

Challenge to Royal Bafokeng Nation's authority to bring application for land ownership in court

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The LRC represents the Bafokeng Private Land Buyers Association, the Setuke Family and the Thekwana Community in the matter between the Royal Bafokeng Nation (RBN) and the Minister of Land Affairs and others.

The LRC's clients lodged an interlocutory (provisional) application to challenge the power of the RBN to go to court on behalf of the traditional community they claim to represent.

The RBN are a traditional community of approximately 300 000 people. They are seeking a declaration that all land that is registered "in trust" for the Bafokeng tribe be registered for itself. This includes 61 properties in the North West Province which traditionally formed part of the tribal lands until the tribe was displaced during colonisation, after which it alleges it regained the land by purchasing the land back between 1869 and 1963.

The title deeds of the properties reflect that the land is registered in the name of a government functionary in trust for the RBN. The RBN asserts that it is the registered owner of the properties.

The application for the declaration, referred to as the main application, was initially brought against the Minister of Land Affairs and Register of Deeds. The Minister indicated that the order sought should be published so that other interested parties could intervene. A number of parties, including the LRC's clients, then sought leave to intervene, which was granted.

The LRC's clients contend that their predecessors, and not the whole Bafokeng community, were the original buyers of certain parts of the land. They dispute that the RBN is entitled to registration as owners of that land. They also dispute the RBN's attorneys' authority to bring the main application. The LRC's clients contend that RBN has not taken a valid decision to institute the main application on behalf of the Bafokeng traditional community.

Furthermore, the LRC clients contend that the question of the RBN's authority should be determined first, before the main application proceeds. An interlocutory application in this regard and judgment was heard in the Mafikeng High Court. The LRC's clients were successful and the court ordered that the RBN and their lawyers are to prove that they were authorised to act on behalf of the communities they say they represent in the main case.

The dispute over the validity of the decision to litigate will now be heard in a trial in the North West High Court, starting on Monday 8 May.

The LRC is introducing evidence by an expert who will deal with the decision-making procedures and consultations that should be followed by the Kgosi (chief). The RBN will also be calling an expert witness.

A number of local witnesses will be called to give oral testimony about the laws, customs and traditions of the Bafokeng during the trial. The trial will determine the significance of consultation by traditional authorities with their communities on matters involving not only court cases but also other issues that may affect community members.