second respondent interfered with the administration of the Trust.

[12] The applicants rely also on an investigation report prepared under the auspices of North West Department of Cooperative Governance Human Settlements and Traditional Affairs (COGHSTA). The report makes adverse findings concerning aspects of the administration of the Traditional Council. Its principal focus, however, is not the validity of the specific appointment impugned in this application. Nor does it, without more, prove the particular acts of interference on which the interdictory relief depends.

[13] The application initially came before Court as an urgent application and was struck from the roll for want of urgency. It later proceeded as an opposed application in the ordinary course.

[14] I now turn to address the legal principles applicable in determining the issues raised in this matter.

APPLICABLE LEGAL PRINCIPLES

Motion proceedings and factual disputes

[15] Where final relief is sought on motion and genuine disputes of fact arise, the rule stated in the classical case of *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*¹ is applicable. Final relief may ordinarily be granted only if the facts alleged by the respondents, together with the admitted facts in the applicants' affidavits, justify the order. A denial that is not real, genuine or bona fide does not create a material dispute, and a version that is far-fetched or clearly untenable may be rejected on the papers.

¹ 1984 (3) SA 623 (A) at paras 634E-F.

[16] Also, the related ever important and classical principle that a litigant who should reasonably foresee a material dispute of fact should not ordinarily institute motion proceedings to obtain final relief dependent on resolving that dispute in its favour finds application in this matter.²

[17] The existence of a dispute does not automatically terminate the enquiry. The Court must identify whether the dispute is material to the relief sought, determine whether it is genuine, and decide whether the matter can be resolved by applying the motion-proceedings rule. Referral to oral evidence under Uniform Rule 6(5)(g) remains discretionary and is not available merely to repair a case that was inadequately made out in the founding papers.

Final and interim interdicts

[18] The requirements for a final interdict are trite and have been settled. Briefly, they entail the applicant(s) having to show or demonstrate a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by another adequate ordinary remedy.³

[19] Interim relief requires, in general, a prima facie right, though open to some doubt; a reasonable apprehension of irreparable harm if relief is refused and the applicant ultimately succeeds; a balance of convenience favouring relief; and the absence of another satisfactory remedy. These requirements are considered together, in light of the nature of the right and the practical consequences of granting or refusing relief.

Traditional leadership and legality

[20] Traditional leadership is recognised subject to the Constitution,⁴ applicable customary law and legislation. The exercise of statutory public power must have a source in law. A court may review or declare unlawful an exercise of public power where a proper case is pleaded, and the relevant decision and decision-maker are

² *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at para 1162.

³ *Setlogelo v Setlogelo* 1914 AD 221 at para 227.

⁴ Section 211(1) of the the Constitution of the Republic of South Africa, 1996.

before it. But litigants cannot confer statutory authority on a person or institution where legislation withholds it.⁵

The Traditional and Khoi-San Leadership Act⁶, read with the North West Traditional Leadership and Governance Act⁷ (the Provincial legislation) and customary law principles, provide the relevant institutional framework. The Provincial legislation also establishes mechanisms for investigating and resolving disputes relating to Bogosi and Bogosana, and assigns functions to traditional structures and provincial executive authorities.⁸

[21] On this topic, the Constitutional Court held that courts must distinguish between official statutory recognition, customary status and cultural identity. Statutory recognition of one traditional authority does not, without more, extinguish every expression of customary identity or leadership. An interdict restricting the use of traditional terminology or participation in community affairs must therefore be clear, properly founded and no wider than necessary.⁹

APPLICATION OF LAW TO THE FACTS

The second respondent's status

[22] The first prayer in the applicants notice of motion is framed as an interdict against the second respondent misrepresenting himself as the lawfully appointed and recognised Kgosana. The applicants were required to establish the right that they seek to protect, the unlawfulness of the representation complained of, actual or reasonably apprehended injury, and the absence of another adequate remedy.

[23] There is a distinction between an appointment or designation made within traditional structures and official recognition or confirmation by the competent statutory authority. It does not follow merely from an allegation that official recognition is absent

⁵ *Moroka v Premier of the Free State and Others* [2022] ZASCA 34 (31 March 2022) at paras 16 and 72.

⁶ The Traditional and Khoi-San Leadership No 3 of 2019.

⁷ North West Traditional Leadership and Governance Act No 2 of 2005.

⁸ See *Pilane and others v Premier of the North West Province and others* (UM127/2020) [2023] ZANWHC 103 (4 July 2023).

⁹ *Pilane v Pilane* [2013] ZACC 3; 2013 (4) BCLR 431 (CC) at para 34.

that every use by the second respondent of the title Kgosana is unlawful. The precise legal effect depends on the applicable customary process, the governing legislation, the act actually performed by the first respondent, and the capacity in which the second respondent thereafter acted.

[24] The applicants have not sought in the notice of motion an order reviewing and setting aside an identified administrative decision by the competent provincial functionary. Nor do they seek a mandatory order compelling the Premier, MEC or another responsible authority to exercise a statutory power. The relief instead asks this Court, through an interdict directed principally at the second respondent, to determine a contested leadership dispute without the complete statutory decision-making process being placed before it.

[25] The evidence placed before Court does not establish, with the clarity required for final relief, the full customary process applicable to the appointment, the steps that were taken or omitted, the legal character of the first respondent's act, and the status of any process before the competent provincial authority. The persons or functionaries whose statutory powers would be directly implicated are not the subject of substantive relief designed to obtain a determination from them.

[26] On the respondents' version, read with the admitted facts, the Court cannot find that every representation by the second respondent that he is Kgosana is necessarily false or unlawful. Conversely, the Court does not decide that he has been lawfully recognised for all statutory purposes. That question is not properly constituted for final determination on the present papers.

[27] A narrower interdict limited to a false claim of official statutory recognition would still require clear proof of the representation made, its falsity, its threatened repetition and the applicants' standing and right to prevent it. The papers, as described above, do not establish those matters sufficiently. The first prayer must therefore fail.

Alleged interference with the Traditional Council and Trust

[28] The applicants proffer serious allegations of interference against the first and second respondents. They include engagement with mining stakeholders, involvement in protests, attempts to influence recruitment and intrusion into the

governance of the Traditional Council and the Trust. Serious allegations, however, do not prove themselves. Interdictory relief must be founded on admissible facts identifying the conduct, the person responsible, its unlawfulness and the right infringed.

[29] In this case material disputes arise concerning what occurred, who authorised the relevant engagements, the capacity in which the respondents acted, and whether the conduct amounted to unlawful interference rather than participation in community affairs. The respondents' denials cannot, on the evidence before Court, be characterised as fictitious, palpably implausible or clearly untenable. Applying *Plascon-Evans*, it is my view that the applicants have not established facts entitling them to final relief they seek in these proceedings.

[30] Further, the relief sought by the applicants is also broad. An order prohibiting "interference" without identifying the prohibited acts risks uncertainty and may restrain lawful conduct, including the performance of recognised functions or legitimate participation in community affairs. The Constitutional Court's decision in *Pilane*¹⁰ demonstrates the need for precision where interdicts affect traditional-community governance, identity and participation.

[31] The Trust is a distinct legal institution. Its administration is governed by the trust deed, applicable trust law and decisions lawfully taken by its trustees. The collaboration agreement regulates aspects of the relationship between the Trust and the Traditional Council, but it neither confers authority to decide traditional succession nor displaces legislation or customary law.

[32] The applicants have not connected the alleged conduct to identified provisions of the trust deed or collaboration agreement with sufficient particularity. Nor have they shown, on facts sustainable in motion proceedings, that the first or second respondent exercised or purported to exercise powers reserved to the trustees, dealt with trust property without authority, or prevented the trustees from performing their legal duties.

¹⁰ See fn 9 *supra*, at paras 40-50.

[33] The COGHSTA report does not cure these defects. Its adverse findings concerning administration of the Traditional Council may be relevant background, but the report does not determine the validity of the second respondent's appointment and does not establish the specific acts required for the interdict sought.

[34] The applicants have accordingly failed to establish a clear right and an actual or reasonably apprehended infringement supporting the broad final interdict. For substantially the same reasons, they have not established a *prima facie* right and a well-grounded apprehension of irreparable harm sufficient for interim relief.

Alternative remedies

[35] The requirement of no adequate alternative remedy must be applied to the particular wrong. A criminal complaint is not a substitute for a judicial determination of leadership status, and a complaint to the Master does not resolve a traditional-leadership dispute. Those avenues are nevertheless relevant to the distinct allegations of criminality and unlawful trust administration.

[36] More importantly, the statutory and customary framework provides processes through which disputes about appointment, confirmation, recognition and conduct in traditional office may be raised before the competent traditional and provincial authorities. The applicants have not shown that those processes were exhausted, unavailable, ineffective, or incapable of producing an authoritative determination. Nor have they sought relief compelling the responsible functionary to act.

[37] Insofar as the complaint concerns the Trust, the trustees may invoke remedies under the trust deed and trust law, approach the Master where appropriate, and seek precisely framed relief against proved interference. The present broad order is not justified merely because other remedies may require properly directed proceedings.

Appointment of an interim Kgosana

[38] The prayer that this Court appoint the ninth respondent as interim Kgosana is in my view, legally unsustainable on the case presented before me for the reasons fully set out below.

[39] The authority to identify, appoint, confirm or recognise a traditional leader is distributed by customary law and legislation among designated traditional structures and executive functionaries. A court's role is to determine legality where properly approached; it is not ordinarily to select and install its preferred candidate. A judicial appointment on these papers would bypass the very processes whose non-compliance the applicants invoke against the first and second respondents.

[40] Even if the applicants had established that the second respondent's appointment was defective, it would not follow that the ninth respondent must be appointed. The ninth respondent's entitlement would require its own lawful customary and statutory foundation. No sufficient foundation has been established by the applicants for me to make the proposed substitution.

[41] Moreover, the prayer is also inconsistent with the applicants' contention that proper investigation, consultation and recognition processes must first occur. A litigant cannot insist on compliance with institutional processes while asking the Court to pre-empt their outcome by appointing its chosen interim candidate.

Referral to oral evidence

[42] I have also considered whether any dispute should be referred to oral evidence under Rule 6(5)(g) of Uniform Rules of Court. In my view, referral would not be appropriate for the following reasons.

[43] The difficulty is not confined to a narrow factual conflict capable of resolution through cross-examination. The application also suffers from the absence of properly directed review or mandatory relief, insufficient identification of the relevant statutory acts and functionaries, lack of precision in the interdicts, and inadequate proof of the Trust rights allegedly infringed. Oral evidence cannot cure those defects without materially reconstructing the applicants' case.

[44] The applicants elected to seek broad final and interim relief on motion in circumstances where substantial disputes concerning conduct and authority were reasonably foreseeable. Fairness and the interests of justice do not favour affording an opportunity to remake the case through an open-ended referral.

COSTS

[45] It is trite, that costs remain a matter of judicial discretion, to be exercised on principle and in light of all relevant circumstances. There was no reason to depart from that rule.

[46] This application engages traditional leadership, customary law and the lawful exercise of public functions. Those features caution against treating an unsuccessful application as abusive merely because it fails. The *Biowatch* principle¹¹ recognises that genuine constitutional litigation should not lightly attract a cost order that chills access to court, while preserving the power to sanction frivolous, vexatious or manifestly inappropriate proceedings.

[47] Moreover, this application was initially enrolled as urgent and struck from the roll for lack of urgency. That history is relevant but does not, without more, establish bad faith or abuse. The applicants nevertheless persisted in seeking wide final relief on materially disputed facts, sought the judicial installation of their preferred interim Kgosana without a sufficient legal basis, and did not formulate relief against the functionaries entrusted with the relevant statutory responsibilities. The first and second respondents were required to oppose the proceedings to protect their asserted positions.

[48] In those circumstances, in my view the ordinary rule that costs follow the result should apply. The complexity of the intersecting issues of customary law, traditional leadership, trust governance and motion procedure reasonably justified the employment of two counsel where two counsel were in fact employed.

[49] A personal costs order is exceptional and ordinarily requires conduct such as bad faith, gross negligence, dishonesty or a serious abuse of the court's process.¹² The present record, as assessed for purposes of this judgment, does not justify a finding of that character against identified applicants individually. The costs order will

¹¹ *Biowatch Trust v Registrar, Genetic Resources, and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) at paras 18 and 21.

¹² See *Public Protector v South African Reserve Bank* [2019] ZACC 29; 2019 (9) BCLR 1113 (CC); 2019 (6) SA 253 (CC) at paras 25, 84 and 117.

therefore be an ordinary party-and-party order, not a *de bonis propriis* or other personal punitive order.

[50] Counsels' costs on scale B is appropriate having regard to the nature, importance and complexity of the matter.

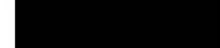
[51] In conclusion, it is my considered view that on the conspectus of the evidence before me, evaluated on a balance of probabilities, the applicants have not established the requirements for final or interim interdictory relief. The material disputes concerning the alleged interference cannot be resolved in their favour on the papers. The official status of the second respondent has not been placed before Court through properly framed proceedings against the competent decision-makers. The collaboration agreement cannot determine traditional succession, and the evidence does not justify a broad interdict concerning the Trust. Finally, this Court has no proper basis to appoint the ninth respondent as interim Kgosana.

[52] Nothing my judgment determines conclusively who is entitled, under applicable customary law and legislation, to occupy the position of Kgosana. Nor does it validate any official representation unsupported by lawful recognition. This judgment determines only that the applicants have not established entitlement to the relief sought in these proceedings.

ORDER

[53] In the circumstances, I make the following order:

- [1] The application is dismissed.
- [2] The applicants, excluding the first and ninth applicants, are ordered, jointly and severally, the one paying the others to be absolved, to pay the first and second respondents' costs on the party-and-party basis, including the costs of two counsel where two counsel were employed on scale B.

M MORGAN
Acting Judge of the High Court of South Africa,
North West Division, Mahikeng

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**The parties whose names or counsel are not recorded herein did not appear or participate in the hearing.*