



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
NORTHWEST DIVISION – MAHIKENG**

CASE NO: UM217/2023

In the matter between:

**HAROLD SEBELE PILANE O.B.O THE ORGANISING
COMMITTEE OF THE BAKGATLA BA
KGAFELA KGOTHE**

1ST APPLICANT

**BAKGATLA BA KGAFELA TRADITIONAL
COMMUNITY MEMBERS**

2ND APPLICANT

And

**MEC FOR CO-OPRATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS, NW PROVINCE**

1ST RESPONDENT

PHINEAS TJIE

2ND RESPONDENT

In re:

**MEC FOR CO-OPRATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS, NW PROVINCE**

1ST APPLICANT

PHINEAS TJIE

2ND APPLICANT

And

ALL PERSONS AND MEMBERS OF THE BAKGATLA
BA KGAFELA TRADITIONAL AUTHORITY

RESPONDENT

Heard: **10 NOVEMBER 2023**

Reasons requested: **23 NOVEMBER 2023**

Delivered: The date for the hand-down is deemed to be on **18
JANUARY 2024**

REASONS FOR JUDGMENT

DJAJE AJP

[1] These are the reasons for the order granted on **10 November 2023** as follows:

“1. THAT: The application for reconsideration is dismissed.

2. THAT: The deponent to the affidavit in support of the reconsideration application, Mr Harold Sebele Pilane is ordered to pay costs.”

[2] The above order was granted as a result of an application to reconsider the order granted on **9 November 2023** which was as follows:

“PART A

1. THAT: Condoning the Applicant’s non-compliance with forms and services and periods provided in the Uniform Rules of this Honourable Court and permitting this application to be entertained as a matter of urgency in terms of Rule 6(12) of the Rules of Court

2. THAT: A Rule Nisi be issued, calling upon the Respondents to appear before Court on 14th day of DECEMBER 2023 at 10:00, in order

to show cause why a Final Order should not be granted in the following terms:-

2.1 The Respondent are hereby **restrained and interdicted** from holding the annual community meeting, Kgotha-Kgothe”, with the Bakgatla ba Kgafela Traditional Community scheduled on the 11th day of NOVEMBER 2023 at 10h00 at Moruleng Stadium, Northwest Province South Africa;

2.2 The Respondent are hereby **restrained, interdicted and prohibited** from holding any community meetings, under the Auspices and guise of the name of Bakgatla ba Kgafela Traditional Authority”;

2.3 The Respondents are hereby **restrained, interdicted and prohibited** from using / alternatively describing themselves as the “Bakgatla Ba Kgafela Traditional Authority”.

3. THAT: The provisions of 2.1 to 2.3 above shall operate as an interim Oder, with immediate effect, pending the return date of the Rule nisi in terms of Part B;

4. THAT: The Applicants shall affect service of the **Rule nisi** through the service of the Sheriff to place such on all entrance of Moruleng Stadium, Northwest as well as all entrance points of the Bakgatla Ba Kgalefa Traditional office situated at Moruleng northwest Province;

5. THAT: The Respondents are given leave to anticipate the return date by giving 48hrs written notice thereof to the Applicant’s attorneys;

6. THAT: Any of the respondents who oppose the relief in terms of Part A be ordered to pay the cost thereof on the attorney and own client, alternatively attorney and client scale;

PART B

8.THAT: *On the return date **14th day of DECEMBER 2023 AT 10;00** or soon thereafter as the matter may be heard, order be made in favour of the Applicants as follows*

8.1 *The Respondents are hereby restrained and interdicted from interfering in whatsoever manner with the day to day running of the activities of the “Bakgatla ba Kgalefa Traditional Authority” and its management thereof;*

8.2 *The Respondents are hereby restrained, interdicted and prohibited from holding any community meetings, under Auspices and guise of the “Bakgatla ba Kgalefa Traditional Authority”;*

8.3 *The Respondents hereby restrained, interdicted and prohibited from using / alternatively describing themselves as the “Bakgatla ba Kgalefa Traditional Authority”;*

8.4 *The Respondents be ordered to pay the costs thereof on the attorney and own client, alternatively attorney and client scale.”*

[3] For ease of reference I will refer to the parties as they appear in the main application, being the MEC and administrator as the applicants and the members of the Bakgatla Ba Kgafela Traditional Authority as respondents. This matter first came before court on **9 November 2023** wherein the applicants sought an order as follows:

PART A

1. *Condoning the Applicant’s non-compliance with forms and services and periods provided in the Uniform Rules of this Honourable Court and permitting this application to be entertained as a matter of urgency in terms of Rule 6(12) of the Rules of Court;*

2. That a Rule Nisi be issued, calling upon the Respondents to appear before Court on 14th day of DECEMBER 2023 at 10:00, in order to show cause why a Final Order should not be granted in the following terms:-
 - 2.1 The Respondent are hereby **restrained and interdicted** from holding the annual community meeting, Kgotha-Kgothe”, with the Bakgatla ba Kgafela Traditional Community scheduled on the 11th day of NOVEMBER 2023 at 10h00 at Moruleng Stadium, Northwest Province South Africa;
 - 2.2 The Respondent are hereby **restrained, interdicted and prohibited** from holding any community meetings, under the Auspices and guise of the name of Bakgatla ba Kgafela Traditional Authority”
 - 2.3 The Respondents are hereby **restrained, interdicted and prohibited** from using / alternatively describing themselves as the “Bakgatla Ba Kgafela Traditional Authority”.
3. That the provisions of 2.1 to 2.3 above shall operate as an interim Order, with immediate effect, pending the return date of the Rule nisi in terms of Part B;
4. That the Applicants shall affect service of the **Rule nisi** through the service of the Sheriff to place such on all entrance of Moruleng Stadium, Northwest as well as all entrance points of the Bakgatla Ba Kgafela Traditional office situated at Moruleng northwest Province;
5. That the Respondents are given leave to anticipate the return date by giving 48hrs written notice thereof to the Applicant's attorneys;
6. That any of the respondents who oppose the relief in terms of Part A be ordered to pay the cost thereof on the attorney and own client, alternatively attorney and client scale;

PART B

8. *That on the return date **14th day of DECEMBER 2023 AT 10:00** or soon thereafter as the matter may be heard, order be made in favour of the Applicants as follows*

8.1 *The Respondents are hereby restrained and interdicted from interfering in whatsoever manner with the day to day running of the activities of the “Bakgatla ba Kgalefa Traditional Authority” and its management thereof;*

8.2 *The Respondents are hereby restrained, interdicted and prohibited from holding any community meetings, under Auspices and guise of the “Bakgatla ba Kgalefa Traditional Authority”;*

8.3 *The Respondents hereby restrained, interdicted and prohibited from using / alternatively describing themselves as the “Bakgatla ba Kgalefa Traditional Authority”;*

8.4 *The Respondents be ordered to pay the costs thereof on the attorney and own client, alternatively attorney and client scale.”*

[4] The second applicant, Phineas Tjie is the appointed administrator of the Bakgatla Ba Kgafela Traditional Community in terms of the Northwest Traditional Leadership and Governance Act 2 of 2005 since **4 January 2020**. The appointment was made by the former Premier of the North West, Professor TJ Mokgoro. According to the applicants, the current Kgosi with the recognition certificate is Kgosi Lenchwe who works hand in hand with the administrator. An application to set aside the appointment of the administrator was dismissed on **26 July 2023**. In the same application, the court also dismissed an application to declare that the decision of the Premier to withdraw the Recognition Certificate issued to Pilane is

unconstitutional, irrational, unlawful and invalid and is of no force and effect on the basis that it violates the principle of legality.

- [5] On **29 October 2023** there was a public notice calling for an annual meeting referred to as Kgotha-kgothe which was to take place on **11 November 2023** at the Moruleng stadium. The notice was as follows:

“The Bakgatla ba Kgafela Traditional Authority, in accordance with the traditions, customs and laws of Traditional Communities in the Republic of South Africa hereby calls and declares a public notice, that the annual community meeting “Kgotha-Kgothe” of the Bakgatla ba Kgafela Traditional Community has been scheduled as follows:

Date: 11 November 2023

Time: 10H00

Venue: Moruleng Stadium, Northwest Province, South Africa.

The meeting aims to give the community various reports and seek to resolve matters including but not limited to:

- (a) The Status of Bogosi;*
- (b) Land Administration and Management;*
- (c) The Status and current tenure of the BBK-CPA and;*
- (d) Commercial legal challenges that the community is facing.”*

- [6] In terms of the above notice the meeting was called or rather convened by “The Bakgatla Ba Kgafela Traditional Authority”. This notice resulted in the launch of the application which was heard on **9 November 2023**. The reason for the urgent application was that Kgosi Linchwe and the administrator were not aware of such a meeting nor were they part of the organising committee. When the administrator was appointed there were terms of appointed which included the following:

- “12.1 To perform any power, authority and function conferred or imposed by law on the traditional council;*
- 12.2 To manage all litigation cases and processes against the Community;*
- 12.3 To engage and call tribal meetings for the purposes of report back to obtain new mandate and tribal resolutions;*
- 12.4 Create a harmonious relationship between internal and external stakeholders and solicit support where necessary;*
- 12.5 Manage financial administration of the community affairs in line with the Act and;*
- 12.6 To support any process or initiative that can bring peace and stability within the community.”*

[7] It was submitted that according to the notice, the meeting was aimed at giving the community reports and seeking to resolve the status of Bogosi, Land Administration and Management and other issues. These are issues that the administrator and the Kgosi should deal with and give reports on. It was not clear from the notice who was calling the meeting as notice only referred to the Bakgatla Ba Kgafela Traditional Authority. The Kgosi being the Chairperson of the Traditional Authority was not aware of such a meeting and deposed to a confirmatory affidavit. The issues listed on the notice were of such grave importance to the community and the administrator together with the Kgosi should have been part of the meeting. This was not done and hence the application to interdict the said meeting.

[8] The applicants had to satisfy the requirements of an interim interdict. The Constitutional Court in **National Treasury and**

**Others v Opposition to Urban Tolling Alliance and Others
2012(6) SA 223 (CC) at Par [50] found as follows:**

“Under the Setlogelo test, the prima facie right that the claimant must establish is not merely the right to approach a Court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should demonstrate prima facie right that is threatened by an impending or imminent irreparable harm. The right to review the impugned decisions did not require any preservation pendent lite”.

- [9] The administrator by virtue of his appointment as such is in charge of all the administrative aspects of the Bakgatla Ba Kgafela Community. No doubt that he has the *prima facie* right to approach court and interdict a Kgotha-kgothe called without his knowledge. It was not known who the convenors of the said meeting were and what was going to be reported to the community. The irreparable harm was imminent as such meeting would cause confusion in the community. The only remedy available for the applicants was to interdict the said meeting. The order was granted on *ex parte* basis as the respondents were unknown to the applicants.
- [10] As indicated above there was an application to reconsider brought by Mr Harold Sebele Pilane on behalf of the organising committee of the Bakgatla Ba Kgafela Kgotha Kgothe. The deponent to the reconsideration founding affidavit was Mr Harold Pilane who identified himself as a member of the Bakgatla Ba Kgafela Traditional Community and also a member of the organising committee of the meeting scheduled to take place on **11**

November 2023. He further stated that all the dikgosana who mandated him were duly recognised in terms of the North West Act.

[11] In support of the application for reconsideration it was submitted that the order granted on **9 November 2023** was against an entity that does not exist. It was argued that the North West Act does not have a provision recognising a Traditional Authority but a Traditional Community and a Traditional Council. that there was a prima facie right. This argument was however without merit as the order was granted against the convenor of the meeting who in the notice identified themselves as the Bakgatla Ba Kgafela Traditional Authority. As stated above at the time of the main application, the applicants were not aware who the organisers of the Kgotha-kgothe were.

[12] The Constitutional Court in **Pilane and Another v Pilane and Another (CCT 46/12[2013] ZACC 3; 2013 (4) BCLR 431 (CC)** (28 February 2013) at par [46] defined a Kgotha-kgothe as *“a traditional gathering at which members of a traditional community publicly debate and decide on matters affecting the community, which may include evaluating and criticising the performance of their leaders”*.

[13] This makes the Kgotha-kgothe and important meetings of the community that can result in serious decisions being taken by the community. In this matter the meeting was to discuss issues relating to the status of bogosi (chieftainship) without involving the recognised Chief or the administrator appointed. Mr Pilane argued that the community needed to be informed about their traditional

leadership issues and pending court cases. There was no reason advanced why the administrator or the Kgosi was not involved except that the appointment of the administrator is a subject of litigation.

- [14] It was further submitted that the office of the Premier was made aware of such a Kgotha-kgothe but no proof was provided that the Premier was informed. The correspondence attached was on the letter head of the office of the Kgosi but the Kgosi was not aware of such a meeting. The only invitation sent was to the Department of Agriculture, Land Reform and Rural Development for the attention of one Mr Richard Keothaile who is a Chief Director in the department. There was no communication to the office of the Premier or the MEC for Co-operative Governance and Traditional Affairs. The application for reconsideration was dismissed as the applicant thereto failed to substantiate why there was a Kgotha-khothe organised without involving the Kgosi, the administrator, the MEC or the Premier.

Costs

- [15] Costs are in the discretion of the court and it is trite that costs follow the result. The order of **9 November 2023** did not direct any specific person to pay the costs except to state that anyone who opposed the application should be liable for the costs. When the matter was heard on **10 November 2023**, Mr Harold Pilane identified himself as the organiser of the meeting and was in fact opposing the main application. It was for that reason that he was

ordered to pay costs. There was no proof furnished that he was acting on behalf of any entity.

[16] It was for the above reasons that the order of **10 November 2023** was granted.

J.T. DJAJE
DEPUTY JUDGE PRESIDENT
NORTH WEST DIVISION

APPEARANCES

DATE OF HEARING	: 10 NOVEMBER 2023
DATE REQUEST FOR REASONS	: 23 NOVEMBER 2023
REASONS HANDED DOWN	: 18 JANUARY 2024
COUNSEL FOR APPLICANT	: ADV NTSAMAI
COUNSEL FOR RESPONDENTS	: ADV MATEBESI SC