The chief is a chief through the people

Using Rule 7(1) to test the authority of a chief to litigate on behalf of his people

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http://dx.doi.org/10.17159/2413-3108/2014/i49a786

This note discusses the judgement handed down by the North West High Court in Mafikeng in an interlocutory application in the matter of the Royal Bafokeng Nation (RNB) vs the Minister of Rural Development and Land Affairs and Others. The application was brought by several 'sub'-communities under the jurisdiction of the RBN, challenging the latter's authority to litigate on their behalf. This application relates to a growing tension between the political authority of traditional leaders and the fundamental right of their 'subjects' to speak for themselves. It may be argued that the judgement represents an important step beyond the established frame of this discussion in the North West courts, namely which representative traditional structure is the proper one, to a question as to the duty upon those structures to comply with customary requirements of broad consultation and consent. In the event, it demonstrates the potential substantive significance of a procedural formality such as regulated by Rule 7(1).

In April 2008, the kgosi[1] of the Royal Bafokeng Nation (RBN) brought an application against the Minister of Land Affairs (as he then was) and the Registrar of Deeds for a declaration that all land registered 'in trust' for the Bafokeng be registered in the name of the RBN. In its application, the RBN described itself as an 'association of persons forming an indigenous tribe under a kgosi or chief' and a *universitas personarum* also deemed to be a traditional community in terms of the Traditional Leadership Governance Framework Act 2003 (Act 41 of 2003, or the TLGFA).

The case discussed here concerns judgement handed down by the North West High Court in Mafikeng on 12 December 2013, in an interim application challenging the RBN's authority to litigate this matter on behalf of the community it purports to represent. This issue, I will argue, addresses a growing tension between the political authority of traditional leaders and the fundamental right of their 'subjects' to speak for themselves. It may be argued that the Mafikeng judgement represents an important step beyond the established frame of this discussion in the North West courts, namely, which representative traditional structure is the proper one, to a question as to the duty upon those structures to comply with customary requirements of broad consultation and consent. In the event, it demonstrates the potential substantive significance of a procedural formality such as regulated by Rule 7(1).[2]

In this case note, I will first set out very briefly the history of land dispossession in pre-colonial, colonial

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and apartheid Transvaal as the context to the main application brought by the RBN. This history itself, however, is contested – as are the histories of countless 'traditional communities'[3] across South Africa. In these circumstances, I argue, the singular and uncontested authority of the traditional leader to speak on behalf of those under his or her jurisdiction translates into a monopoly over history. This would not have mattered as much if the democratisation of traditional communities and their leadership structures had been a success. In other words, who wields power and over whom may arguably have been less important if that power was contained and accountable. Unfortunately, the current statutory framework of traditional leadership has failed in that democratisation project, leaving the courts as the site of endless traditional power struggles. I briefly describe this failure in the second section.

But why does it matter?

It matters, I argue, not only because history forms the basis not only of ownership of land and other resources, but also of authority. In the context of the latest commodity resource boom, which targets rural areas almost exclusively, it matters a great deal. To be recognised as the leader of a community is increasingly to be the one to decide over the fate of that community's resources.[4] In the context of growing tensions in the North West Province platinum belt, any mechanism that might allow affected community members to raise their voices *effectively* through formal legal processes must surely reduce the frustration that has led to the instances of violent protest that have become associated with the area.

I then turn to a discussion of the main application of the RBN to have 61 farms transferred into its name, the opposition raised by several parties, and the interim Rule 7 application, which is the subject of this case note. I conclude by discussing the potential significance of the judgement for the issues set out here.

The relevant history of land dispossession in the Transvaal

The history of land dispossession in South Africa, while culminating in the coherent project of placing the vast majority of land (and other resources) in white hands, initially varied across provinces. I will only describe very briefly the origin of this project in the Transvaal, as it forms the context of the case under discussion, but the significance of a proper understanding of the history of dispossession – and of the formation of communities – echoes across the country.[5]

We recently marked the centenary of the Natives Land Act 1913, which prohibited Africans from owning or renting land outside marked areas that constitute 8% of the total area of South Africa. While this initiated formal segregation, dramatic land dispossession started much earlier.

The legal expropriation of land began in the western Transvaal the moment the Voortrekkers arrived in 1839.[6] A Volksraad Resolution of 1853, for example, noted that land could be granted to 'natives' on condition of obedient behaviour – which tenure would lapse as soon as the obedience came into question.[7] In 1855, Volksraad Besluit 159 held that 'all coloured persons' would be excluded from burgher rights and therefore from the possession of immovable property in freehold. In these circumstances, a form of land buying through informal trusteeship of white owners emerged in the 1860s, one that eventually saw many local missionaries buy and hold land on behalf of black land-buying groups.[8]

In 1877, Sir Theophilus Shepstone led the first British annexation of the Transvaal.[9] Shepstone, it will be recalled, was the pioneer of indirect rule in the British Natal Colony. He believed that the selective use of indigenous political structures and institutions was an important strategy to counter instability in the colonised territories – and imported the same ideas into the Transvaal.[10]

In line with this development, the Pretoria Convention of 1881 proclaimed that 'all paramount chiefs, chiefs and natives of the Transvaal' would be permitted to buy land. What this meant in practice was that blacks could only acquire title through a recognised chief who would act as 'traditional custodian' of the land. It further meant that a state authority, deemed appropriate, would in fact assume 'trusteeship' of the property on behalf of the African purchaser – the latter necessarily being a recognised chief.[11] Central to this regime was, on the one hand, the

racist notions of ownership as beyond the level of civilisation of black communities and, on the other, the entrenchment of recognised chiefs as key figures in the project of indirect rule.

Who is the community?

The role of traditional leaders in the advancement of the project of indirect rule has been analysed and discussed by historians and anthropologists.[12] That discussion is beyond the parameters of this case note. My interest here is in the post-constitutional statutory framework of traditional leadership and, in particular, how the issues of community representation played out in the courts and the policy arena.

The increasing significance of who represents the community and how it ties up with property and power is perhaps nowhere better illustrated than in the 20-year life span of the Restitution of Land Rights Act.[13] When the Act first came into force in 1994, it made no reference to traditional leaders whatsoever. Rather, it recognised the fluid nature of community boundaries by including 'part of a community' in the definition of community as claimant and understanding customary ownership as deriving from shared rules rather than jurisdictional boundaries.

In 2014, when the Act was amended to re-open the land claims process,[14] the rhetoric had shifted dramatically. It was now seen by many as a means for the traditional leader to claim all land that may have been dispossessed from anyone under his/her jurisdiction – and the flurry of announcements from various traditional leaders of their intention to lodge massive land claims shortly after the re-opening thus came as no surprise. It had come to be accepted that all land under the jurisdiction of a traditional leader must be held by him (or, occasionally, her).[15] In fact, the North West legislature, in voting in favour of the amendment to the Act, noted as its sole reason for the vote 'the importance of strengthening the institution of traditional leadership'. Gone was the notion of smaller groups within traditional communities having the right to choose whether to claim land as a family or a sub-group, or as a member of a greater traditional community. In its place we find the insistence that, as under colonial rule, members of traditional communities only 'exist' – and can claim rights – through their traditional leaders.

The increase in power of the traditional leaders led naturally to increasing contestation over the incumbents to that power. The TLGFA created a scheme whereby the boundaries and leadership positions recognised by the Bantu Authorities Act 1951 would stay intact, but be 'democratised' and 'restored to its pre-colonial dignity' through two mechanisms: on the one hand tribal authorities would become 40% elected structures,[16] while, on the other, a commission would be set up to deal with any leadership disputes that arose after 1927, when successive colonial and apartheid governments manipulated traditional leadership recognition to further the segregationist project.[17] The Commission on Traditional Leadership: Disputes and Claims (also discussed in this issue of *SACQ* by Jeff Peires) was supposedly an attempt to clarify history once and for all and re-establish the leaders whose legitimacy is sourced from custom rather than past political favour. Unfortunately, the Commission was fraught with difficulties, with every one of the handful of decisions made public already, the subject of litigation. Alongside the rise of the recognised leaders, history remains a pawn to be manipulated by those in power.

In an illustration of the contestations over both the leadership and their areas of jurisdiction, the lodging of disputes picked up so much speed over the last decade that a series of provincial commissions were constituted – and inundated. In Limpopo alone, over 500 disputes were lodged by May 2012.[18] To date, none has been settled in that province.

While there are many reasons why these disputes are important, including the issues of chiefly and headmanship salaries, the fact that the traditional leaders are increasingly allowed to speak on behalf of their communities about those communities' resources, without any effective statutory requirement of proper community participation and consultation, is a significant cause. This is clear from the cases that have reached the courts – the majority emanating from the resource rich North West.

The Bapo-ba-Mogale community, next door neighbours of the RBN and the authority presiding

over Marikana, has seen various disputes relating to the authority to represent the community end up in court. In 2010, the kgosi attempted unsuccessfully to interdict 26 community members from calling meetings of the community.[19] The Traditional Authority, in turn, successfully interdicted an individual who claimed to be the tribe's CEO from representing the community in a different court on the same day.[20] In 2011, the Traditional Authority unsuccessfully attempted to stop the election of a new representative structure.[21] In 2012, the issue of who represents the Bapo community at the Marikana Commission of Enquiry also reached the High Court.

The third North West neighbour of litigious significance has been the Bakgatla-ba-Kgafela. Kgosi Nyalala Pilane has obtained a number of interdicts against anyone in the community who seeks to call meetings of any inter-community structures without his consent. These judgements saw a growing tension between the High Court's acceptance of the notion that within a traditional community, only structures recognised in terms of statute may act, represent or call meetings – and the pushback from community members who insist on their right to discuss the governance of their communities outside these structures.[22] It was thus significant, when one of these matters reached the Constitutional Court in 2012 in *Pilane v Pilane,*[23] that the court set all three of the interdicts aside, although the minority dissent indicated a split in the court as to whether freedom of association and speech should outweigh the need to insulate the authority of traditional leadership. The majority insisted on the rights of community members and further indicated, quite significantly, that it believed the relationship of statutory traditional authority to customary leadership not recognised by legislation is 'far from clear'; but refrained from pronouncing on it.[24]

Royal Bafokeng Nation v Minister of Land Affairs and Others: the main application

In the main application launched in 2008, the RBN sought an order declaring it to be the owner of 61 properties in North West. It alleged that the land was bought by the traditional community today known as the RBN between 1869 and 1963. It describes the land as the ancestral land of the RBN but ascribes the ownership thereof not 'merely by occupation of the land historically by the Applicant as an indigenous community', but to the acquisition of the land. All the relevant portions of land are currently still registered in the name of the government at the time of purchase. According to the title deeds, the government functionary holds the land 'in trust' for the chief acting on behalf of the Bafokeng Tribe.[25] This came about as a result of the systematic barring of 'natives' from owning land through a series of colonial and apartheid policies, as described above.

It should be noted that this application was brought in the context of the constitutional challenge launched against the Communal Land Rights Act 2006. That Act sought to transfer communal land held in trust by government functionaries back to communities, but was challenged by four communities on the very basis that it would weaken their tenure security by placing the authority over the land in the hands of traditional leaders. The Constitutional Court eventually scrapped the Act on procedural grounds in *Tongoane*,[26] thus not entertaining the substantive objections and leaving it up to the RBN to continue pursuing a similar property formulation.

The RBN sought this order on the grounds that the so-called trust regime created by the colonial and apartheid governments did not create a true trust relationship between the community and the government functionary and, in fact, the land is recognised as 'owned' by the community even if registered in terms of the old trust formula. If this is not the case and the land is, in fact, still held in trust by the government, then such a system is discriminatory and paternalistic and stands to be dismantled under a constitutional democracy.

At the time, the Minister requested the order sought to be published, to allow any interested parties to intervene. Subsequent to the publication, 13 parties, including families, communities and an association under the jurisdiction of the RBN, sought leave to intervene. Some opposed the relief sought in respect of specific properties to which they assert direct interest – alleging that the property was in fact bought by their ascendants and not by the 'tribe' – while others objected to the relief sought in respect of all

the affected properties. The RBN initially opposed the intervention, but it was eventually granted on an unopposed basis. The majority of the intervening parties were represented by the Legal Resources Centre and have come to be described in the papers as 'the LRC clients'.

After being admitted, the LRC clients filed their answering affidavits in the main application in April 2011. They did not dispute that the system of state trusteeship had colonial and racist origins and is wholly inappropriate within a non-racial and democratic South Africa. However, they disputed the version of history and custom presented by the RBN, which would entitle the chief to hold the land on behalf of the entire community. They disagreed with the RBN's contention that all the affected properties were purchased by the Bafokeng community and for the community, and alleged that, in fact, many of the properties were purchased by smaller syndicates for themselves and their children. They did not support an outcome that would see the kgosi having representative authority over their land and argued that, in the absence of a regulatory statutory framework for the governance of communal land, such a transfer would be premature. In any event, they argued that the Bafokeng kgosi and his council only have rights to the properties in terms of customary and common law in as far as the descendants of the original purchasers would consent thereto.

Closely related to that objection, the LRC clients raised the defence that the kgosi was not properly authorised by the community he purports to represent to bring the main application. The details of their objection are discussed below.

Instead of filing replying papers, the RBN applied for the matter to be referred to trial. It included the question as to whether it was authorised to institute the proceedings among a number of disputes of fact it identified.

The LRC clients then brought an application in terms of Rule 7 of the Uniform Rules of Court for an order granting them leave to dispute the RBN attorneys' authority to bring the main application, directing the RBN to prove its authority to bring that application and ordering that both the attorney and/or the RBN may not act further in the main proceedings unless and until such time as both had established their authority to the satisfaction of the court. That application was heard on 31 October 2013.

The Rule 7(1) judgement[27]

Rule 7(1) provides that 'the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such a person is so acting, or with the leave of the court on good cause shown at any time before judgement, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application'.

While the Rules formerly required the filing of a power of attorney in specific instances as a rule, the substituted Rule 7 has, since 1988, meant that authority need generally not be shown in actions or applications,[28] but may be challenged. While it was originally understood that Rule 7(1) only applies to the mandate given to attorneys,[29] the SCA held in 2005 that 'the remedy for a respondent who wishes to challenge the authority of a person allegedly acting on behalf of the purported applicant is provided for in Rule 7(1)…'.[30]

The LRC clients first raised the opposition that the kgosi was not properly authorised by the Bafokeng traditional community in its answering affidavit in the main application. While the application was instituted in April 2008, the date of the resolution which the kgosi attached as authorisation was 22 September 2005. That resolution was allegedly taken by the RBN at a Supreme Council meeting. However, the LRC clients contended, under custom the Supreme Council does not have the power to make such a decision, in any event not without thorough and broad consultation within the traditional community it represents. No such consultations occurred prior or subsequent to the resolution. Moreover, even if the resolution was properly taken, the LRC clients contended, it was overturned by a *Kgotha-Kgothe*[31] meeting of 29 July 2006, where general opposition to the idea that land should be transferred to the RBN was voiced by those in attendance. According to the LRC clients, 'the Kgosi gave an undertaking at that

pitso that he would not pursue the matter before he had consulted further. He never consulted further in any meaningful way'.[32] In terms of custom, the LRC clients contended, the kgosi may not go against the decisions of the *Kgotha-Kgothe*. The latter is 'the highest ranking decision making body of the traditional community'.[33]

The LRC clients expected the RBN to respond to the allegations, but instead the RBN brought an application for the main application to be referred to trial. The RBN wanted the question of its authority to institute the proceedings to be dealt with as part of the main trial.

The LRC clients insisted that it had to be dealt with as a separate and preliminary issue. They contended that Rule 7, in the circumstances, protected other fundamental interests. In these circumstances, these interests include the importance of ensuring compliance with traditional governance structures and practices that, in terms of customary law, 'require widespread consultation, democratic decision making and full and thorough debate',[34] and the importance of avoiding situations where one part of the community with access to the financial resources of the community as a whole, litigates against another, less resourced part of the community.[35] In addition, the issues 'concern important questions of customary law that relate [to] governance systems and the ability of communities to hold their leaders [to] account'.[36]

The RBN, in response, argued that the resolution of 22 September 2005 authorised the kgosi to institute proceedings to ensure that the registration of ownership of the 61 farms in question would reflect the RBN as owners. It is thus, so the argument goes, not a resolution that has the effect of land being disposed or huge financial liability being incurred. 'It is a resolution which in customary law does not therefore require the consent or consultation of each and every member of the Royal Bafokeng.'

It may be noted as an aside that an interesting dispute over the content of custom with regard to decision-making – and who may claim to have knowledge of the custom – ensues on the papers. Mr Rapoo, a member of the RBN who deposes to an affidavit on behalf of the LRC clients, bases his knowledge of the custom on his membership of the community. For the RBN, Mr van den Berg, their attorney, insists that he has knowledge of the requirements of the applicable customary law as he has had a long-standing professional relationship with the RBN.

In its assessment of the arguments, the court listed the following principles to be applicable 'where the authority of a signatory of an artificial legal person and its attorney is in dispute':[37]

- An artificial legal persona is obliged to prove that it is authorised to initiate the litigation in question
- Any challenge should be mounted in terms of Rule 7(1)
- Rule 7 can be invoked at any time before judgement
- While 'it is a practical rule which mostly turns out to be compliance with a procedural formality', it can, in some cases, impact substantively on the rights of litigants

On the issue of whether the LRC clients were able to show 'good cause', the court held that it included a 'satisfactory explanation for raising it at the time it is raised'; that prejudice to the other party must be taken into account; and that there must be the prospect for the objection to be a good one. Good cause would also require 'some indication that prejudice [to the party alleging lack of authorisation] will be averted'.

Assessing the arguments before it, the court found that the question of authority was of such importance that it had to be resolved sooner rather than later. The LRC clients had shown their challenge to be a serious one and the RBN had not disputed that the issue of authority was one that had to be decided. In the circumstances, the purpose of the rule – to avoid the cluttering of pleadings on the one hand, but provide a safeguard to prevent a person from denying his authority for issuing the process on the other[38] – would be served by granting the application.

The order granted refers three particular issues for oral evidence, namely:

- Did the Supreme Council of the RBN take a decision to authorise the bringing of this application on 22 September 2005?

- Does the Supreme Council have the power to take such a decision under customary law, and if so, is it necessary for it to consult broadly within the traditional community before taking such a decision?
- Was any such decision overturned or reversed by subsequent events, and more particularly by the *Kgotha-Kgothe* meetings of the traditional community held in 2006?

In the circumstances, 'the RBN and attorneys Fasken Martineau may not act further in the main application until the issue of their authorisation has been decided'.

Conclusion

The LRC clients, like hundreds of members of traditional communities who have approached the Leadership Dispute Commissions, dispute the accepted version of history that contains them within a certain jurisdictional boundary and under specified leadership. That struggle will continue for these communities. The significance of the Mafikeng High Court judgement in the Rule 7(1) application, however, is that it may diminish the importance of those contested boundaries and leaders: if traditional leaders are bound by the democratic principles of custom that require them to seek consent of their communities before taking decisions that would have an impact upon those communities, then the position of leader becomes a side issue.

It is interesting to note that the question of whether, and to what extent, traditional leaders should seek consent from their communities prior to decision-making that would affect them, has a long history in pre-constitutional jurisprudence.[39] Those cases invariably benefitted a despotic leadership. In fact, in a case in 1908[40] concerning the right of the predecessor of the current RBN kgosi over land, J Bristowe held that 'it seems necessary, for that purpose [of self-preservation], that the chief should be an autocrat, that his will should be law …'.

The Mafikeng High Court may well have taken the first step in breaking a new post-constitutional path.

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Notes

1. Chief or senior traditional leader in terms of the Traditional Leadership and Governance Framework 2003 (Act 41 of 2003), Pretoria: Government Printer.
2. See *North Global Properties (Pty) Ltd v Body Corporate of the Sunrise Beach Scheme* [2012] ZAKZDHC 47, para 6.
3. As defined in the TLGFA.
4. For an in-depth analysis of how power and land rights are tied up in the traditional leadership discourse, see A Claassens and B Cousins, *Land, power and custom,* Cape Town: Juta, 2008.
5. For further reading on this topic, see W Beinart, P Delius and S Trapido (eds), *Putting a plough to the ground: accumulation and dispossession in rural South Africa, 1850–1930,* Johannesburg: Ravan Press, 1986; C Bundy, *The rise and fall of the South African peasantry* (2nd ed), London: James Currey, 1988; A Claassens and B Cousins (eds), *Land, power and custom: controversies generated by South Africa's Communal Land Rights Act,* Cape Town: UCT Press, 2008.
6. Gavin James Capps, *Tribal-landed property: the political economy of the BaFokeng chieftancy, South Africa, 1837–1994*, London: London School of Economics, 2010.
7. *Royal Bafokeng Nation v Minister of Land Affairs and The Registrar of Deeds* North West High Court, Mafikeng Case nr 999/08. Founding Affidavit of Kgosi Leruo Tshekedi Molotlegi, para 32.
8. See S Trapido, Landlord and tenant in a colonial economy: the Transvaal 1880–1910, *Journal of Southern African Studies* 5(1) (1978), 26–58.
9. H Klug, Defining the property rights of others: political power, indigenous tenure and the construction of customary land law, *Journal of Legal Pluralism* 35(119) (1995), 128.
10. Capps, *Tribal-landed property,* 108, 171.
11. Ibid., 173.
12. For further reading, see Claassens and Cousins (eds), *Land, power and custom*; also see the work of HWO Okoth-Ogendo, Peter Delius and Martin Chanock.
13. Restitution of Land Rights Act 1994 (Act 22 of 1994), Pretoria: Government Printer.
14. Restitution of Land Rights Amendment Act 2014 (Act 15 of 2014), Pretoria: Government Printer.
15. Traditional leaders lobbied strongly in favour of this notion on many fronts, but in particular in the National Reference Group on land reform (NAREG) working groups on land set up by the Minister of Rural Development and Land Reform. The traditional leaders in particular rejected the existence of Communal Property Associations (CPAs) holding land within their territories. As a result, the newly proposed Communal Land Tenure Policy proposes that CPAs will only exist outside the territory of traditional leaders.
16. Section 28(3) and (4).
17. Section 22 establishes a 'Commission on Traditional Leadership Disputes and Claims'.
18. Statement released by the Limpopo Department of Co-operative Governance, Human Settlements and Traditional Affairs, 18 May 2012.
19. *Mogale v Maakane and 27 Others* [2010] NWHC 1106.

20 *The Traditional Authority of the Bapo-ba-Mogale Community v Kenosi and 1 Other* [2010] NGHC 31876.

21 *Maakane and Others v The Premier of the North West Province and Others* [2011] NWHC 2715.

22 In September 2011, he obtained such an interdict against a group who attempted to convene a meeting of the royal family. Leave to appeal was rejected.

23 *Pilane and Another v Pilane and Another* (CCT 46/12) [2013] ZACC 3; 2013 (4) BCLR 431 (CC).

24 Para 44–45.

25 Since 1994, the RBN has purchased more land, which is registered directly in its name.

26 *Tongoane and Others v Minister for Agriculture and Land Affairs and Others* [2010] ZACC 10; 2010 (6) SA 214; 2010 (8) BCLR 741 (CC).

27 *The Royal Bafokeng Nation v The Minister of Land Affairs and 15 Others* [2013] NWHC 999.

28 The Rule is subject to subsections (2) and (3) that provide that an attorney must file a power of attorney when prosecuting or defending an appeal to a division of the High Court against a magistrate's decision in a civil case.

29 AC Cilliers, C Loots and HC Nel, *The Civil Practice of the High Court and Supreme Court in South Africa Vol. 1*, 268.

30 *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA), para 14.

31 General community meeting.

32 Main Application Rapoo Answering Affidavit, para 186.

33 Rule 7(1) Founding Affidavit Para 26.

34 Para 33(m).

35 Ibid.

36 Ibid.

37 Para 38.

38 *North Global Properties (Pty) Ltd v body Corporate of the Sunrise Beach Scheme* [2012] ZAKZDHC 47, para 6.

39 See *Hermansberg Mission Society v The Commissioner for Native Affairs and Darius Mogale* 1906 TS 135; *Mogale v Engelbrect and Others* 1907 TS 836; *Mathibe v Lieutenant-Governor* 1907 TS 557; *Khunou v Minister for Native Affairs and Mokhatle* 1908 TS 260; *Mathibe v Du Toit* 1926 TPD 126; *Matope v Day* 1923 AD 397; *Rathibe v Reid* 1927 AD 74; *Mossi v Motseoakhumo* 1954 (3) SA 919 (A); *Masenya v Seleka Tribal Authority and Another* 1981 (1) SA 522 (T).

40 *Petlele v Minister for Native Affairs and Mokhatle* 1908 TPD 260.