Reportable:	YES/**NO**
Circulate to Judges:	YES/**NO**
Circulate to Magistrates:	YES/**NO**
Circulate to Regional Magistrates	YES/**NO**

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

CASE NUMBER: 1814/2024

In the matter between:-

KWENDA DARIUS MANGOPE First Applicant

BHURUTSHE BOO MANYANA TRADITIONAL COMMUNITY Second Applicant

and

PIKI MANGOPE First Respondent

CONCERNED MEMBERS Second Respondent

*The judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is **14 May 2025 at 12:00**.*

JUDGMENT

FMM REID J

Introduction:

[1] This is an urgent application in which the applicants seek an interdict against the first respondent from claiming to be, or purporting to be, a legitimate representative of the Bahurutshe boo Manyana Traditional Community (the Community). The interdict also seeks to prevent the respondents from convening Community Meetings to discuss developments and projects of the said Community. Lastly, the interdict seeks to prevent the respondents from disrupting, obstructing or intimidating the activities of the applicants.

[2] This matter is brought on a semi-urgent basis, with truncated periods. The reasons for urgency as advanced by the applicants, are the following:

2.1. The first respondent continues to convene unlawful community meetings, wherein he perpetually presents himself as a representative of the Community. The applicants deny that the first respondent is a representative or spokesperson of the Community, but

admits that he is a member of the Community.

2.2. The first respondent convened a meeting for the Community on 8 November 2023.

2.3. The first respondent attempted to convene a meeting in February 2024 but it was unsuccessful due to non-attendance by the community.

2.4. The first applicant's attorney of record sent a letter to the first respondent on 22 March 2024 which incorporated a demand that the first respondent cease and desist from holding himself out to be a lawful representative of the Community, whilst he is not. The first respondent was informed that such conduct was unlawful and an undertaking was sought that the first respondent will refrain from doing so. The applicants argue that, by calling a meeting and the first respondent appending his signature on the notice to call a meeting, the first respondent purports to be a representative of the Community.

2.5. The first respondent admits that he called meetings of the Community, but denies that this action identifies him as a Community representative. He responded to the abovementioned correspondence on 2 April 2024 to the effect that he is a member of the royal family and does not hold himself out to be a representative of the Community. The first respondent refused to give such an undertaking as sought.

2.6. On 5 April 2024 the first respondent issued a notice under his signature titled “NOTICE OF A GENERAL MEETING OF BAHURUTSHE BOO MANYANA (MMASEBUDULE)”. In this letter the first respondent calls a meeting for 10 April 2024.

2.7. The legal representatives of the first applicant and the first respondent communicated on 9 April 2024 and 10 April 2024 in an attempt to resolve the *impasse*, but the correspondence bore no fruits.

2.8. These urgent proceedings were instituted on 12 April 2024. The respondents were to give notice if they intend to oppose, if any, by close of business Monday 15 April 2024. The respondents were to file answering affidavits by Wednesday 17 April 2024, and the applicants were to file its replying affidavit by 19 April 2024.

2.9. The matter was set down on the urgent roll for hearing on 23 April 2024. On 23 April 2024 the respondents appeared in person at the court and requested that the matter stand down for them to obtain legal representation and file an opposing affidavit.

2.10. Without making any finding on urgency, and having the applicant's rights on urgency reserved, the parties agreed (and this Court made an order) that the matter stand down to be argued on 10 May 2024 after the respondents had sufficient time to file their opposing documents.

2.11. The matter was subsequently heard on 10 May 2024.

[3] The first respondent denies that there is urgency in the application on the following basis:

3.1. That the first respondent is not purporting to be a representative of the Community.

3.2. That the first respondent is exercising his rights to free speech as a member of the Community.

3.3. That the first respondent is a member of the royal family and intends to proceed calling meetings due to the concerns that the Community has with the Traditional Council.

[4] I have regard to the following in determination of whether the matter stands to be heard as one of semi-urgent:

4.1. The first respondent has called for previous meetings and is not inclined to provide an undertaking that he will not do so in future.

4.2. The first respondent is inclined to proceed calling meetings as he holds the view that it is within his rights to exercise his freedom of speech at a meeting in the Community.

4.3. There is a dispute about whether the first respondent is a member of the royal family.

4.4. The first applicant denies, and the first respondent contends that the first respondent has authority to call meetings of the Community.

4.5. Aside from the meeting that was to take place on 10 May 2024, the first respondent has the clear intention to call another meeting in the absence of an interdict.

[5] The principles of urgency in applications are trite.

[6] Urgency is determined with reference to several different levels of urgency, depending on the nature of the urgency

applicable to that matter. The *locus classicus* that deals with the degrees of urgency is the matter of **Lunar Meubel Vervaardigers (Edms) Bpk v Makin & Another (t/a Makin's Furniture Manufacturers** 1977 (4) SA 135 (W) at 136H where the court held that:

> *"Practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the Rules and of the ordinary practice of the Court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of Rule 6 (12) (b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down."*

and further

> "*… there are degrees of urgency. As a result, our courts deal with the question of urgency according to the merits of each case. The degree of relaxation of the rules and of the ordinary practice or the court depends on the degree of urgency of each matter. On the other hand, were a matter lacks the requisite degree of urgency, the court can, for that reason alone, strike the application from the roll."*

[7] In the matter of **IL & B Marcow Caterers (Pty) Ltd v**

Greatermans SA Ltd and Another; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd and Another 1981 (4) SA 108 (C) where a full bench (two judges) on appeal it was expressly held that the applicants in an urgent application has to justify not only the disruption of the court's roll, but also justify the prejudice that naturally follows in that other litigating members of the public are to wait the determination of their applications as the urgent application would, in simple terms "jump the que". This was set out succinctly in the **Marlow Caterers** matter as follows:

> *"Held, further, that the loss that applicants might suffer by not being afforded an immediate hearing was not the kind of loss that justified the disruption of the roll and the resultant prejudice to other members of the litigating public.*

and further on page 110 and 111:

> *"Applicants, by so doing, became obliged to persuade the Court that the matters were of such urgency that their non-compliance with the Rules should be condoned and that the matters should be heard forthwith. Respondents had no option; they were compelled by applicants to adhere to the time periods chosen by applicants and to appear in Court on the day selected by applicants. Then only, save if respondents had anticipated the hearing and made an earlier application to Court, could respondents object to the procedure followed by applicants.*

See ***Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk*** *1972 (1) SA 773 (A) where at 782A - E this course and its implications are discussed by RUMPFF J A as he then was.*

In terms of Rules 27 and 6 (12), applicants thus had to show good cause why the times should be abridged and why applicants could not be afforded substantial redress at a hearing in due course. The case for urgency had to be made out in the supporting affidavits. For discussions of this requirement, see ***Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another*** *1977 (4) SA 135 (W) at 137F;* ***Sikwe v SA Mutual Fire & General Insurance Co Ltd*** ***1977 (3) SA 438 (W)*** *at 440H;* ***Eniram (Pty) Ltd v New Woodholme Hotel (Pty) Ltd*** *1967 (2) SA 491 (E) at 493C - D, G;* ***Mangala v Mangala*** *1967 (2) SA 415 (E) at 415H - 416A."*

[8] In consideration of the legal principles applicable to urgent applications, and the individual facts of this matter, I find that the matter is semi-urgent and can be heard on the urgent roll.

Factual background

[9] The first applicant is the eldest son of the late Lucas Manyane Mangope, who was the Kgosi of the Bahurutshe Boo Manyana Traditional Community until his untimely death on 18 January 2018, for a period exceeding 40 years.

[10] Due to the deteriorating illness and inability to carry out his duties as Kgosi, the first applicant was issued with a Certificate of Recognition by the Premier of the North West Province on 25 September 2017 in terms of Chapter 3 of the **North West Traditional Leadership and Governance Act**, 2 of 2005. The Certificate of Recognition is dated 1 July 2017 and reads that:

> *"This is to certify that, by virtue of the powers vested in me in terms of chapter 3 of the **North West Traditional Leadership and Governance Act**, 2005 (Act No 2 of 2005), I have been pleased to recognise and hereby designate the person referred to below as *kgosi / acting kgoi / regent kgosi / deputy kgosi of the traditional community with effect from the date depicted below.*
>
> 1. *FULL NAMES: KWENA DARIUS MANGOPE*
> 2. *TRADITIONAL COMMUNITY: BAHURUTSHE BOO MANYANA*
> 3. *DESIGNEE TO ACT ON BEHALF OF: ACTING FOR KGOSI LUCAS MANYANE MANGOPE."*

[11] The above quoted Certificate of Recognition confirms that the first applicant is the lawful Acting Kgosi of the Bahurutshe Boo Manyana Traditional Community (Traditional

Community). By virtue of this position as Acting Kgosi he also serves as Chairperson to the Bahurutshe Boo Manyana Traditional Council (Traditional Council) with its seat of administration situated at Motswedi Village, North West Province.

[12] As Acting Kgosi of the Bahurutshe Boo Manyana Traditional Community, the first applicant holds the position of the Chairperson of the Traditional Council in terms of the **Traditional and Khoi-San Leadership Act** 3 of 2019 (the Act) and flowing from the position as Chairperson, the first applicant is also the custodian of custom and culture of the Traditional Community.

[13] The opposition to the application is on four grounds:

13.1. The first respondent claims that the first applicant is no longer the Acting Kgosi as the Certificate of Recognition has lapsed with the passing of the first respondent's father Kgosi Lucas Manyane Mangope. This argument is on the basis that the circumstances upon which the

first applicant was appointed to act, namely to assist Kgosi Lucas Mangope, has ceased to exist.

13.2. After the passing of Kgosi Lugas Mangope the royal family held a meeting and identified another individual, other than the first applicant, to be the next Kgosi. The first applicant is contesting this outcome. On 10 April 2019 a court order was made that the Community should cooperate with the Premier, who has appointed an Investigative Committee to investigate the appointment of a Kgosi. This investigation is ongoing.

13.3. That the Community has the right to gather and discuss issues of concern, such as mining royalties being paid into the trust account of the attorneys of the liquidators of Marico Chrome Corporation Proprietary Limited, as per court order under case number M91/21.

13.4. That the first respondent is not purporting to be a Community Leader or member of the Traditional Council, but a concerned member of the community who

has the right to call other concerned members to a meeting in order to discuss issues that are of concern to the Community.

[14] The first applicant confirms that his lawyers and the lawyers of the liquidators are in continuous discussions on the royalty payments in relation to the mining company operating mining operations in the Community.

[15] The first applicant also confirms that there was a previous court order issued under M373/18 in terms of which the parties were ordered to subject themselves to mediation. The first applicant states that this mediation process has culminated in the Premier's investigation and is subject to the Premier's findings and recommendations.

[16] The first respondent states that the meeting held on 10 April 2024 is significant as the issue of the opening of a community trust account was discussed at the meeting. The first respondent states that a community trust account is being considered, as the concerned members of the

community are concerned with the misappropriation of community funds.

[17] The first respondent denies that he purports to be the Kgosi or Leader. He states as follows:

> *"[34] There is nowhere in the said notice where I purport to be speaking on behalf of the traditional council or the royal family. I solely participate in these meetings as the concerned member of the community."*

[18] The first respondent contends that he is acting in the best interest of the Community and is rightfully doing so.

Analysis

[19] It is common cause that the first applicant has been duly appointed as the Acting Kgosi of the Traditional Community and Traditional Council. The Certificate of Recognition as issued by the Premier cemented that position and has not been withdrawn.

[20] I am not aware of any circumstances under which the Certificate of Recognition will "lapse" *ex lege* on the

occurrence of an event, as stated by the first respondent. The Premier of the Province is the only person that can withdraw the Certificate of Recognition, and the Premier has not withdrawn the first applicant's Certificate of Recognition.

[21] In terms of the **North West Traditional Leadership and Governance Act**, 2 of 2005, (the Act) the functions of a Kgosi is set out as follows in section 18 as follows:

> *"**18 Role and functions of kgosi/kgosigadi***
> *(1) A kgosi/kgosigadi recognised in terms of section 8, shall subject to this Act and the Constitution-*
> *(a) administer the affairs of the traditional community;*
> *(b) maintain peace in the traditional community, by conciliating and mediating disputes between members;*
> *(c) forthwith report to the competent authorities-*
> *(i) the death of any person within the traditional community area from violence or any other unnatural causes;*
> *(ii) the outbreak of any contagious or infectious disease or epidemic;*
> *(iii) any allegation of an act of witchcraft or divination;*
> *(iv) the commission of any offence which cannot lawfully be disposed through the exercise of the powers in co-operation with the Traditional Council and jurisdiction conferred upon such kgosi/kgosigadi;*

(d) take such steps, which are necessary and effective, to make known to the members of the traditional community the provisions of any new law or policy;

(e) convene and attend meetings of the Traditional Council to discuss the affairs of the traditional community: Provided that such meetings shall be convened at least once every calendar month;

(f) take such steps which are necessary to make known to the members of the motsana the provisions of any new law or policy;

(g) convene and attend meetings of the traditional community to discuss the affairs of the traditional community: Provided that such meetings shall be convened and attended by members of traditional community: Provided that such meetings shall be convened at least once every six months;

(h) take note of any problems, grievances or matters, if any, raised by any member of the traditional community at any meeting as referred to in paragraph (h) and shall take such steps which are necessary to attempt to resolve such grievance, problem or matter, as the case may be;

(i) generally seek to promote the interests of the traditional community and shall take such reasonable steps which may be necessary to promote the well-being and advancement of the traditional community.

(2) A kgosi/kgosigadi shall enjoy the status, rights and privileges conferred upon such kgosi/kgosigadi by customs and traditions applicable within the traditional community concerned.

(3) A kgosi/kgosigadi shall be entitled, in the lawful execution of his/her functions, to loyalty, respect, support and obedience of any member of the traditional community."

[22] The Act makes provision for the appointment of an Acting Kgosi in section 16 thereof, which reads as follows:

> *"**16 Recognition of an acting kgosi/kgosigadi***
> *(1) The identification of an acting kgosi/kgosigadi to bogosi of a traditional community shall be made by the Royal family in accordance with its customary law and customs.*
> *(2) The Premier may recognise a person identified as contemplated in subsection (1) as an acting kgosi/kgosigadi of a particular traditional community.*
> *(3) The Premier must issue a person recognised as an acting kgosi/kgosigadi with certificate of recognition.*
> *(4) The Premier must issue a notice in the Gazette recognising an acting kgosi/kgosigadi and such notice must be served on the Provincial House of Traditional Leaders for their information."*

[23] The Act draws no distinction between the duties of the Acting Kgosi and that of the Kgosi. In terms of section 18(1)(g) of the Act the first applicant, by virtue of his position as Acting Kgosi, is the appropriate person to:

> *"**(g) convene and attend meetings of the traditional community to discuss the affairs of the traditional community**: Provided that such meetings shall be convened and attended by members of traditional community: Provided that such meetings shall be convened at least once every six months."*
> (own emphasis)

[24] The first applicant approaches this Court for an interdict to prevent the first respondent from purporting to be a community leader and to prevent the first respondent from calling community meetings. Section 18(1)(g) of the Act provides the right to call meetings of the traditional community, exclusively to the first applicant. The wording of the Act is very clear to that effect.

[25] The first respondent thus does not have the right to call any community meetings.

[26] Concerns with the conduct of the first applicant is to be reported to the Premier in terms of section 10 of the Act, which reads as follows:

> *"**10 Administration of a traditional community***
> *(1) A Traditional Council and kgosi/kgosigadi shall endeavour to perform their roles and functions in the best interest of their traditional community and be responsible to the Premier for the efficient and effective performance of the functions assigned to such Traditional Council and kgosi/kgosigadi in terms of this Act.*
> *(2) The Premier may, subject to the provisions of this Act and the Constitution and with due observance*

> *of the traditions applicable in a traditional community, take such steps as may be necessary to ensure the due performance of the functions referred to in subsection (1).”*

[27] The first applicant has thus established a clear right to the relief sought.

[28] The concerns of the first applicant, namely that the first respondent’s actions are causing confusion in the community, appears to be valid concerns. Only the appointed Kgosi or Acting Kgosi has the legislative mandate to call community meetings.

[29] Should any concerned member of the community be in a position to call a traditional community meeting, it might lead to parallel processes as envisioned by the first applicant. This should be avoided, as should a separate bank account for traditional community’s funds. It is by no stretch of the imagination that these acts will cause division in the Community. The purpose of the legislature in granting certain specific functions to the Kgosi, is to prevent division in the Community.

[30] The funds are specifically dealt with in section of the Act and reads as follows:

> *"**9 Functions of Traditional Council***
> *(1) The Traditional Council of any traditional community, shall subject to the provisions of this Act, the Constitution and/or any other law-*
> *(a) administer the affairs of the traditional community in accordance with customs and tradition, and perform such other functions conferred by customary law and customs, consistent with statutory law and the Constitution;*
> *(b) promote the interest, advancement and well-being of members of the traditional community;*
> (c) *subject to the provisions under this Act, **administer the finances of the traditional community**."*
> (own emphasis)

[31] Only the Traditional Council has the legislative right to open an account in administering the finances of the traditional community. The answer of the first respondent that the meetings are held in consideration of opening a separate account for the administration of the Community's funds, is in direct contradiction with the legislation that determines the Traditional Council is the only entity who is legislatively

empowered to administer the finances of the traditional community.

[32] In the event that no interdict is granted, and the first respondent continues with the stated intention to open a trust account for the community's funds, the Traditional Council will have no control over those funds. These funds are of a substantive nature as it involves payments by the mines in relation to mining rights. The damages that the Traditional Council will suffer in that regard, may not be recoverable by a claim for damages against the Community.

[33] On this basis the first applicant has established an apprehension of irreparable harm, should the interdict not be granted.

[34] It is common cause that the parties attempted to settle the matter, as it is evident from the amount of communication between the legal representatives of the parties.

[35] The first applicant has thus established that there is no

alternative satisfactory remedy available to him.

[36] The first respondent has a right to freedom of speech, but this right is a limited right in terms of section 36 of the **Constitution** and is not to be exercised in contradiction with any other legislation. To convene meetings and discuss the opening of another account, would be to exercise in the contravention of the Traditional Communities Act.

The legal principles

[37] It is trite law that the following requirements need to be met for an applicant to be successful in the application for a final interdict:

37.1. The applicant must demonstrate a clear right to the relief sought;

37.2. The applicant must have a reasonable apprehension of irreparable harm; and

37.3. The applicant must have no other remedy available to it.

See: **Setlogelo v Setlogelo** 1914 AD 221 at 227
Van Deventer v Ivory Sun Trading 77 (Pty) Ltd 2015 (3) SA 532 (SCA) para 26
Red Dunes of Africa v Masingita Property Investment Holdings [2015] ZASCA 99 para 19
Pilane and Another v Pilane and Another 2013 (4) BCLR 431 (CC) para 39

[38] If the applicant establishes all three requirements of a final interdict, the Court will have a very limited discretion in deciding whether to grant such relief or not. The question of whether the Court has a general discretion in whether to grant a final interdict or not, after the applicant has indeed established all three the requirements, has been decided as follows in the matter of **Hotz and Others v University of Cape Town** 2017 (2) SA 485 (SCA):

> *[29] The law in regard to the grant of a final interdict is settled. An applicant for such an order must show a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by any other ordinary remedy.* ***Once the applicant has established the three requisite elements for the grant of an interdict, the scope, if any, for refusing***

> ***relief is limited. There is no general discretion to refuse relief.*** *That is a logical corollary of the court holding that the applicant has suffered an injury or has a reasonable apprehension of injury and that there is no similar protection against that injury by way of another ordinary remedy. In those circumstances, were the court to withhold an interdict, that would deny the injured party a remedy for their injury, a result inconsistent with the constitutionally protected right of access to courts for the resolution of disputes, and potentially infringe the rights of security of the person enjoyed by students, staff and other persons on the campus."*
> (own emphasis)

Conclusion

[39] When the first respondent issues a notice in calling a Community meeting, it appears on the face of it that the first respondent, as some type of community leader, is calling the meeting. The Act does not make provision for any concerned community member to call for a community meeting.

[40] Since it is only the Acting Kgosi or Kgosi that is legislatively empowered to call a Community meeting, the first

respondent's conduct in calling a community meeting is disruptive to the duties of the Acting Kgosi or Kgosi.

[41] On a similar basis, as the first respondent states his intention to open a separate trust account for the community's funds, but it is only the Traditional Council that is legislatively permitted to administer the finances of the community. Should the first respondent be allowed to continue with the process of opening a trust account, the functions of the Traditional Council will be disrupted and impeded on.

[42] The first applicant has established a clear right to the relief sought, a reasonable apprehension of irreparable harm in the event that the relief is not granted, and the first applicant has successfully established that there is no alternative relief available to him.

[43] Having established these principles, and thus having acquitted the onus on him, the first applicant is entitled to the relief sought.

Cost

[44] The normal rule is that the successful party is entitled to its costs occurred by the application.

[45] I find no reason why the normal rule should not be applicable and the respondents be ordered to pay the applicants' costs.

ORDER:

In the premise, I make the following order:

i. The first respondent and any other person or group of people acting at their behest or as their agents, or on their own, individually or as a group in association with the respondents, are interdicted and restrained from claiming and/or purporting to be legitimate representatives of Bahurutshe boo Manyana Traditional Community.

ii. The respondents or any other person or group of people acting at their behest or agents, or on their own,

individually or as a group in association with the respondents from convening Community meetings in their representative capacity to discuss developments and projects of the said Community.

iii. The respondents or any other person or group of people acting at their behest or as their agents, or on their own, individually or as a group in association with the respondents are interdicted and restrained from obstructing, intimidating or disrupting the activities of the applicants.

iv. Cost of the application is to be paid by the respondents, individually and collectively, the one paying the other to be absolved.

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FMM REID
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION
MAHIKENG

DATE OF HEARING: **9 MAY 2024**

DATE OF JUDGMENT: **14 MAY 2024**

APPEARANCES:

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