

THABANTSHO BENEFICIARIES ASSOCIATION V HARRY BOLEU RAMMUPUDU N.O. & OTHERS (UNREPORTED, NORTH GAUTENG HIGH COURT Case No. 54652/09)

<p>Importance</p>	<p>This case deals with a dispute between a traditional authority and a community regarding the administration of trust monies. Its relevance to the mining litigation review is that the trust monies received by the traditional authority included rentals payable by a mining company, Blue Ridge Platinum (Pty) Ltd for lease of community land to conduct mining operations. The case is thus potentially illustrative of the difficult issues that ensue when mining operators become involved in the relationship between a community, their traditional authority, and their land. These include issues around representation and transparency in the negotiations leading to the lease of community land to mining operators, the allocation of benefits to members of community from the lease transaction, the fairness of the amount paid as rental for community land, and transparency in the administration of such funds.</p>
<p>Parties</p>	<p>Applicant: Thabantsho Beneficiaries Association First respondent: Harry Boleu Rammupudu II N.O. Second respondent: Mphoke Patrick Magane N.O. Third respondent: Edward Matsepe N.O. Fourth respondent: Kenneth Morare N.O. Fifth respondent: Mphoke P.K. Magane Attorneys Sixth respondent: Master of the High Court</p>
<p>Facts</p>	<p>The background to the dispute in this case is as follows: In 2004 the farm formerly known as Rietkloof Farm JS166 in the Groblersdal area, Limpopo province, now known as Thabantsho, was awarded to the community staying at Tafelkop in terms of the provisions of the Land Restitution Act. The community was dispossessed of its land by the previous government sometime around 1962. In order to effect restitution, a Memorandum of Understanding (MOU) was entered into between the Bakgaga Ba-Kopa Traditional Authority (Traditional Authority), acting on behalf of the Tafelkop community and the Department of Land Affairs and other related state departments. The MOU provided, inter alia, that the identified land would be transferred to an entity still to be created, on behalf and for the benefit of the beneficiaries (i.e the Bakgaga Ba-Kopa community). In the interim the control of the land vested on the chief, the first respondent, and the Traditional Authority. Registration of the land on behalf of the beneficiaries has not been effected.</p> <p>On 4 September 2007 the first respondent, acting as a representative of the Traditional Authority concluded a lease agreement with Blue Ridge Platinum (Pty) Ltd (the lessee) in terms of which a certain portion of the land was leased to the lessee to enable it to conduct mining operations. In terms of the lease agreement the lessee undertook to pay monthly rentals of approximately R116 000.</p>

	<p>After conclusion of the lease agreement the rental was paid into the ABSA account of the Traditional Authority.</p> <p>From 2006 a number of complaints surfaced from community members regarding the manner in which the Traditional Authority was administering the community's affairs. Matters came to a head when the lease agreement with Blue Ridge was signed. As a result of the discontent amongst the community the Thanbantsho Beneficiaries Association (TBA) was established to serve as the vehicle through which the community aimed to hold the Traditional Authority accountable for the funds received from Blue Ridge Platinum.</p> <p>In the meantime, the first respondent had founded a trust known as the Bakgaga Ba-Kopa Motheo Trust and appointed the first to fourth respondents as trustees. The object and purpose of the trust, according to the trust deed, was to hold land in trust in its name on behalf of Bakgaga Ba-Kopa and/or beneficiaries of the Title Deed in respect of all land known as Thabantsho. Upon learning of the existence of the trust the TBA started engaging with the trustees regarding the money received by Blue Ridge Platinum. When a satisfactory response was not forthcoming, the TBA laid a complaint with the Master of the North Gauteng High Court. Certain correspondence ensued between the Master's office and the trustees but the matter was not satisfactorily resolved.</p>
Relief sought	<p>The applicant sought a court order (a) requiring the respondents to submit to the Master of the North Gauteng High Court all books, records, accounts or documents relating to the administration of the Bakgaga-Ba-kopa Motheo Trust within 10 days of service of the order upon them; and (b) interdicting the respondents from utilizing the trust monies until the first order had been complied with and the books, records, accounts and documents had been audited by a legally recognized auditor.</p>
Legal Issues & Judgment	<p>Issue 1: The respondents argued that the order should not be granted because nothing prevented any member of the applicant, as an interested party, from inspecting the books of the trust at the trust's registered offices.</p> <p>Judgment: The court dispensed with this factual argument by pointing out that counsel for the respondent had in argument indicated that the trust uses a postal address, and the trust deed itself fails to indicate any address at which an inspection can be made.</p> <p>Issue 2: The respondents further argued that a precondition to the relief sought by the applicant was that the Master had to have exercised his powers in terms of s 16 of the Trust Property Control Act 57 of 1988 (which deals with a request on the part of the Master to the trustees to furnish information relating to the administration of the trust). They further contended that the Master had withdrawn the letters he sent to the trustees in this regard.</p> <p>Judgment: As an official from the Master's Office clearly testified that</p>

	<p>the letters had not been withdrawn, the respondents' argument regarding the premature nature of the application could not be upheld. The applicants accordingly had a right in terms of s 19 of the Trust Property Control Act to bring the application before the court. Section 19 reads:</p> <p>"If any trustee fails to comply with a request by the Master in terms of section 16 or to perform any duty imposed upon him by the trust instrument or by law, the Master or any person having an interest in the trust property may apply to the court for an order directing the trustee to comply with such request or to perform such duty."</p>
Outcome	The application was successful on both counts.
Obiter	None