



CONSTITUTIONAL COURT OF SOUTH AFRICA

Pilane and Another v Pilane and Another

**Case No: CCT 46/12
[2013] ZACC 3**

**Date of Hearing: 13 September 2012
Date of Judgment: 28 February 2013**

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 28 February 2013, the majority of the Constitutional Court upheld an appeal by members of the Bakgatla-Ba-Kgafela Traditional Community (Traditional Community) against three interdicts of the North West High Court (High Court).

The case concerned whether members of the traditional Community, based in the North West Province were correctly interdicted from convening meetings under certain auspices; acting in a manner contrary to applicable statutory and customary law; and holding themselves out as a traditional authority using specified names and cognate titles.

The applicants are members of the Traditional Community, based in the North West Province who lead a group that desires secession from the Traditional Community. The applicants sought to convene a *KgothaKgothe* (a traditional gathering) to discuss the proposed secession. The respondents in the matter are Mr. Nyalala John Molefe Pilane, the *Kgosi* (senior traditional leader) of the Traditional Community, and the Traditional Council of the Traditional Community.

The respondents applied to the North West High Court (High Court) for urgent relief. The High Court granted seven interdicts against the applicants. On the return date, the High Court confirmed three of the seven interdicts, restraining the applicants from: (1) organising or proceeding with any meeting purporting to be a meeting of the Traditional Community or Motlhaba Tribal Authority without proper authorisation from the respondents; (2) taking any steps or conducting themselves in any manner which is contrary to the provisions of the relevant legislation or the customs of the traditional community in Moruleng and customary law; and (3).

pretending or holding themselves out as a traditional authority under the name or names Bakgatla-Ba-Kautlwale or Bakgatla-Ba-Motlhabe or the traditional authority of Motlhabe or any similar name or title of whatever kind.

In a judgment penned by Skweyiya J, (concurrented in by Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Van der Westhuizen J and Zondo J) , the majority of the Constitutional Court upheld the appeal and set aside all three interdicts.

With respect to the first interdict, the majority found that the respondents had failed to prove the first requirement for an interdict, namely a clear right, and further, as regards the second requirement for an interdict, that the context and content of the invitation convening the meeting indicated that the applicants were not attempting to appropriate the identity, authority or powers of the respondents. The majority overturned the second interdict on the basis that it lacked specificity and was overly broad. The third interdict was overturned because it effectively prevented the applicants from using terminology that describes their identity as a people and because the applicants had undertaken to refrain from using such statutory terms to refer to themselves in future. In addition, the majority considered the adverse impact of the interdicts on the applicants' rights to freedom of expression, association and assembly and the importance of these rights, particularly emphasising the inherent value of allowing dissenting voices to be heard in a constitutional democracy. The majority accordingly allowed the appeal and overturned the High Court's order.

In a dissenting judgment, Mogoeng CJ and Nkabinde J, held that they would have dismissed the appeal in respect of the first interdict but upheld it in respect of the second and third interdicts only to their over-breadth. The minority found that the applicants made use of the title "Motlhabe Tribal Authority" which could only be understood to mean an authority clothed with statutory recognition and that they purported to convene a *KgothaKgothe*, a power they did not have. The minority found further that the applicants, by previously declaring their independence and stating that they do not recognise the first respondent's legitimacy, in effect sought to undermine and threaten the *Kgosi's* position or remove him as a senior traditional leader, in disregard of the relevant customary law and statutes. The respondents, as the lawful authorities, were entitled to approach the High Court to resist the usurpation of their rights by the applicants who had no authority to convene the *KgothaKgothe* under customary law and the relevant statutes. The minority found further that while it is correct that courts should be slow to grant interdicts that have the effect of limiting constitutional rights, the grant of the first interdict in the circumstances of this case did not breach the applicants' rights to free association and free speech.