IN THE HIGH COURT OF SOUTH AFRICA
NORTH GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES ~~YES~~/NO
(3) REVISED

DATE 2010.10.04 SIGNATURE

CASE NUMBER: 48712/08
DATE: 5 October 2010

THE REGIONAL LAND CLAIMS COMMISSIONER
APPLICANT

V

RAMA COMMUNAL PROPERTY ASSOCIATION
1st RESPONDENT

ANDY NTHITE
2nd RESPONDENT

PETER SEKGOTHE
3rd RESPONDENT

LEMECK PILA
4th RESPONDENT

PETER SEEMA
5th RESPONDENT

SAM NTSOKO
6th RESPONDENT

SAMSON MMOLEDI
7th RESPONDENT

REFILWE NCUBE
8th RESPONDENT

MAMSY MPHOLOFOLE
9th RESPONDENT

MARIA LETSWALO
10th RESPONDENT

Judgment:
Mabuse J

JUDGMENT

<u>MABUSE J</u>:

1. This is an application in terms of section 13(1) of the Communal Property Association Act 28 of 1996 ("The CPA Act") to place the First Respondent under the administration of the Applicant and furthermore to remove the incumbent office bearers of the First Respondent, that is, the Second to the Tenth Respondents from office. The Application is opposed by the Respondents.

2. The Applicant is The Regional Land Claims Commissioner appointed as such by the Minister of Agriculture and Land Affairs in terms of the provisions of section 4 of the Land Restitution of Land Rights Act 22 of 1994 ("The Restitution Act") of 9 Bailey Street, Arcadia, Pretoria. The Applicant alleges that the Director General of Land Affairs, who is the relevant authority empowered by the provisions of the CPA Act to place the First Respondent under administration, has delegated his powers to place the First Respondent under administration to herself in terms of section 15 of the CPA Act. In support of this allegation that the Director General has delegated the necessary authority and powers in terms of section 15 of the Act, the Applicant relies on a document she has attached to the application marked ISSI. I will deal with this document later.

3. The First Respondent is Rama Communal Property Association (Rama CPA), a Communal Property Association which is registered in terms of Section 8 of the CPA Act which has its offices at Eckraal Quarries 310, Farm Wildebeeshoek, Rosslyn, Pretoria. The Second Respondent is Andy Nthite ("Andy"), an adult male person and the current chairperson of the First Respondent Committee of the same address as the First Respondent. The Third Respondent is an adult male person and the current vice-chairperson of the First Respondent Committee of the same address as the First Respondent. The Fourth Respondent is an adult male person and current secretary of the First

Respondent who also shares the same address as the preceding Respondents. The Fifth Respondent is an adult male person and the current vice secretary of the First Respondent. He also shares the same address as the preceding Respondents. The Sixth Respondent is an adult male person and the treasurer of the First Respondent. The Seventh Respondent is an adult male person and an additional member of the First Respondent. The Eighth Respondent is an adult male person and also an additional member of the First Respondent. The Ninth Respondent is an adult male person and additional member of the First Respondent. The last and the Tenth Respondent is an adult female person and also an additional member of the First Respondents. All the Respondents share the same physical address.

4. The Applicant contends that the Director General of the Department of Land Affairs ("DLA"), has delegated to her his powers in terms of section 13 of the CPA Act which provides that a Director General can bring an application to place a Communal Property Association (CPA) under his administration where the CPA, because of insolvency or maladministration or for any other cause is unwilling or unable to pay its debt or is unable to meet its obligations or where it would otherwise be just and equitable in the circumstances. The basis on which the Applicant seeks to bring an application in terms of the aforementioned section is clear from the following background.

5. In 1998 the claimants, presumably some members of the Rama Community, lodged claims in terms of the Restitution Act on the Remaining Extent of Kafferskraal 308 JR and Portion 2 of Wildebeesthoek 308 JR. These claims were adjudged to be valid and accordingly were published in the Government Gazette. For that purpose a CPA was formed and registered as the Rama CPA. The Rama CPA was formed for the purpose of a holding land on behalf of the claimants. A section 42D submission was prepared and was approved by the Minister of Agriculture and Land Affairs on 24 March 2001. In terms of the section 42D memorandum, the State acquired the claimed land for the sum of R13 811 000,00.

6. Rama CPA started experiencing problems when its elected chairperson, one Ramathyane Poo ("Poo") was voted out of the Rama CPA Committee after a report from the auditors had indicated that certain transactions were executed without supporting documents. A group of non-beneficiaries constituted themselves into the Se-Boikhutso after they had alleged that they were part of the original buyers of Rama. They presented a memorandum to the Applicant's office in which they had requested the Applicant to remove the Government Official who was working on the project. Having gone through the memorandum the Applicant requested her legal unit to respond to it. The First Respondent's Committee brought an urgent interdict to stop the Se-Boikhutso group from holding meetings on the restored land.

7. Another interdict was brought by a group led by the said Poo who claimed to represent the original buyers of Rama and who furthermore claimed that he did not recognise the existence of the Rama CPA Committee. This interdict was dismissed with costs.

8. The Rama CPA Committee members started to fight among themselves when the chairperson requested the removal of the Treasurer for failing to attend executive meetings on three occasions without any written apology. Other members of the Rama CPA Committee objected to the chairperson's request for the removal of the Treasurer and decided to side with the Treasurer. The Treasurer together with four other Rama CPA Committee members approached the Absa Bank in Rosslyn and caused removal of the chairperson as one of the signatories to the bank account.

9. A Steering Committee comprising of Tshwane Metropolitan Municipality, Gauteng Provincial Housing Department, the Department of Mineral and Energy, claimants representatives and the Regional Land Claims Commission was formed. However the Steering Committee could not function as a result of the wrangle within the Rama CPA. The environmental impact assessment process was outsourced but was put on hold pending the appointment of the consortium that would have dealt with the Integrated Planning Process in relation to the Land Use and Service Plan. The outsourcing of the IDP was

delayed as a result of conflicts which wreaked the Rama CPA Committee. A Capacity Building Process for the Rama CPA Committee and other structures was concluded recently but did not yield any improvement. On 22 August 2007 one Jeff Sebape ("Sebape"), director responsible for the CPA administration within the Department of Land Affairs compiled a memorandum in which he advised the Director General not to exercise his powers in terms of section 13 of the CPA. The Director General was instead advised to proceed in terms of section 11(6) of the CPA. The said memorandum is attached to the application as annexure ISS5.

10. The Commission on Restitution of Land Rights acted in the spirit of annexure ISS5 by referring the dispute within the Rama CPA to Tokiso Dispute Settlement Organisation. The mediation was not successful owing to the fact that affected parties failed to identify the issues in dispute and did not agree on the mediation process.

11. The mediation process was also strangled by the allegations that the said Poo was not a bona fide beneficiary. This issue sidetracked the mediation process. The Applicant's office investigated the status of the said Poo and came to the conclusion that the claims that Poo was not a bona fide beneficiary had no merit and furthermore he was indeed a bona fide member of Rama Community. The Rama CPA was requested to consider mediation in the light of the fact that the status of the said Poo had been determined.

12. During June 2006 the Applicant's office enlisted the services of business planners Bathupi Business Enterprises (Bathupi) which identified the financial problems facing the Rama CPA such as conflict of interests relating to the award of projects to themselves, the CPA Committee members holding dual roles and lack of financial management expertise, failing to have an operation office after a period of eight years of existence and furthermore failure to account to the community in respect of the running of the project.

13. Before a report by Bathupi Business Enterprises could be made the applicant one Modisele and Ntsoko attempted to hold a meeting with the said Bathupi.

Bathupi declined to attend the meeting after noting that there are conflicts with the CPA Executive Committee and that it was not clear that what the status of the working group was. Bathupi also advised the said Modisele and Ntsoko that they were employed by the Department of Land Affairs and for that reason could not hold any meeting with them.

14. On 8 July 2006 the Rama CPA held a disciplinary enquiry into the conduct of one Hans Carl Ntsoko who had been accused of fraudulently using the Rama CPA name to raise a loan from Cuyvers, inciting members of the Rama CPA to threaten committee members, acting on his own on matters affecting the interest of the entire Committee, holding unscheduled meetings with the members of the Rama CPA. At the conclusion of the inquiry, the disciplinary proceeding the Committee resolved to remove the said Ntsoko as chairperson and a member of the Rama CPA Committee. On 10 July 2006 the Rama CPA Committee wrote a letter to the Applicant informing her about the resolution they had taken to remove the said Ntsoko from Rama CPA Committee.

15. Before the said Ntsoko could be removed as the chairperson of the Rama CPA, he wrote a letter to the Director General in which he stated that the Rama CPA was operating outside the parameters of their Constitution and appealed to the Director General to intervene, particularly on the finances of the Rama CPA, lack of capacity on financial matters and official to implement what they were taught on financial matters and conflict of interest relating to awarding projects to themselves at the expense of the broader committee and violating the provisions of the Rama CPA Constitution. The letter furthermore implored the office of the Director General to intervene.

16. On 13 September 2006 Ngubane and company audited the books of the Rama CPA for the year ending 31 May 2003, 2004 and 2005. In their report they found, and reported, that an amount of R10 050,00 was spent on salaries, R25 000,00 on bonuses, R73 353,00 in respect of security, R75 00,00 in respect of rent, R27 500,00 in respect of the meetings and R48 635,00 in respect of trade expense. These amounts were regarded as being related to expenses that did

not relate to business of the Rama CPA and were correctly classified as fruitless and wasteful expenditures.

17. This audit which was conducted in respect of the year ending May 2005 found many instances with qualified audit on aspects such as land, building and machinery which were not included in the financial statements, no existence and rights of property stated at R92 882 and that accounting records were not properly maintained. On 22 September 2006 a lease agreement between Rama CPA and Eckraal Quarries (Pty) Ltd was concluded in terms of which the restored land was leased back to Eckraal for an amount of R675 000,00. The current Rama CPA is using the premises at Eckraal Quarries as the operating office of the First Respondent. This constitutes an irregularity and conflicts of interest. The affairs of the First Respondent should not be run from the premises of the company or entity which has benefited from the lease agreement. This relationship compromises the interest of Rama CPA Committee whenever the lease agreement comes up for renewal.

18. According to the Applicant the Rama CPA Committee would not be objective if a choice had to be made between Eckraal Quarries and other competitors for the lease of the Quarries premises in the future. The Rama CPA Committee has also irregularly raised a loan in the sum of R500 000,00 with Eckraal Quarries which has been invested for the benefit of the community members and their families. The reason of the loan with Eckraal Quarries is also an instance of conflict of interests arising from the awarding of the lease agreement to Eckraal Quarries by the Committee. The CPA Committee ought to have approached the commercial banks or financial institutions if it required bridging finances to run the affairs of the First Respondent. This process would have entailed that the Committee constituting the First Respondent would have been informed and consulted to ensure transparency in the financial affairs of the Respondents.

19. On 9 May 2007 Rama CPA wrote a letter to the Applicant's office in which they enquired as to the process regarding the progress of memorandum from the Director General concerning the resolution of the Rama CPA Committee and

the closing of the association bank account. On 22 May 2007 Khuduthamaga Rama CPA wrote a letter to the Applicant to inform her that a delegation would be sent to her office to discuss, among others, means that could help kept illegal activities, public notices to the perpetrators to stop their activities, public notices to the community to stop supporting illegal activities and to be furnished with written reports of steps taken by the Applicant to stop the rot.

20. On 15 October 2007 Rama CPA Committee wrote a letter to the Department of Land Affairs (DLA) to inform the DLA that a resolution had been taken to inform the Applicant that one Simon Poo was neither born nor bred at Rama; that the Applicant's office should resist from holding meetings with him regarding Rama activities; that the said Poo was not recognised by the Traditional Council as their spokesperson; that Poo is the stumbling block regarding the settlement of problems affecting the Rama Community; that he did not understand the capacity in which he was attending meetings of the Rama CPA, and that they required clarification regarding the 537 hectares documents and other issues raised therein.

21. On 9 March 2008 individuals calling themselves Rama Communal Property Association Concerned Group wrote a memorandum to the Applicant's office in which they stated that a loan amount in the sum of R500 000,00 from Eckraal Quarries was invested in Terminus Restaurant for some Rama CPA Committee members against CPA Constitutional guidelines; that all jobs done during 2006/7 went to Rama CPA members or their families; and that Rama CPA Committee has failed to formulate and adhere to systems and procedures such as tender policies and guidelines for hiring or employment of staff (procurement policies). Rama CPA had no management, knowhow or expertise to formulate and implement a settlement program, huge amounts being spent on undelivered promises, the 2006/7 financial statement showing quite alarming proportions of financial investment by the Committee and that expenditure of 2006 had been done without a mandate from the Rama CPA.

22. On 9 March 2008 one Diale wrote a letter to the chairperson and secretary of the First Respondent and informed the First Respondent that they were

resigning due to the gross financial investment by the Respondent's Committee, for instance of the R500 000,00 from Eckraal, gross violation of the CPA Constitution (corrupt tenders for Rama CPA Committee members) and nepotism (investment of the loan raised from Eckraal Quarries for the benefits of Rama CPA Committee and their families).

23. On 12 March 2008 the First Respondent wrote a letter to one Bradley Makipi and one Deon Theron of the Applicant's office. This letter contained complaints which were raised in certain annexures attached to the application. In the same letter they called for the current Rama CPA Committee to be dissolved and for a forensic audit to be launched. They had styled themselves as the interim committee. A similar letter was written on 20 March 2008 and is also attached to the Applicant's papers. On 10 July 2008 the Director General wrote a letter to the Applicant advising that the matter relating to Rama CPA problems should be brought to a conclusion. He indicated that he would proceed to invoke the powers vested in him in terms of the provisions of section 13 of the CPA and that he would request the Applicant's assistance in that regard.

24. On 12 August 2008 the Applicant's officials held a meeting with the First Respondent and the various components which had been complaining about the conduct of the First Respondent. The concerned groups are referred to were the Madidi Tribal Council, Khuduthamaga Concerned Group and Rama CPA Executive Committee. The Khuduthamaga Group raised the following concerns; the term of the Committee that had been elected had long lapsed and that the Committee members had further co-opted certain people to the Ex-co in contravention of the Rama CPA; subsidy forms for houses were completed by people who were not part of Rama CPA; there was a new development of which the Committee knew nothing about, no accounting projects; VAT had not been paid since February 2004 and extensions of lease with Eckraal Quarries without the Committee's consent; the chairperson had not been elected by the Committee and the stands were illegally sold by certain Committee members for an amount of R300,00 in respect of residential settlement.

25. The Khuduthamaga proposed that the Rama CPA Committee should stop calling mass meetings; using money and all activities; all groups should unite and form a committee to deal with problems; the CPA must include the Khuduthamaga group in decision making process; vote for a new Committee Representative of the concerning group and that the Director General should take over the administration of Rama CPA.

26. The Executive Committee responded by stating that there were only two people who had been co-opted and that everyone qualified for subsidies; that the Rama CPA catered for the Rama people only and if the concerned group had any concerns it should approach the Rama Executive Committee before approaching the Land Affairs or complaining to the Applicant. One Nthite, the chairperson at the time, further stated that the concerned group should write down their concerns and forward them to the Rama Ex-co. He further stated that the two houses that had been built in Rama were show houses of houses that would be built in future in Rama. Rama Executive Committee further proposed that Khuduthamaga members should respect the elected members of Rama CPA; that the concerned group should not come on board, that the Constitution be followed as a guiding document and that people should change their mentality. The officials from the Applicant's office put forward these three proposals for the dissolution of the executive, calling new elections and co-opting other members. A proposition was made and accepted that the Director General should take over the administration of Rama CPA. From the aforegoing it is apparent that the First Respondent is afflicted with a multitude of irregularities and infighting which emasculate it. Some of this irregularities which justify the Respondent to being placed under administration are as follows: Financial irregularities as hi-lighted in the audited financial statements from 2004, 2006; (2) the splitting of the claimant community into three factions being the Rama CPA Community, the Khuduthamaga and the Madidi Tribal Council; (3) the conflict of interests as shown by the Rama CPA community members awarding contracts to themselves; and investing the proceeds from the lease for their own benefits; (4) engaging in acts of nepotism and corruption by raising a loan with Eckraal Quarries in the sum of R500

000,00 for the benefit of the Rama CPA Committee members and their families; (5) the Rama CPA Committee setting an office of the First Respondent at the premises of Eckraal Quarries thereby compromising its own interests; (6) the unconstitutional removal of the previous chairpersons such as Poo and Ntsoko; (7) failure to co-operate with mediators appointed by the Applicant's office to assist the Rama Community to resolve its own problems; (8) failure to comply with the tax procedures by failing to submit tax returns to the South African Revenue Services; (9) failure by Rama CPA Committee to convene the annual general meetings and to elect new leadership in accordance with the constitution of Rama CPA Committee; and that Rama CPA has contracted developers to construct show houses thereby encumbering the restored land without being mandated by the general body of the CPA being the Rama Community.

27. As I indicated earlier this application by the Applicant is opposed by the Respondents through the opposing affidavit of one Andy Nthite, the incumbent chairperson of the First Respondent who resides at house nr. 2248 Garankuwa. The said Nthite became the chairperson of the First Respondent on 9 December 2006. He contends that he has been properly authorised to act on behalf of the First Respondent and he depose this affidavit by the resolution of the First Respondent which was signed on the 11th day of November 2008. The said resolution merely states that the Rama Communal Property Association Committee has given Mr. H Nthite permission to stand in as its representative. It is not clear as to whether the said H Mthite referred in the said resolution and Andy Nthite who deposed to the First Respondent's opposing affidavit are one and the same person. Nevertheless there does not seem to be any dispute between the parties as to the identity of the two people.

28. In his affidavit the said Nthite denied any allegations or suggestions of any improper conduct by the First Respondent. He concedes however that it is correct that there is a longstanding dispute between certain individuals and the First Respondent but contends that that does not relate to the improper conduct of the affairs of the First Respondent. According to him such wrangles relate instead to those individuals who attempt to take over the control of the

First Respondent for their own personal benefit. He emphasised that the present members of the First Respondent have been duly and properly elected by the Committee and that they have endeavoured to serve the Committee's best interest throughout. He confirms in his affidavit that the Applicant is the Regional Land Claims Commissioner who has been appointed as such in terms of the provisions of section 4 of the rest Restitution of Land Rights Act, 22 of 1994. He denied however the correctness of all the allegations contained in certain paragraphs of the application. He denied that the Applicant was properly delegated by the Director of Land Affairs. It is for this reason that when this matter came before me on 28 July 2010 the Respondents raised a point in *limine*. That point in *limine* is based on the point that the Applicant in these proceedings has not been properly delegated to bring the application before the parties could deal with the merits, the Court had first to make a determination of the Respondent's point in *limine*.

29. In her replying affidavit the Applicant has also raised a point in *limine* against the *locus standi* of the said Andy Nthite to oppose the application. The Applicant has noted that there are nine members who serve as the Executive members of the First Respondent. The resolution which the Respondent or the said Nthite has relied on was signed by only four members excluding the deponent himself. The said resolution does not grant the deponent the authority to act on behalf of the First Respondent in this legal proceedings. The Applicant contends therefore that the resolution is defective and the deponent is not properly authorised to act on behalf of the First Respondent in this proceedings. It is important to know that the resolution only refers to Rama Communal Property Committee and not Rama Communal Property Association. To the Applicant this is a further indication that the said Nthite is not authorised or properly authorised to act on behalf of the First Respondent. On this aforementioned basis the Applicant prays that the application shall succeed in terms of the orders referred to in the notice of motion.

30. The Applicant challenges the point in *limine* raised by the Respondents and relies on annexure ISS1 which states the following:

In paragraph 4.1 thereof states that the office of the DG approves a takeover of administration of Rama CPA through relevant court procedures in terms of section 13 of the Act; paragraph 4.2 thereof states that the DG further delegates such authority for the purpose of the Court application in terms of section 13 to the Regional Land Claims Commissioner in terms of section 15(1)(a)-(b) of the Act; and paragraph 4.3 thereof states that the DG expresses in writing his preparedness to intervene in the form of a concept letter, on letterheads he had attached to the memorandum; Deputy-Director, Mbuso Majosi supported the recommendations by affixing his signatures on the memorandum on 10 July 2008. On this basis the Applicant contends that he has been properly delegated by the Director General in terms of section 15 of the Act.

31. Now I need to examine the documents on which the Applicant relies for his *locus standi* to bring this application. That document entitled memorandum, goes on and states that Recommendations for Rama CPA take over by the Director General in terms of section 13 of the Communal Property Associations Act (Act 28 of 1996) based on regular conflicts and mismanagement of funds in the case of Rama Land Claim, instituted in the Tshwane Metropolitan area Gauteng Province. Right at the end it contains in paragraph 4 recommendations. These recommendations are as contained in the replying affidavit of the Applicant. It is important to note that this memorandum was prepared by Mr. APM Mpela, the Acting Chief Land Claims Commissioner and all three recommendations contained in paragraphs 4.1, 4.2 and 4.3 were approved by the Director General of the Department of Land Affairs on 10 July 2008.

32. Section 13 of the Act states as follows:

"13. *Administration, liquidation and deregistration. –*

(1) A division of the Supreme Court or a Magistrates Court having jurisdiction in respect of the area in which the property of the association is situated or the area in which the land which may be acquired by a provisional association is situated, may, on application

made by the Director General, an association or provisional association or any member thereof, or any other interested person, place the association or provisional association under the administration of the Director-General or grant a liquidation order in respect of an association or provisional association, where the association or provisional association, because of insolvency or maladministration or for any other cause is unwilling or unable to pay its debts or is unable to meet its obligations, or when it would otherwise be just and equitable in the circumstances."

33. As far as it concerns the provisions of section 13 of the CPA Act, and with particular reference to the competent order that a Court may make and the *locus standi*, there are three requirements. For the purposes of *locus standi*, as it is the subject matter of the Respondent's point in *limine*, and as it is the only subject the Court is at this stage concerned with, the requirements of the said section are that; firstly, the Director General must bring the application; and secondly, the application must be brought in the name of the Director General.

34. In the evaluation of the Applicant's *locus standi*, section 15 of the CPA Act is relevant. It reads as follows:

"15. Delegation of powers and assignment of duties by Director-General:

(1) The Director-General may-

(a) delegate to any officer of the Department of Land Affairs or, with the prior approval of the Premier of the province concerned, to any officer in the service of that provincial government, any power conferred upon him or her by or under this Act, either generally or in a particular case;

(b) authorise any such officer to perform any duty assigned to him or her by or under this Act."

35. The provisions of the aforegoing section which obviously provide for the delegation of some powers conferred on the Director General by the Act; do

not afford the Applicant any remedy at this stage. It behoved the Applicant to make sure that the application conforms to formalities. Where an Applicant is delegated to do something, especially where the Governing Departments are concerned, and in order to avoid undesirable consequences, the Applicant must obtain such delegation unequivocally and in specific terms in advance of launching this application. Accordingly the Applicant in this matter should have ensured that she obtained a proper delegation with specific terms from the Director General before she could bring this application. Accordingly and without being prescriptive as to the manner in which such delegation should be executed, it should be unambiguous that any person who relies on the delegated power or authority indeed has been properly delegated to execute the mandate of the person who delegated such powers.

36. The affidavit of the Applicant lacks the necessary allegations that are intended to establish her *locus standi*. For instance, as the relevant section provides that the Director General may delegate to any official of the Department of Land Affairs, it must be clear from the averments that the Applicant is an officer of the Department of Land Affairs or the Applicant must expressly state that in her capacity as an officer of the Department of Land Affairs she has been delegated such powers. Where no such averments have been made in the affidavit and no other facts exist upon which an inference can be drawn in such circumstances, the Applicant will have failed in her onus to establish that she has been delegated powers or authority to perform certain deeds by the Director General.

37. The Applicant has also not complied with the further requirements set out in the said section 15 of the CPA Act. Counsel for the Respondents argued, and I fully agree with him, that the Applicant has not satisfied the Court that she has been properly delegated to launch this application. He developed his argument furthermore and submitted that the Applicant could not rely on the approval or the recommendation of the Director General as contained in the document referred to as annexure ISS1. I made the following order on 28 July 2010:

(1) The Respondent's point in *limine* is upheld.

(2) The application is dismissed with costs.

P.M. MABUSE
JUDGE OF THE HIGH COURT

Appearances:

Applicant's Attorneys:	*The State Attorney*
Applicant's Counsel:	*Adv. Notshe (SC)*
Respondent's Attorneys:	*Potgieters Inc. Attorneys*
Respondent's Counsel:	*Adv. JG Cilliers (SC)*
Date Heard:	*28 July 2010*
Date of Judgment:	*5 October 2010*