

IN THE HIGH COURT OF THE OF SOUTH AFRICA

NORTHWEST PROVINCIAL DIVISION, MAFIKENG

Case Number: M161/2014

In the ex parte matter between:



THE ROYAL BAFOKENG NATION

Applicant

and

ALL THE ILLEGAL OCCUPIERS OF AND/OR ALL SUCH PERSONS

RESPONSIBLE FOR THE INVASION OF THE AND/OR FOR THE

ILLEGAL DERMACATION OF RESIDENTIAL STANDS AND/OR

ERECTION OF STRUCTURES ON THE REMAINDER OF

FARM BOSCHFONTEIN 268 JQ

Respondents

URGENT NOTICE OF MOTION

Document Filed by : Mr Kgomo
Tel: 018 381 0286 ; 018 381 0495
Cell: ; 083 345 3809

KINDLY TAKE NOTICE THAT the above named Applicant intends to make application to the above Honourable Court, at about 19h30 on **19 APRIL 2014** or soon thereafter as the matter may be heard for an order in the following terms:

1 That this matter be heard as urgent and the applicant's non-compliance with the rules of the above Honourable Court relating to forms and service be condoned;

2 That the respondents and any other person are hereby:

2.1 Directed to cease, with immediate effect, any illegal invasion and/or occupation of ALL OR A PORTION of the farm Boschfontein 268 JQ ("the FARM");

2.2 Interdicted from causing the division and/or demarcation of ALL OR A PORTION of the FARM for residential stands or for any other purposes;

3 Directing the respondents to remove all the structures they have erected on the FARM, within forty eight (48) hours of this order;

- 4 **ALTERNATIVELY TO PRAYER 3 ABOVE;** that the Sheriff of Bafokeng be authorized to remove and/or cause the removal of all the structures illegally erected on the Farm by the respondents, within twenty four (24) hours of the expiry of the time stated in prayer 3 above;

- 5 Interdicting ANY FUTURE invasion and/or illegal occupation and/or illegal subdivision and/or illegal demarcation of the FARM for residential or any other purposes;

- 6 Declaratory order that the occupation of the FARM, in any manner or any form, must comply the Land Use Policy of the Applicant;

- 7 The Applicants and/or Sheriff of Bafokeng are hereby directed to serve a copy of this order on the respondents by affixing a copy of this order on all and/or any visible structure erected on the Farm;

- 8 Cost of suit against all the respondents jointly and severally with the one paying and the others to be absolved; and

- 9 Further and/or alternative relief.

KINDLY SET THE MATTER DOWN FOR HEARING ACCORDINGLY.

TAKE FURTHER NOTICE THAT the affidavit of **SYDWELL RAMPE** and annexes thereto shall be used in support of this application.

TAKE NOTICE FURTHER THAT the applicant has appointed the offices of **KGOMO MOKHETLE TLOU ATTORNEYS**, whose address appears hereunder, as the address at which they shall accept notice and service of all processes in these proceedings.

DATED AT MAFIKENG ON THE 19 DAY OF APRIL 2014.

Filed by: _____

KGOMO MOKHETLE TLOU ATTORNEYS
Attorneys for Applicant
KMT Building, 56 Shippard Street,
Mafikeng
Tel: (018) 381 0495
Fax: (018) 381 0496
Ref: Kgomo

TO: THE REGISTRAR
NORTHWEST HIGH COURT

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FARM BOSCHFONTEIN 268 JQ

Respondents

FOUNDING AFFIDAVIT

I the undersigned **SYDWELL RAMPE**

m.m

S.R.

do make oath and state that:

- 1 I am an adult male Unit Head of the Applicant's Tribal Security Services, whose offices are located Bafokeng Civic Centre, Phokeng, Northwest.
- 2 The facts set out hereunder are within my personal knowledge and are, unless the contrary is stated or appears from the context, to my belief both true and correct.
- 3 I have the necessary authority to depose to this affidavit, as appears from the confirmatory affidavit of **Adv K M MOKATE**, a copy of which is attached hereto and marked "**RBN1**".
- 4 Any submission of a legal nature made herein is made on the strength of the legal advice sought and received from my legal representatives, which advice I accept to be correct.
- 5 The Applicant is the Royal Bafokeng Nation, an association of persons forming an indigenous tribe under a kgosi or a chief, and constituting a *universitas personarum* in law with *locus standi* to sue and be sued and deemed a traditional community in terms of section 28(3) of the Traditional Leadership and Governance Framework Act 41 of 2003. The Applicant's administrative offices are situated at the Phokeng Civic Centre in Bafokeng District, Phokeng, Northwest Province.

m-m

S.R.

- 6 The individual and/or collective identities and/or particulars of the respondents are and remain unknown to the Applicant. They are however and for purposes of these proceedings described as, ALL THE ILLEGAL INVADERS AND/OR OCCUPIERS OF AND/OR ANY OTHER PERSON RESPONSIBLE FOR THE ILLEGAL ERECTION OF STRUCTURES ON OR THE DIVISION OR DERMACATION OF THE BOSCHFONTEIN FARM 268 JQ, situated at Phokeng, Rustenburg FOR RESIDENTIAL AND/OR ANY OTHER PURPOSES.
- 7 The purpose of this application is to, *inter alia*, seek a final interdict for the illegal invasion or occupation of the FARM. The above Honourable Court has the necessary jurisdiction to hear this application.
- 8 The Applicant is the registered owner of the FARM, alternatively, the legal custodian of the FARM for the benefit of the entire constituent members of the Applicant. It accordingly has the right to approach court and seek the relief sought. See the attached copy of the title deed marked "RBN2".
- 9 The Applicant has, set aside FARM or a PORTION THEREOF, for industrial development and has had same serviced for that purpose.

- 10 The FARM or A PORTION THEREOF is located on a border of land owned by the Applicant and the land falling under the jurisdiction of the Rustenburg Local Municipality.
- 11 A PORTION OF THE FARM is legally occupied by the sub-community of the Applicant called Lefaragatlhe under the stewardship of Kgosana Setuke.

FACTUAL BACKGROUND

- 12 During or about 16 April 2014, some members of the sub-community of Lefaragatlha noticed a gathering of people on a portion of the FARM adjacent to Tlhabane and alerted members of the Tribal Security Services.
- 13 I was duly alerted of such illegal gathering, after which I duly informed Adv Mokate, the Land Affairs Executive of the Applicant responsible for the overall management of land usage and allocation of the Applicant.
- 14 I was then advised to attend to such gathering and establish the purpose of such gathering, from a peacekeeping setup. I discovered, upon my arrival, that the situation was way beyond illegal gathering and case of illegal land grabbing.

- 15 The people on the FARM were busy moving onto the FARM, dividing and demarcating stands and erecting structures on the FARM.
- 16 My estimation of the number of the people in attendance at the portion of the FARM was two hundred and more and had remain so for the past two days. The police were immediately advised of the situation and their presence invited.
- 17 I was accompanied by Messers Itumeleng HUMA and MOLETSANE from the Land Unit of the Applicant, who confirmed that the aforesaid occupation or invasion was illegal as no authority or permission was sought from or given by the Applicant.
- 18 We, together with the members of the South African Police Services Lieutenant Diale from Tlhabane Police Station addressed the illegal occupiers/invaders. We collectively advised them of the illegality of their actions and requested them to cease such action and disperse. All such persons were in possession of a variety of tools and materials which could be used as weapons if there were to be any physical confrontation.

- 19 Members of the Tribal Security Services were present at the scene and heavily armed at that time. We, as the security personnel and leadership of the Applicant, took an informed decision not to physically engage with any or all such persons or cause their immediate removal from the FARM, despite our capability to do so.
- 20 Colonel Raphata, the Station Commander of the Tlhabane Police Station, who was also present, urged all such persons who were on that portion of the FARM to cease their conduct and disperse. He further promised to facilitate a meeting between them and the relevant leadership of the Applicant, in particular Adv Mokate and Mr Rapetsana. He further requested them to avail to him the particulars of their leadership which they refused.
- 21 The illegal gathering and invasion was immediately stopped. On 17 April 2014, the same persons or other or more gathered on the FARM and continue with their aforesaid illegal conduct.
- 22 The COO of RBA Mr Keorapetse Tumagole, Kgosana Mogono, Councillor Rangwaga who is the Deputy-Chairperson of the Applicant Traditional Council attended to the Farm on 17 April 2014 in an endeavour to engage with the said invaders or occupiers. The latter were advised of the internal processes of the Applicant which needed to be followed in order to gain access to land owned by the Applicant.

- 23 Some of such invaders became unruly and insulted us and the leadership of the Applicant and continued with their conduct of demarcating stands and erecting structures on the FARM. See the attached confirmatory affidavit of Mr Ragwaga marked "RBN3". As matters stands, the aforesaid invaders and/or illegal occupiers are not residing on the Farm.
- 24 Ultimately, the said invaders, refused to leave the FARM and/or to cease their aforesaid conduct. Mr Tumagole then prepared a notice to all such person and same was distributed amongst the illegal invaders or occupiers by members of the Tribal Security Servises, in my presence.
- 25 I then went to Tlhabane Police Station and opened a case of Trespassing under Cas Number 228/4/2014.
- 26 In brief, the respondents' conduct is unlawful. We have taken steps to engage with them and they have refused. The members of the South African Police Services have unsuccessfully tried to intervene. The Applicant has a legal right to protect its right to property and to ensure that its land is allocated and/or occupied and/or used in accordance with its internal processes to the benefit of its general members.

- 27 Arbitrary and forceful occupation or invasion of land must be discouraged to maintain the rule of law. The applicant saw it fit to then approach the above Honourable Court for appropriate relief, as oppose to taking matter into its hands.
- 28 The aforesaid invasion or occupation or subdivision has continued over the past two days. There is an eminent risk that same shall continue at fast pace over the course of this weekend, unless there is a court order interdicting such conduct.
- 29 We have been advised by the Colonel Raphata, the Station Commander of Tlhabane Police Station that any further intervention on their part shall be at the instance of a court order.
- 30 There is no sufficient alternative remedy available to the Applicant than to seek the relief sought.
- 31 The applicant is unable to effect service of these proceedings on the respondents as their identities and particulars are unknown. There is nonetheless, an attended risk that the respondent would use the processes of this court delay the hearing of this matter and thereby continue with their illegal conduct.

32 I therefore submit that a proper case has been made for the relief sought and we shall therefore be seeking that rule nisi be issued for this purposes.

WHEREFORE I pray for the relief set out in the notice of motion to which this affidavit is attached.



DEPONENT

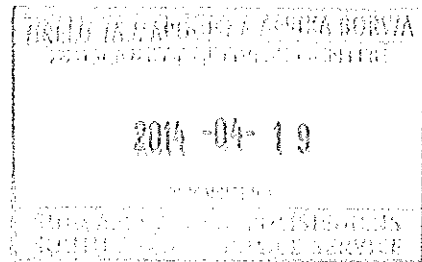
SIGNED AND SWORN BEFORE ME AT PHOKENG ON THIS 19th DAY OF APRIL 2014, THE DEPONENT HAVING ACKNOWLEDGED THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF HER AFFIDAVIT, HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH, AND CONSIDERS THE OATH BINDING ON HER CONSCIENCE.

7202597-2
M. M. M. M. S/C87

COMMISSIONER OF OATHS

POSITION: S/C87

ADDRESS: PHOKENG SAPS



RBN1

IN THE HIGH COURT OF THE OF SOUTH AFRICA
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FARM BOSCHFONTEIN 268 JQ**

Respondents

CONFIRMATORY AFFIDAVIT

I the undersigned

KENNETH MOSIMANEGAPE MOKATE

Do make oath and state that:

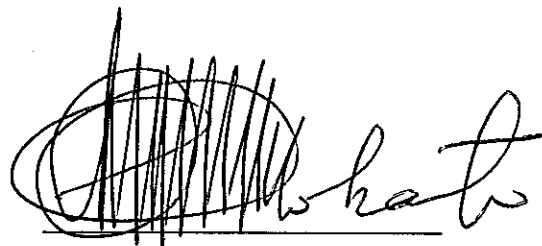
m-m

S.R.



- 1 I am an adult male Executive Land Affairs of the Applicant, whose offices are situated at Phokeng Civic Centre, Phokeng, Northwest Province.
- 2 The facts set out hereunder are within my personal knowledge and are, unless the contrary is stated or appears from the context, to my belief both true and correct.
- 3 I have read the founding affidavit deposed to by SYDWELL RAMPE and I confirm the contents thereof in so far as they relate or refer to me. I further confirm that he has been authorized to depose to such affidavit on behalf of the Applicant.
- 4 I therefore submit that a proper case has been made for the relief sought.

WHEREFORE I pray for the relief set out in the notice of motion to which the founding affidavit is attached.

A handwritten signature in black ink, appearing to be 'M.M. Mphahlele', written over a horizontal line.

DEPONENT

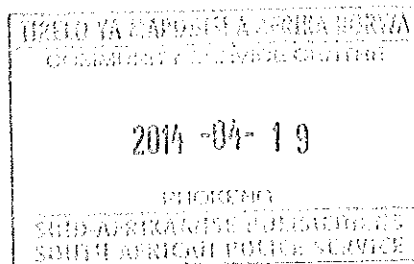
SIGNED AND SWORN BEFORE ME AT PHOKENG ON THIS 19TH DAY OF APRIL 2014, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF HIS AFFIDAVIT, HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH, AND CONSIDERS THE OATH BINDING ON HIS CONSCIENCE.

7202897-2
M. Mafoko s/c 87
M.M.

COMMISSIONER OF OATHS

POSITION: s/c 87

ADDRESS: Phokeng SAPS



M.M.

S.P.

RBM 12

*Mineral Rights
Chrome and Placans Stone exchange*

Leased to Verhuur aan..... *P.P. Beest* *Platynums Ltd*
 for 20 years from 22.5.47.
 vir.....
 by *Not* Doed-registered this
 kragtens.....Akte geregistreer hierdie
 onder No. *500/51*
 Register of *Mineral Rights*
 Register van.....
18/51
 Deputy Office, Asst. Registrar,
 Sekretarisoor, Asst.-Registrateur,
 Pretoria.

22.5.47 22.5.66 10 May 1960

STRICTLY CONFIDENTIAL
 REGISTERED UNDER THE PATENT AND TRADE MARKS ACT, 1917
 REGISTRATION DIVISION
 PRETORIA
 1960
J. S.
J. M. M. M.

By Material Deed No. *144* the right has been granted to
P.P. Beest by which conveyed together
 to *Platynums Ltd* and *Placans Stone Exchange* with more fully
 set out in the deed, and the said deed is as with more fully
 set out in the deed and the said deed is as with more fully
 set out in the deed.
 PRETORIA, 12 1960
 ASST. REGISTRAR OF DEEDS.

REGISTERED UNDER THE PATENT AND TRADE MARKS ACT, 1917
 REGISTRATION DIVISION
 PRETORIA
 1960
J. M. M. M.
 ASST. REGISTRAR OF DEEDS.

M.S

m.m

S.P.

desired by the Government of the Transvaal that transfer of the said property be passed from the Estate of the late Johann Heinrich Christof Penzhorn aforesaid to the Minister of Native Affairs for the Transvaal in trust for the Native Chief August Mokhatle as Successors in Office to Mokhatle Mokhatle and his tribe, free from transfer Duty in terms of Executive Council Resolution No. 1999 of 27th November 1905.

NOW THEREFORE he, the said Appearer, in his capacity as Attorney aforesaid, did by these Presents, cede and transfer, in full and free property, to and on behalf of

JOHANN FRIEDRICH BERNHARD RISSIK

in his capacity as the Minister of Native Affairs for the Transvaal and as such acting in trust for the Native Chief AUGUST MOKHATLE and his ^{Tribe} ~~Tribe~~, his Successors in Office or Assigns;

Certain quitrent farm named BOSCHFONTEIN No. 489. situate in the District of Rustenburg, Ward Hex. River;

Measuring Two thousand two hundred and Forty-three morgen Four hundred and Ninety square roods;

Extending as the Deed of Grant with diagram relating thereto made in favour of Johann Hendrik Baschoff, on the 11th February 1852,

BLADSYFAGE A f
 ENDOSSMENT OF 13785/1907
 ENDOSSMENT ON Remainder of Farm No. 268
 EIENDOANSKOPPELTY I. O.

Remaining extent = 2285,6610 myn
 certificate filed with T 1/1980

1347/1977
 dd 2/2/80 (1980-80)

ORDRAG ENDOSSMENT IN TERMS
 TRANSFER, ENDOSSMENT IN TERMS
 T. 11 / 1980
 van DIE President of the Republic of South Africa
 The name of the person mentioned in the deed is hereby registered in the name of the President of the Republic of South Africa
 - 8 JAN 1980 -
 REGISTRAR GENERAL
 REGISTRATEUR-GENERAAL

1915, 2056
 5662
 1915, 7718

K 1
 ESCOM
 1987
 General

K 38
 ESCOM
 1989
 General

S.P.R.

m.m

and three subsequent Deeds of Transfer the last of which No. 9310. made in favour of Johann Heinrich Christof Penzhorn on the 3rd day of August. 1871, will more fully point out, and further subject to such conditions as are therein mentioned or referred to.

WHEREFORE the Appearer, renouncing all the right and title his Constituent heretofore had to the premises, on behalf as aforesaid, did in consequence also acknowledge the said Estate of the late Johann Heinrich Christof Penzhorn to be entirely dispossessed of, and disentitled to the same; and that by virtue of these presents, the said

JOHANN FRIEDRICH BERNHARD HISSIK

in his capacity as Minister of Native Affairs for the Transvaal and as such acting in trust for the Native Chief AUGUST MOKHATLE and his Tribe his Successors in Office, or Assigns, now is and henceforth shall be, entitled there- to conformably to local custom; moreover promis- ing to free and warrant the property thus transferred, as also to clear it from all en- cumbrances and hypothecations, according to Law; Government, however, reserving its rights;

IN WITNESS WHEREOF, I, the said Registrar of Deeds, together with the Appearer q.q. have subscribed to these presents and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of

-the-

Prospecting & Mineral lease

REM. EXT. OF THE FARM

Leased to **NUCO CHROME BOPHUTHATSWANA**

Vernor aan **PROPRIETARY LIMITED**

for a period of **FIVE (5) YEARS**

vir 'n tydperk van

by Deed registered this
kragtens... Akte geregisreer hierdu

under No. **K 6 1942**

Register of
Register van

Deeds Office,
Aktekantoor

Mmapaketho 22/2/94

Registrar General
Registrasie

DIE VERMELDE EIENDOM IS ONDERNEWIG AAN 'N KRAGTENS- TUUT TEN GUNSTE VAN 'N EIENDOM MET BYKOMENDE REGTE.	THE MENTIONED PROPERTY IS SUBJECT TO A POWERED SERVITUDE IN FAVOUR OF 'N EIENDOM WITH ANCILLARY RIGHTS.
K007659 03 S	REGISTRAR

17/11/03

KRAGTENS NOTARIELE AKTE No. K 7972/04

BY NOTARIAL DEED No. **K 7972/04**

GENATEER **11/10/2004**

DATED **11/10/2004**

IS DIE HIERIN VERMELOE EIENDOM *is subject to a servitude in*
 THE WITHINMENTIONED PROPERTY *respect to a servitude in respect of pipelines*
already laid and in favour of Rand Water at the
the hereinafter mentioned property to convey water, along
a strip of ground 5,004 m² indicated by figures
A B C D E F G H J K L M N P Q R S T U V W X A I A m S no. 575/02.

SOOS MEER VOLLEDIG SAL BLYK UIT GEMELDE NOTARIELE AKTE WAARVAN
 'N AFSKRIF HIERAAN GEHEG IS.
 AS WILL MORE FULLY APPEAR FROM REFERENCE TO THE SAID NOTARIAL
 DEED, A COPY WHEREOF IS HEREUNTO ANNEXED.

AKTEKANTOOR
 DEEDS OFFICE

02 11/04

the Registrar of Deeds, at Pretoria, Transvaal, on the 19th day of the month of September, in the year of Our Lord One Thousand Nine hundred and Seven.

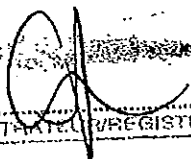
[Handwritten signature]
q.q.

In my presence,

[Handwritten signature]
Registrar of Deeds.

Registered in the Register of *Pastorburg J*
kept at Pretoria, Book 3, page 3/3
on the above date.

[Handwritten signature]
[Handwritten initials]

<p>THE UNDERSIGNED HAS BEEN ORDERED TO BE A FIDUCIARY OF THE PROPERTY OF THE ABOVE MENTIONED PROPERTY IN THE FOLLOWING MANNER</p>	<p>THE ABOVE MENTIONED PROPERTY IS SUBJECT TO A FIDUCIARY SERVITUDE IN FAVOR OF EMILY HOLDINGS LTD IN ACCORDANCE WITH</p>
<p>K 002738/08</p>	
<p>23 04 08</p>	<p>REGISTRAR</p>

RBN3

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I the undersigned

PAPI RANGWAGA

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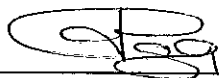
m.m



S.R.

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