iAfrica Transcriptions (Pty) Limited

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO: 29218/2010

DATE: 2012-10-16

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES ~~YES~~/NO
(3) REVISED

DATE 28/1/2013 SIGNATURE

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In the matter between

29/1/13

PLATREEF RESOURCES (PTY) LIMITED Applicant

and

KGOBUDI TRADITIONAL COMMUNITY Respondent

J U D G M E N T

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20 KOLLAPEN J: In this application the applicant seeks confirmation of a Rule *nisi*, issued out of this Court on 29 May 2012, that interdicts and restrains the respondent described therein as the Kgobudi Traditional Community, from amongst other things:

1. Interdicting and restraining the respondent from assaulting, intimidating, interfering with, molesting and harassing the applicant, including its employees, its contractors, sub-contractors

and their respective employees.

2. Damaging and/or unlawfully misappropriating any property owned by or in the possession of the threatened persons.
3. Entering the area within a radius of 200 meters from any of the threatened persons, drill-rigs situated on the prospecting area, save with the prior written consent of the applicant.
4. Taking any unlawful steps to prevent the threatened persons from accessing the prospecting area and inciting any person to prevent such access.

10 The Rule was granted on 29 May 2012 by Ledwaba J and the Applicant has in these proceedings sought confirmation of the Rule.

Confirmation of the Rule is opposed and an answering affidavit was filed by one Letsetsa David Maruma in his capacity as a member of the Kgobudi Community. Mr Maruma is also the Secretary of the Makopani Interested and Affected Communities Committee (M.I.A.C.C.) and he purports to rely on Section 38 of the Constitution of the Republic of South Africa in support of his claim to *locus standi*. In brief Section 38 provides that any person may act in his own interests, act on behalf

20 of another who cannot act in their own name, act as a member or in the interest of a group or class of persons, act in the public interest and act on behalf of any association acting in the interests of its members.

The applicant on the papers challenged the claim to *locus standi* of Mr Maruma.

By way of background, the following facts may be relevant for

the purposes of this judgment. The applicant, Platreef Resources (Pty) Limited is the holder of a prospecting right issued by the Department of Minerals and Energy Affairs, in respect of the farms Touspruit 241KR and Makkalaskop 243KR which rights endure until 31 May 2014.

The Kgobudi Community, a clan within the broader Makopani Community, live on the farms in respect of which the applicant holds a prospecting right. The applicant commenced prospecting activities, including drilling activities, following the conclusion of a surface use and co-operation agreement, entered into with one Induna Kekana and Mr
10 Joshua Molala. Induna Kekana purported to and warranted that he represented the Kgobudi Community and Mr Joshua Molala acted in his capacity as the Chairman of the Kgobudi Mining Committee. It would appear that following the conclusion of this Surface Use and co-operation Agreement the applicant continued with its prospecting activities on the land described.

There have been various difficulties in the community including issues of leadership as well as various difficulties in the relationship between the applicant and those with whom it entered into the Surface Use and co-operation Agreement. Those difficulties include:
20 (a) The Makopani and Kgobudi Communities experience significant leadership problems. It is alleged that the status of the Chief is disputed by many while few of the headmen are recognised as legitimate.

(b) The manner in which the applicant exercised its prospecting rights has been questioned and challenged by some in the

community, resulting in the Department of Mineral Resources issuing an order against the applicant on 15 February 2012, in which order the applicant is found to have conducted its prospecting operations in contravention of the conditions imposed upon it. As a result the applicant was ordered, amongst other things to "refrain from conducting any prospecting activities on land comprising residential areas, public road or land being used for public purposes with immediate effect."

10 In addition the applicant was ordered by the Department of Mineral Resources to "engage with all affected communities and take a proper resolution in respect of a positive and negative socio-economic environmental health and safety affects of your activities."

The applicant was also instructed by the Department of Mineral Resources to stop making payments in terms of the Surface use and co-operation agreements. These payments, in the main, were payments made to Kgoshi Kekana, Induna Kekana and members of the mining committee.

20 (c) The cessation of these payments appeared to have triggered some unhappiness and on 14 May 2012, the applicant alleges that a mob of some 150 angry and violent members of the Kgobudi Community marched on the drill-rigs and threatened violence if operations were not stopped. Similar incidents occurred again on 15 May 2012 and 18 May 2012.

(d) These events culminated in the applicant launching urgent proceedings out of this Court and resulted in the Order of 29 May 2012 to which reference has already been made.

The issues in dispute are reasonably narrow. The first was the question of *locus standi*. While the *locus standi* of Mr Maruma was challenged on the papers, Mr Lazarus, appearing for the applicants, at the commencement of the hearing of this application indicated that the applicant no longer placed in issue the *locus standi* of Mr Maruma.

In my view this concession was properly made, given the
10 approach taken by our Courts regarding standing in Constitutional matters where our Courts have essentially adopted the approach that a generous view is taken with regard to standing in respect of litigants who wish to assert or protect Constitutional rights. That disposes of the issue of *locus standi*.

The second issue in dispute was the question of whether it was permissible to seek and obtain an interdict against an entire community, as the applicant purported to do, and in fact was able to do in terms of securing the order of this Court of 29 May 2012.

Counsel for Mr Maruma contended that it is impermissible in law
20 for the applicant to obtain relief against the entire Kgobudi Community in the context of this application. In this regard they rely on the *dicta* of amongst others, CONRADIE J in the matter of *Kayamandi Town Committee v Mkhwaso & Others*, 1991 (2) SA 630 C, where the Court remarked as follows:

"A notification to persons in general or to a group

of individuals by way of a Rule *nisi*, that the Court is about to pronounce a suit between parties is of course permissible. It is a procedure frequently adopted in order to give interested parties an opportunity of joining in the litigation. But it does not by itself, make them parties to the litigation and they do not merely, by virtue of being notified of the litigation become liable to be punished for contempt of Court, for failure to comply with any order which is eventually made. A failure to identify defendants, or respondents would seem to me to be destructive of the notion that a Court's order operates only inter-parties, not to mention questions of *locus standi in jurico iudicio.* An order against respondents, not identified by name or perhaps by individualised description, in the process commencing action or in very urgent cases, brought orally on the record, would have the generalised effect typical of legislation. It would be a decree and not a Court order at all."

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See also in this regard *City of Cape Town v Yawa & Others,* 2004 (2) All SA 281 (C) as well as the *Illegal occupiers of various erven Phillipi v Monhood Investment Trust Company (Pty) Limited* 2002 (1) All SA 115 (C). On the facts the applicant's stance in these proceedings is that at best some 200 members of the Kgobudi Community were

entitled to its costs, but disputed whether given the nature of the application the costs of two counsel were warranted. The question of costs invariably rests within the discretion of the Court but it is a discretion that has to be judicially exercised.

In the matter at hand, the matters of importance that the Court would have had to deal with, would have been the *locus standi* of Mr Maruma and the applicant seeking confirmation of the Rule against an entire community of 15000 people. The application would have dealt with significant Constitutional and legal issues including access to land,
10 agriculture, the environment, healthcare and the general well being of a community.

In my view the factual and legal issues were sufficiently important to justify the engagement of two counsel and I intend to make such an order.

In all the circumstances, then it would be appropriate for the Rule *nisi* to be discharged and I make the following order:

ORDER

1. The Rule *nisi* is discharged.
2. The applicant is ordered to pay the costs occasioned by Mr
20 Maruma in opposing the confirmation of the Rule nisi and such costs are to include the costs of two counsel.