



Reportable:	YES / <u>NO</u>
Circulate to Judges:	YES / <u>NO</u>
Circulate to Magistrates:	YES / <u>NO</u>
Circulate to Regional Magistrates:	YES / <u>NO</u>

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

**CASE NO: UM178/2020**

**In the matter between:**

**KETSHEPILEONE JOYCE SENNYANE**

**1<sup>ST</sup> APPLICANT**

**SLACK SENNYANE**

**2<sup>ND</sup> APPLICANT**

**AND**

**SANNIBOY HAILANE**

**1<sup>ST</sup> RESPONDENT**

**ANY OTHER PERSON WHO ASSOCIATES  
OR HERSELF WITH THE FIRST RESPONDENT  
AND/OR WHO HAS INVADED OR INTENDS ON  
INVADING THE PROPERTY KNOWN AS JOYCE  
TRADING STORE, MOROKWENG, IN THE NORTH  
WEST PROVINCE**

**2<sup>ND</sup> RESPONDENT**

**BAROLONG BOO RATLOU BA GA MARIBA  
TRADITIONAL COUNCIL**

**3<sup>RD</sup> RESPONDENT**

**THE STATION COMMANDER MOROKWENG  
POLICE STATION**

**4<sup>TH</sup> RESPONDENT**

**THE PROVINCIAL COMMISSIONER OF**

Heard: 4 June 2024

Reserved: 25 October 2024

**Delivered:** This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **24 January 2025**.

**ORDER**

The following order is made:

The rule nisi granted on **4 September 2020** is hereby confirmed.

**JUDGMENT**

**DJAJE DJP**

[1] This matter first came before court as an application to interdict the first respondent from allocating stands on the land occupied by the applicants. On **4 September 2020** a rule *nisi* was issued against the respondents as follows:

*"1. THAT: In terms of Rule 6(12)(a) of the Uniform Rules of the Honorable Court, the applicant's failure to comply with the ordinary rules of the Honorable Court as it relates forms, service on the other party and time periods be and are hereby condoned and this matter is disposed of as an urgent application.*

2. THAT: *A rule nisi is hereby issued calling upon the Respondents to show cause, if any, on Thursday the 08 October 2020 at 10:00 or as soon thereafter as the matter will be heard, why the following order should not be confirmed;*
- 2.1 *That the First Respondent is to refrain from allocating plots/stands to any person on the land known as Joyce Trading Store, Morokweng Village Ganyesa;*
  - 2.2 *That Second Respondent be and are interdicted from occupying and or invading the land known as Joyce Trading Store, Morokweng Ganyesa and erecting structures on the land known as Joy Trading Store, Morokweng Village Ganyesa;*
  - 2.3 *Should any person cited under the Second Respondent have erected structures on the land known as Joyce Trading Store, Morokweng Ganyesa, such Respondents be ordered forthwith to demolish the unoccupied structures;*
  - 2.4 *Should any person cited under the Second Respondent fail to demolish the unoccupied structures within 5 (five) days of the granting of this application, the Sheriff of the Honorable Court with the assistance of the members of the South African Police Services stationed at the office of the Fourth Respondent be and are hereby authorized to demolish the unoccupied structures;*
  - 2.5 *The Third Respondent be and is hereby ordered to refrain from allocating stands on the land known as Joyce Trading Store, Morokweng Village, Ganyesa, and or instigating members of the community of Morokweng to occupy the land known as Joyce Trading Store, Morokweng Village, Ganyesa.*
  - 2.6 *That the Fourth and Fifth Respondent be and are hereby ordered to enforce the terms of paragraph 2.1, 2.2 and 2.5 by maintaining law and order,*



- 2.7 *The First, Second and Third Respondents be and are hereby interdicted from being in a radius of 100 meters of the land known as Joyce Trading Store, Morokweng Village, Ganyesa with the intention of violating the terms of the orders sought in 2 and 3 herein above;*
- 2.8 *The First and Third Respondent be ordered to pay the costs of this application.*
3. THAT: *The ordered made under paragraph 2.1, 2.2 and 2.5 operate with immediate effect pending the return date of this application;*
4. THAT: *SERVICE OF THIS ORDER AND APPLICATION BE EFFECTED IN THE FOLLOWING MANNER:*
- a) *By attaching the interim order and application to the fence posts at the land known as Joyce Trading Store in Morokweng, Ganyesa;*
  - b) *Where possible upon the invaders by the Sheriff of this honorable Court;*
  - c) *By affixing a copy of this order and application to the notice board of the Third Respondent;*
  - d) *By proper service in terms of the Rules of the Honorable Court on the Third, Fourth and Fifth Respondent*
5. THAT: *Respondents are entitled to anticipate the return day within 48 hours' notice.*
6. THAT: *Service upon the First Respondent to be effected in terms of the Provisions of Rule 4. Should service as described above not be possible the Sheriff is authorized to leave a copy of this application and interim order for the attention of the First Respondent at the offices of the Third Respondent."*

[2] The rule *nisi* was extended as the matter was referred for oral evidence due to several dispute of facts after the respondents opposed the matter. The following order was made referring the matter:

*"1. THAT: The matter is referred for oral evidence for the determination of the following:*

*1.1 The size of the land in dispute;*

*1.2 The authenticity of the 1992 tribal resolution;*

*1.3 The allocation of the land to the Applicants.*

*2. THAT: The Applicants are ordered to pay wasted costs of the 26<sup>th</sup> day of AUGUST 2021."*

[3] The applicants are husband and wife, but the second applicant is now deceased after the institution of this matter. The first respondent was the Kgosana (head man) of Morokweng village under the traditional leadership of Barolong Ba Ga Mariba and has since the institution of this matter passed on. The applicants' case is that the land in dispute was allocated to them for the purpose of establishing a filling station. In **2015** the second applicant transferred the land to the first applicant with the knowledge and approval of the traditional council of Barolong boo Ratlou ba ga Mariba. In **2020** the first respondent was allocating stands to members of the community of Morokweng from the land in dispute. This resulted in the launching of this application.

[4] At the commencement of the hearing the parties agreed on the size of the land in dispute as 160m x 160m, leaving only two issues to be determined, the authenticity of the 1992 resolution and the allocation of the land to the applicants.

### **Evidence for the applicants**

[5] The first witness to testify for the applicants was Mr Mahole Thebe. He was employed by the Traditional Leadership Directorate until

**2007**. In **1991** to **1999** he was a clerk, thereafter in **1999** to **2000** he was the Office Manager. He was the head of the Ganyesa district from **2000** to **2007**. The office was at Barolong Boo Tlou le Tau Traditional Council in herein. He is the author of the document presented as the tribal resolution herein. The said document is prepared when a person applies for a business site. In this instance he explained that the application was received from the office of Barolong Ba Ga Mariba Traditional Council in Morokweng and directed to their office as the main office.

[6] He explained that the Traditional Council would take a resolution approving the application and the applicant would thereafter be informed. The applicant would have to take the tribal resolution to the administrator and the then Department of Economic Development. The department will then measure the site with the Department of Agriculture. He was able to identify all the members of the traditional council at the time of the resolution. He did confirm that the application of the second applicant was approved for the establishment of a filling station. The resolution was issued in **1992**. He further explained that Barolong Ba Ga Mariba fall under Barolong Boo Tlou le Tau ba ga Letlhogile Traditional Leadership.

[7] Mr Thebe testified that the first respondent was never recognised as a Senior Traditional Leader, he was a Kgosana (head man) of Barolong Ba Ga Mariba under the leadership of Kgosi Letlhogile of Barolong Boo Tlou le Tau.

[8] During cross examination, Mr Thebe explained that when the resolution was taken in **1992**, the Bophuthatswana government was



still in place. It was put to him that Barolong Ba Ga Mariba dispute that they fall under the traditional leadership of Boo Tlou le Tau and as such could not have referred an application for a business site to their offices.

- [9] Mr Kanononyane Kanono testified that he was a headman at Kgokgole village since **1992**. He knows Barolong Ba Ga Mariba as a sub-village falling under Barolong Boo Tlou le Tau. He named several villages that fall under the leadership of Boo Tlou le Tau. According to Mr Kanono, the resolutions of the said villages were forwarded to the offices of Boo Tlou le Tau for final approval. He explained that the first respondent's father was a head man accountable to Boo Tlou le Tau. He confirmed that he was aware of the resolution taken to approve the application for a business site by the second applicant and he signed it as a member of the Barolong Bo Tlou le Tau traditional council.
- [10] The applicant called Mr Thebeetsile Hordes Letlhogile who is a headman at Phaphosane village which fall under the leadership of Boo Tlou le Tau. He explained that the current Kgosi of Boo Tlou le Tau, is Kgosi Thato Letlhogile. Mr Thebeetsile le Letlhogile acted as a Kgosi of Boo Tlou le Tau after the passing of Kgosi Abnar Letlhogile, the father to Thato Letlhogile. He was issued with an acting certificate for a period of five years. According to Mr Letlhogile, Ba Ga Mariba are not independent, they fall under the leadership of Boo Tlou le Tau. At the time he acted as Kgosi, he presided over the traditional council of Boo Tlou le Tau as a head man and the first respondent was representing Ba Ga Mariba in the traditional council of Boo Tlou le Tau and was not Kgosi.

[11] As the second applicant is deceased, the first applicant testified. She confirmed that she was married to the second applicant who passed away in **September 2021**. The two got married in **1997** after they had been staying together since **1990**. She knew about the tribal resolution approving her husband's application for a business site in Morokweng. After the site was allocated to her husband, a steel structure was erected and a fence put up around the site. Although the site was approved for a filling station, they decided to build a shop which is known as Joyce Trading Store. According to the first applicant in **2018** stands were allocated to community members within their business site. When they approached the tribal council in Morokweng they were not assisted and had to go to the senior tribal council in Ganyesa.

[12] During cross examination, it was put to her that the site in dispute was allocated to the Department of Public Works in **1970**. In **1975**, 100m x 100m of the said land was allocated to Mr Ditira and there was already a fence erected around the entire 160m x 160m of the site. The remaining 60m x 60m was the only portion allocated to the second applicant. The first applicant disputed that the land allocated to Mr Ditira was part of the land allocated to the second applicant.

### **Evidence for the respondents**

[13] The first witness to testify was Mr Ogone David Bonokwane who is a resident of Morokweng village. In **1992** he was the Chairperson of the traditional council of Ba Ga Mariba. According to him, the land in dispute was used by the Department of Public Works to store equipment until **1994**. He indicated that there was no resolution from



Ba Ga Mariba allocating the said land to the second applicant. Mr Bonokwane testified that the Boo Tlou le Tau Tribal Council did not have authority to issue resolutions for the allocation of land in Morokweng. He explained that the second applicant approached the Ba Ga Mariba tribal council in **2010** claiming the land in question and when he was not happy, he approached Kgosi Letlhogile in Ganyesa. The matter was referred to the first respondent to resolve and that is how the second applicant was allocated 60m x 60m of the said land and not the 160m x 160m as he claims. Thereafter, a tribal resolution was issued to formalise the said allocation.

- [14] Mr Bonokwane's evidence was to the effect that business sites in Morokweng are allocated 60m x 60m and it was not possible to allocate 160m x 160m to the second applicant. The 100m x 100m belongs to Mr Ditira who had already allocated stands within his land to other members of the community.
- [15] He did confirm during cross examination that Boo Tlou le Tau tribal authority are senior to Ba Ga Mariba, but not in relation to the allocation of business sites. When asked why the Ba Ga Mariba tribal council did not remove the second applicant from the site in **1995** when he built a steel structure, he responded that they left him because they knew that the site does not belong to him. It was only in **2018** that the tribal council acted and issued a resolution that the second applicant was allocated 60m x 60m.
- [16] Mr Omphemetse Molao has been residing in Morokweng and was a member of the Ba Ga Mariba tribal council until **1994**. He testified that during the period he served on council, there were no tribal

resolutions issued for business sites. When a person made a request for a business site, the council would send that request to the Department of Economic Affairs which would then issue a trading license. According to Mr Molao, both Ba Ga Mariba and Boo Tlou le Tau tribal council could not issue any tribal resolutions for business sites. The tribal resolutions only started to be issued in **1995**. He disputed the **1992** resolution that approved the business site for the second applicant.

- [17] Mr Molao went on to state that Ba Ga Mariba tribal council does not fall under Boo Tlou le Tau is leadership and that the first respondent is the Kgosi of Ba Ga Mariba.
- [18] Another witness on behalf of the respondents was Mrs Agnes Matthews who also resides in Morokweng. She is a member of the tribal council of Ba Ga Mariba since **2003**. She confirmed that the second applicant was only given a council resolution by Ba Ga Mariba in **2010** for a business site measuring 60m x 60m. Further that Ba Ga Mariba are independent from Boo Tlou le Tau traditional authority.
- [19] The last witness to testify was Mr Jackson Ditira. He resides in Morokweng and was allocated a residential stand by the Ba Ga Mariba tribal council in **1975** measuring 100m x 100m. He fenced the stand. In **2009** he sold 30m x 30m of his stand to Ms Mooketsi. Mr Ditira testified that the first applicant erected poles in his stand and was reprimanded by the tribal council.

[20] At the end of the trial the parties agreed to submit comprehensive heads and not make any oral submissions. The only heads of argument received are from the applicants, nothing was filed on behalf of the respondents.

[21] As these proceedings were referred for oral evidence it becomes important to evaluate the evidence by the parties and in this instance the case of **Stellenbosch Farmers' Winery Group Ltd and another v Martell & Cie SA and others 2003 (1) SA 11 (SCA)** sets out the approach as follows:

*" The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses, (b) their reliability; and (c) the probabilities."*

[22] Rule 6(5)(g) of the Uniform Rules of Court provides that:

**"6 Applications**

*(5)(g) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as to it seems meet with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for him or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise."*



[23] The Supreme Court of Appeal in **National Director of Public Prosecutions v Zuma 2009 (2) SA 277 (SCA)** in dealing with the resolution of legal issues stated that:

*"[26] Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers. The court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP's version."*

### **The 1992 resolution**

[24] This resolution was taken at a tribal council meeting of Boo Tlou le Tau tribal council in Ganyesa on **6 July 1992** and states that:

*"MR SLACK SENANYE HIS APPLICATION FOR GARAGE AND FILING STATION AT MOROKWENG VILLAGE BE STRONGLY RECOMMENDED FOR APPROVAL DUE TO THE FACT THAT THE NEAREST GARAGE FROM THE SAID VILLAGE IS ABOUT 280KM RETURN."*

[25] The members of the tribal council present at the said meeting were Letlhogile A.S, Kanono G K, Letlhogile P E and Mampe J. After the

resolution was taken it was endorsed by the Administrator at Ganyesa.

- [26] It is this resolution that that applicants rely on as having approved their application for a business site in Morokweng. The respondents have disputed the authenticity thereof. The respondents' version is that Ba Ga Mariba tribal council in Morokweng was independent from the Boo Tlou le Tau in Ganyesa and could not have issued any tribal resolution relating to allocation of land in Morokweng. Mr Bonokwane for the respondents testified that Boo Tlou la Tau tribal council is senior to the Ba Ga Mariba but not in relation to the allocation of business sites.
- [27] Mr Thebe who was the author of the resolution confirmed the members who were part of the meeting and the signatures thereon. He further emphasised that Ba Ga Mariba tribal council falls under the leadership of Boo Tlou le Tau tribal council. His evidence was supported and corroborated by Kanono and Letlhogile. Both these witnesses, as headmen from their villages, Kgokgole and Phaphosane, were members of the tribal council of Boo Tlou le Tau representing their villages. They were present when the **1992** resolution was taken. None of the respondents' witnesses were present when the resolution was taken. The endorsement by the Administrator could not be disputed as well.
- [28] In **2018** there was a letter from the Boo Tlou le Tau tribal council addressed to Ba Ga Mariba tribal council concerning the dispute of land by the applicants. In that letter signed by Kgosi T H Letlhogile, reference is made to Boo Tlou le Tau as the Kgotlakgolo (senior

tribal office). The said letter further states that the matter first be attended to by Ba Ga Mariba council before the Kgotlakgolo can intervene. Ba Ga Mariba did respond to the said letter and nowhere do they dispute that Boo Tlou le Tau tribal council is the Kgotlakgolo.

[29] Mr Bonokwane testified for the respondents that in **1995** when the second applicant started building a steel structure on the land in question, they as the tribal council were aware that the land does not belong to him. Nothing was done or said at that time until in **2018**. When asked why there was no action from the tribal council of Ba Ga Mariba, he stated that they knew that the land was not his. It is improbable that the tribal council could allow an individual to erect a permanent steel structure on land that belongs to the traditional authority. If indeed the tribal council had an issue with the occupation of the land by the applicant in **1995**, there would have been some reaction, and the matter resolved then. The probabilities are that Ba Ga Mariba tribal council knew that the approval for the land was done in Ganyesa and hence no action taken against the second applicant when he started erecting a permanent structure.

[30] The **2018** letter from Kgosi Letlhogile made reference of payments to the land by the second applicant. There was no dispute that payments were made by the second applicant to Ba Ga Mariba tribal authority. If indeed the second applicant occupied the land unlawfully, then there would be no justification for payments to be made and accepted from the second applicant. I agree with the submission on behalf of the applicants that the payments were accepted because the land had been allocated to the second applicant.



[31] The version of the respondent in challenging the authenticity of the **1992** resolution is rejected as being unsubstantiated. The resolution of Boo Tlou le Tau of **1992** recommending the allocation of a site for the second applicant is valid and stands as such.

### **Allocation of land to the applicants**

[32] The dispute arose as to whether the tribal council of Boo Tlou le Tau had the authority to allocate land to the second applicant in Morokweng. This dispute is based on the submission by the respondents that Ba Ga Mariba traditional authority is independent from Boo Tlou le Tau. In fact, the witnesses for the respondents testified that the first respondent was a Kgosi of Ba Ga Mariba and not a Kgosana as stated by the applicants.

[33] Mr Hordes Letlhogile's testimony that he was the Acting Kgosi of Boo Tlou le Tau for a period of five years was never disputed. He testified further that the first respondent was never a Kgosi but a Kgosana. This evidence stands undisputed and there was no document in the form of a recognition certificate produced to substantiate the respondents' case. Letlhogile who acted as a Kgosi is in the best position to testify who are the members of the tribal council of Boo Tlou le Tau and the relationship with Ba Ga Mariba. His evidence was also corroborated by Mr Kanono as well as the letter of **2018** written to Ba Ga Mariba tribal council by the Boo Tlou le Tau council. As stated above, Kgosi Letlhogile in the letter referred to Boo Tlou le Tau as the Kgotlakgolo and that was not disputed.

- [34] The evidence of Mr Thebe was to the effect that an application for a business site by the second applicant was received from the tribal council of Ba Ga Mariba and directed to Boo Tlou le Tau as the main office for approval. The application was approved, and due process was followed. There is no probable reason advanced why the Boo Tlou le Tau tribal council would engage in an illegal and unlawful conduct of meeting to discuss and recommend allocation of a business site when they had no authority to do so.
- [35] The evidence of the respondents through Mr Bonokwane is to the effect that the land in dispute was utilised by the Department of Public Works to store their equipment until **1994**. At that time, the allocation to Mr Ditira had already been done in **1975**. This means that the land in dispute does not include the portion allocated to Mr Ditira. The evidence of the first applicant that the 100m x 100m allocated to Mr Ditira is not part of the land allocated to the second applicant is probable and should be accepted.
- [36] The applicants' case is that the stand allocated to the second applicant was in **2015** transferred to the first applicant by the second applicant. Attached to the founding affidavit is a document on the letter head of Ba Ga Mariba with a date stamp of Ba Ga Mariba tribal authority. In that document, the second applicant transferred the stand in Morokweng where Joyce Trading Store is situated to the first applicant. In the answering affidavit deposed to by the first respondent, it is denied that the transfer of ownership was done in accordance with the customs and practices of the community. There was no evidence to explain the proper transfer procedure that

should have been followed. The document attached to the founding affidavit stands as proof of transfer and is accepted as such.

[37] The **1992** resolution approving the allocation of land to the second applicant and the transfer of ownership to the first applicant are found to have been validly done. The respondents are not entitled to invade the said land or allocate stands to any person without the consent of the first applicant. The applicants have succeeded to make out a case for the confirmation of the order of **4 September 2020**.

### **Costs**

[38] There is no reason why costs should not follow the result as the applicants are successful.

### **Order:**

[39] Consequently, the following order is made:

1. The rule nisi granted on **4 September 2020** is hereby confirmed.

  
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**J T DJAJE**  
**DEPUTY JUDGE PRESIDENT OF THE HIGH COURT**  
**NORTH WEST DIVISION**



**APPEARANCES**

**DATE OF HEARING : 4 JUNE 2024**  
**DATE RESERVED : 25 OCTOBER 2024**  
**DATE OF JUDGMENT : 24 JANUARY 2025**

**COUNSEL FOR THE APPLICANTS : ADV MONNAHELA**  
**COUNSEL FOR THE RESPONDENTS : ADV MONGALE**