



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribal Authority and Others**

**CCT 231/14**

**Date of hearing: 28 May 2015**

**Date of judgment: 20 August 2015**

---

#### **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.*

Today the Constitutional Court handed down a judgment in a matter concerning the proper interpretation of section 5(4) of the Communal Property Association Act (the Act).

The applicant, Bakgatla-Ba-Kgafela Communal Property Association (Association), is a provisional association created in accordance with the impugned provision. The Association was formed by members of the Bakgatla-Ba-Kgafela traditional community, which occupies 32 villages in the Moses Kotane Municipal area in the North West Province. During apartheid, the community was dispossessed of and forcibly removed from its land, on which thereafter a game reserve was established. In an effort to recover their land, the community lodged a claim under the Restitution of Land Rights Act. The claim was approved by the Minister of Rural Development and Land Reform (the Minister) in October 2006.

In order for the community to be able to take possession of the restored land, they initiated a process of registering an Association in 2005. However, a dispute arose between the community and the respondents, the Tribal Authority and Kgosi Pilane, concerning the nature of the entity through which the land was to be held. On the advice of the Minister, a provisional association was registered for a period of 12 months pending the registration of a permanent association. The land was then transferred to the Association.

Within a 24-month period, there were two attempts to register the Association as a permanent association. Both failed. The Association then sought the intervention of the Land Claims Court. The main issues before that Court were whether the Association was properly registered under the Act so as to be able to institute an action before the Court and whether the Association was entitled to be registered as a permanent association.

The Land Claims Court found in favour of the Association on grounds that under section 5(4) of the Act, after 12 months the Association only lost the right to alienate land but not its legal personality. The Court directed the Director-General in the Department of Land Reform and Rural Development to effect a permanent registration. The Tribal Authority and Kgosi Pilane appealed to the Supreme Court of Appeal which overruled the Land Claims Court. The Supreme Court of Appeal held that under the impugned provision the Association ceased to exist on the expiry of 12 months and therefore lacked legal standing to bring the action.

Before this Court, the Association argued that the Supreme Court of Appeal erred in its interpretation of the Act and in its conclusion that the Association's existence terminated 12 months after the provisional registration. Kgosi Pilane and the Tribal Authority argued that the matter does not raise a constitutional issue and does not meet the jurisdictional requirements of this Court. In addition, the respondents agreed with the Supreme Court of Appeal's interpretation of the Act. After being joined as respondents in this Court, the Minister and the Director-General supported the Association's case but suggested that the matter be referred for mediation.

In a unanimous judgment, the Court set aside the decision of the Supreme Court of Appeal. It found that reference to the period of 12 months under the Act was in relation to the exercise of the right to occupy and use land and not in regard to the lifespan of an association. It ruled that the Supreme Court of Appeal misinterpreted the meaning of the impugned provision. The Court also stated that Kgosi Pilane's opposing view could not override the majority's choice to form an association. Further, the Court ruled that the Association had met all the requirements for registration and therefore should be registered as a permanent association.