

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

(1)	REPORTABLE: YES/NO
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	REVISED
.....	
DATE.....	SIGNATURE:.....

Case No: 142/2016

In the matter between:

RIBYE CHARLES MOHLABA (N.O)

APPLICANT

**(In his capacity as Chairman of Nkuna
Traditional Council)**

And

GREATER TZANEEN MUNICIPALITY

RESPONDENT

CORAM: M MADIMA AJ

JUDGMENT

M MADIMA AJ

- [1] The Applicant, in the representative capacity as the chairman of Nkuna Traditional Council, a duly constituted structure which represents the Nkuna community, launched motion proceedings as urgent basis.
- [2] The Respondent is the Municipality Based in the area when the Applicant is domiciled.

BACKGROUND

- [3] The was at the outset brought before the High Court, Gauteng Division, Pretoria, on urgency. The High Court, Pretoria per my sister Madam Justice Mali, granted the Applicant interim relief with an order that the Applicant should, not later than the 30th day of January 2016 at 12H00 bring application before the appropriate Court, this Court with jurisdiction. The Applicant obliged.
- [4] Before me the parties are ad idem that the urgency of the case had been preceded by the events and that the matter should be handled with in the ordinary way.

FACTUAL MATRIX

- [5] The Appellant (Nkuna Tribal Community) alleges that it is the holder of informal rights over the Farm-Mohlaba's location LT (hereinafter referred to as "Erf 657 LT") and had been in occupation thereof far more than a century. This is disputed by Respondent. (verify on date of judgment –correct title No657 or 567).
- [6] In 2001, the property was donated and transferred to the Respondent by then Department of Land Affairs in terms ofAct (check Act that allows such donation). Thus with effect from 2001, the Erf 657's ownership was transferred to the Respondent. Applicant avers that such transfer was done without consultation with members of Nkuna community. Para 6.: The Erf 657 is currently been developed with residential sites put on sale or evidenced by the bid which wad advertised.

[7] Consequent upon transfer of the above Erf 657 to the Respondent, there arose disputes, which culminated in the holding of several meetings between the parties in the vain hope that amicable solutions, would be found. Applicant addressed letters of envisaged legal proceedings, to Respondent, Co-operative, Governance, Human Settlement & Traditional Affairs and Department of Rural Development and Land Reform.

[8] The Applicant invites the Respondent to meet a case in terms of which Applicant seeks:

"1.....

2. Quoute

3. Quoute

And ancillary relief.

In short the case of the Applicant is disputed.

[9] **POINTS IN LIMINE**

Respondent raised three points in limine in opposing affidavit but in its heads of arguments and presentation of argument before me, abandoned a point of "prescription" The remaining points in Limine.

NON-JOINDER

- [10] At common law a party seeking to raise a point of non-joinder must at least place argument which proves that the third party or parties not joined to the proceeding do not only have interest in the case (see *Judicial Service Commission v Cape Bar Council* 2013(1) SA 170 (SCA) at 1761-177A) but that their interest is : (a) direct, and
- (b) Substantial in the issues to be adjudicated by Court. (see *Aquator (Pty) Ltd v Sacks and Others* 1989(1) SA 56 of (A) at 62 A-E, *In re Boe Trust Ltd and Others* MNO 2013(3) SA 236 (SCA) at 241 H-I)

The principle has over a period of time been followed at different divisions of the High Courts, the SCA still find it, in different decisions to be good law to date.

[11] The Appellant argue that not citing ...(Refer to para 7 to get names of parties not cited) is fatal to the case of the Applicant. I express my own disclaimer on this point.

It is so that the state institutions which the Applicant alleges that they should have been cited have some interest in the case. The property is undergoing some developments at the expense of public money, and that, without going a step further attracts their interest in the issues. However the question that remains to be answered is, that is the interest direct and substantial in the issues before Court?

In *Amalgamated Engineering Union v Minister of Labour* 1949(3) SA 637 (A) at 657, Fagan A.J.A discussed the topic of interests of third parties in the issues of a case and referred also to the case of *Tshandu v Swan and Another* (1946, A.D.10) when the following happened: This was an appeal when "a nature claimed that he was the lawful permit-holder in respect of certain stands in a

location owned by the municipality. He had cited as defendants:(1) the manager of the Council's Non-European Department, who had authorised the location superintendent to transfer the stands to another native,(2) the superintendent who had transferred them, and (3) the transferee. Held: that it was not necessary to join the Council, belonged to the Council, was regulated by statute and statutory regulations and the Council therefore had "no real interest" in the issues "no proprietary interest... which required to be protected by a joinder Court was asked to make being " a matter of no moment to the Council."

[12] I deem it opposite by way of paraphrasing the notice of motion prayers of the Applicant to state that the Applicant seeks to tentatively prohibit Respondent from alienating or leasing out residential sites situated in Erf 657 TT and an order suspending adjudication of bid no. SCMU 38/2015. The Erf.....in question is not property of the Respondent and the development in the property as being by the Respondent.

The Applicant does not seek relief from the aforesaid state institutions. The facts *in casu* are similar to the case in Tshandu v Swan and Another supra and I do not find, therefore purposes of

this application, an omission to cite or join above organs of state to be fatal to the case of state. Argument in this regard lacks substance and I therefore reject it in toto.

LOCUS STANDI

Ad para [13] under Locus standi

- [13] A party instituting Court proceedings bears the onus to prove that it has locus standi and that should be specifically alleged and Court papers (see *Mars Incorporated v Candy World (pty) Ltd* 1991 (1) SA 567 at 575 H-I,

LOCUS STANDI

- [14] In his papers including cover pages of Court states in no unclear wording that he deposes to Court papers in his representative capacity as the chairman of Nkuna Traditional Council.

- [15] In his argument, counsel for the Respondent raises a point, which, rightly so, is not gainsaid by the counsel for Applicant that the Applicant does not prove on balance of probabilities that he was sanctioned, through a resolution of the meeting, by the tribal council to bring this application before court.

[16] Counsel for Applicant conceded that omission to cite the Applicant as both acting in personal and representative capacities was an oversight. Regrettably, this is a mistake that proves fatal and of this state of the development of the case, such a mistake cannot be undone save to face the consequences of such omission.

[17] I am persuaded that the Applicant does not have *locus standi* to bring an application on behalf of Nkuna Tribal Council. To my mind the application falls to fail and I therefore make the following order:

1. The Application is struck off the roll with costs.

**M MADIMA AJ
ACTING JUDGE OF THE
HIGH COURT OF SOUTH
AFRICA, LIMPOPO
DIVISION, POLOKWANE**

APPEARANCES

Heard on : 21 June 2016

Judgment delivered on : 24 June 2016

Counsel for Applicant : Isaiah Nyathi

Instructed by : Mohlaba & Moshwana Incorporated

Counsel for Respondent : TT Magabe

Instructed by : Magabe Incorporated