

OKAVANGO KOPANO MOKORO COMMUNITY TRUST & 11 OTHERS v GIDEON PITLAGANO & 22 OTHERS

Court: *High Court of Botswana, Maun*

Judge: *Justice Nthomiwa J*

Summary By: *Tehillah Monamoledi*

Overview

This case is an urgent application that emerged from a wave of disputes within the Okavango Kopano Mokoro Community Trust (“the Trust”), a community trust in Botswana’s North-West District. The Trust was created within the framework of Community Based Natural Resources Management (CBNRM) policy, which is an eco-tourism initiative by the Government to enable the societies within concessions where flora and fauna are located to participate in the conservation of same, and also to then benefit financially from such management of natural resources. At its core, the matter reflects internal conflicts over control of resources, financial benefits, and governance structures of the Trust.

The Applicants comprised the Trust and former Trustees, whilst the Respondents were the current Trustees as well as the Master of the High Court and Attorney General. Bogopa, Manewe, Tobedza & Co. represented all the Respondents save for the public authorities.

Facts

The Applicants initially removed a group of trustees elected in September 2022 through a vote of no confidence on 28th October 2024. Following this, the Applicants were issued with Letters of Authority by the Master of the High Court on 20th December 2024, allowing them to act as interim trustees. They were to serve the remaining tenure of the previous trustees, which was until September 2025.

Subsequently, on 17th March 2025, members of the Trust, including the 1st to 10th Respondents, convened a Special General Meeting and passed a vote of no confidence removing the Applicants as trustees.

Dissatisfied with the Respondents' actions, the Applicants challenged their removal, arguing that a vote of no confidence alone was insufficient to remove trustees under the Trust Property Control Act 2024 ("the Act"). Whilst pursuing review proceedings, they launched an urgent application seeking interim relief.

Relief sought

The Applicants' main objective was to launch legal proceedings for judicial review of the legality of decision of the trust members to remove them as trustees, as they were of the belief that their removal was contrary to the trustee removal procedures laid out in Act.¹

In the interim, the Applicants sought to suspend the decision taken by the Respondents as well as interdict the Respondents from taking any further actions that would undermine the Letters of Authority previously handed to the Applicants.

They further sought to interdict the Master from removing the Applicants as Trustees or cancelling the Letters of Authority previously granted to them.

Respondents' Arguments

In opposition to the Application, the Respondents raised points of law that the Applicants requested incompetent reliefs, in that the events sought to be interdicted had already occurred.

The Respondents further argued that Master cannot be interdicted as she is public functionary who exercises statutory power in terms of the Act, save for circumstances where there are allegations of *mala fide*², which allegations had not been placed before the Court.

¹ Section 23 of the Act

² acting in bad faith, with dishonesty, deceit, or intentional wrongdoing.

In addition to these points of law, the Respondents contended that the Applicants approached the Court with unclean hands, as they had not surrendered their Letters of Authority to the Master after their removal, as required by the Act.

Legal Issues

The Court was called upon to determine:

1. Whether the removal of trustees and appointment of others could be interdicted;
2. Whether acts that have already occurred can be interdicted;
3. Whether the Master, as a public functionary, can be interdicted from performing statutory duties;
4. Whether the Applicants approached the Court with unclean hands.

Court's Reasoning

In interpreting section 23 of the Act, the Court recognized that a trustee can be removed in one of three circumstances which included removal by trustees or a protector in terms of the trust instrument. The Court succinctly held that the removal of trustees through a vote of no confidence in this matter was lawful as it was in accordance with clause 21 of the Deed of Trust.

Following this, the Court asserted that interdicts are preventative remedies for actions that have not occurred. They therefore cannot be issued against a decision or resolution that has occurred and been implemented. The Court duly held that an interdict was not an appropriate remedy in this case as the decision to remove the Applicants as trustees was already taken in terms of the Deed of Trust and the Act.

The Court further upheld the Respondent's point in limine that the Master of the High Court, could not, as a public functionary executing her statutory duties in terms of the Act, be interdicted from performing her duties unless *mala fide* has been alleged against her. In the present case, the Master was acting on information

that was given to her, which was, *prima facie*³, regular and in conformity with the law regulating Trusts, therefore interdicting her would be an incompetent relief.

Following this, the Court addressed the point on the clean hands doctrine⁴. It was held that in terms of the Act, once the Applicants were ousted from the Trust, they ought to have handed back their Letters of Authority to the Master. Therefore, in failing to do so the Applicants had committed a criminal offence in terms of the Act and were approaching the Court with tainted hands.⁵

Lastly, the Court considered whether the requirements of an interim interdict had been satisfied. This was essentially whether the Applicants have a *prima facie* right, prospects of success, the balance of convenience of favours them and if there is a likelihood they will suffer irreparable harm. The Court held that the reasons advanced by the Applicants appeared to be flimsy, vexatious and without merit. On that note, it was held that the Applicants do not have a *prima facie* right that is necessary to be protected by way of an interdict and further had no prospects of success in the purported review application.

On the point of irreparable harm, the Court highlighted that the main source of any harm being caused to the Trust stemmed from the power struggles and legal disputes which caused delays in the administrative functioning of the Trust. The Court opined that this would be remedied by simply dismissing the application and enabling the Respondents, who have been lawfully elected to office, to perform their duties. Therefore, the Applicants failed to substantiate the limb of irreparable harm.

In addressing the balance of convenience, the Court held that it favours the Respondents over the Applicants. The trust was in a state of paralysis and Letters of authority needed to be issued to the Respondents after their lawful election to enable the Trust to function. In light of this, the Court held that the Applicant's application for interim interdict failed.

³ at first sight or based on first impression.

⁴ A principle that prevents a party from seeking judicial relief when they have engaged in misconduct connected to their claim.

⁵ Section 30(e) of the Act

Ruling

1. The decision taken at the Special General Meeting is upheld;
2. The Master cannot be interdicted from issuing Letters of Authority to the Respondents; and
3. The Applicants should vacate the office and surrender their Letters of Authority to the Master

Conclusion

After extensive research and diligent efforts, the firm managed to effectively facilitate and ensure the success of the Respondents in this case, which success was instrumental to the smooth and good governance of the Trust.

At Bogopa, Manewe, Tobedza & Co. trust matters are one of our many specialties. Whether it's guidance, support, or tailored solutions, our team is here to assist. Kindly visit bomaattorneys.co.bw for more information.

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