

GENERAL INFORMATION ABOUT THE CASE	
Case URL	http://www.saflii.org/za/cases/ZACC/2013/3.html
Name of case:	<i>Pilane & Another v Pilane and Another 2013 (4) BCLR 431 (CC)</i>
Court name:	Constitutional Court
Type of court:	<input checked="" type="checkbox"/> Constitutional Court <input type="checkbox"/> Supreme Court of Appeal <input type="checkbox"/> High Court <input type="checkbox"/> Other
Issue:	Governance of traditional councils and community rights
Justice(s)/Judge(s)	Skweyiya J, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Van der Westhuizen J and Zondo J Mogoeng CJ and Nkabinde J (<i>Dissent</i>)
Reference No:	[2013] ZACC 3
Filing No:	CCT 46/12
DESCRIPTION	
Facts:	<p>The first and second applicants are Mr Mmuthi Kgosietsile Pilane and Mr Ramoshibidu Reuben Dintwe, respectively. The applicants are residents of the Motlhabe village, one of 32 villages that comprise the Bakgatla-Ba-Kgafela Traditional Community (Traditional Community), located in the Pilanesberg area of the North West Province. They have for a number of years been dissatisfied with the administration of their village by the official governance structures within the Traditional Community.</p>

	<p>The first respondent is Mr Nyalala John Molefe Pilane, the senior traditional leader or Kgosi of the Traditional Community.</p> <p>The applicants have alleged that the resources amassed from the area’s economic activity in platinum mining had been mismanaged for years under the leadership of the respondents. Thus, the applicants established the Bakgatla-Ba-Kautlwale Pilane Motlhabo Tribal Authority and resolved that they were an independent tribe no longer falling under the jurisdiction of the Traditional Council. They were advised that in order for secession to be granted, the Premier would have had to approve. This prompted the applicants to begin the process of addressing village members in line with this inviting them to a ‘Motlhabo Tribal Authority Kgotha Kgothe’.</p> <p>As word of the meeting got out, the applicants were threatened with arrest prompting their cancellation of the meeting. The applicants later attempted to reconvene a meeting with community members and it was then that the respondents filed for an urgent interim interdict against the applicants.</p>
<p>DECISION/JUDGMENT</p>	
<p>Decision/Judgment:</p>	<p>The court considered the question of whether a kgotha kgothe could be convened by either the kgosi or the community as the applicants argued or by the kgosi only as the respondents contended, the court found in favour of the former. And the court held that, The respondents’ litigious record portrayed a lack of restraint on the part of the Traditional Community’s official leadership in employing legal devices to deal with challenges that should more appropriately be dealt with through engagement. Further, this situation was a cry out for meaningful dialogue between the parties, undertaken with open minds and in good faith.</p> <p>In addition the court considered the adverse impact of the interdicts on the applicants’ rights to freedom of expression, association and assembly and the importance of these rights, particularly emphasising the inherent value of allowing dissenting voices to be heard in a constitutional democracy. On the first interdict, the court found that the respondents had failed to prove the requirement for an interdict, namely a clear right and the context and content.</p>

The second interdict was hinged on the claim that the applicants had conducted themselves contrary to the provisions of the legislative frameworks. This could not be proved. On the third interdict based on the claim that the applicants were attempting to assume the identity of the traditional authority, the court did not find in the respondents' favour and overturned the Supreme Court's decision. The court set aside all three interdicts.

Dissent:

In the dissenting judgement, the court found that setting aside the first interdict and allowing regular members of the community to call a kgotha kgothe would amount to the undermining of an important and respectable traditional governance authority. The dissenting judgement differs in sentiment over the majority's finding in terms of the first interdict. It found that by declaring that they did not recognise the leadership of the official traditional authority, they effectively undermine the cultural leadership structures and authorities which should be protected under the post-apartheid dispensation.

The judgment recognised the importance of nation-building, peace and harmony amongst members of communities and considered that paramount. It found that the applicants' conduct of declaring themselves chairpersons of the kgotha kgothe was a unilateral action not in line with these values and principles. In the eyes of the minority judgement, the applicants attempted to seize the position of the respondent in an improper and irregular manner. Further, it was stated that it is not just any member of the community who can call a kgotha kgothe as that was an action reserved for the kgosi alone. By calling the kgotha kgothe, the applicants attempted to make a claim to legitimacy which they did not have.

REFERENCES	
Reference(s) to other court decision	