



THE OFFICE OF KGOSI

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BM/ms.08/2016

25/05/2016

To: Members of the Select Committee on Petitions and Executive Undertakings
Parliament of The Republic of South Africa

From: Royal Bafokeng Nation

Date: 25 May 2016

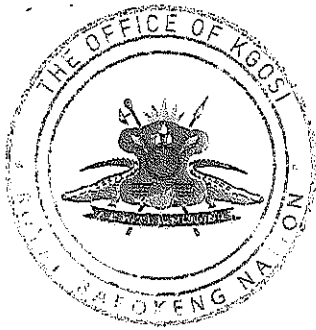
Subject: Petition by the Bafokeng Land Buyers' Association

Dear Honourable Members,

I do not deal with all of the issues raised in the petition by the Bafokeng Land Buyers Association. Much of what they say is vague and incoherent that it is difficult to respond to.

I think it is worth making the point that they represent very few people. If one looks at the numbers involved in their litigation (and one excludes the so-called Thekwana Community) they represent no more than 150 or 200 people. The petition attached to the 2008 submission has only 21 signatories. Of those only 11 appear to lay some sort of claim to farms owned by the Bafokeng.

The petition states that since 1996 various claims under the restitution process have been laid in respect of Bafokeng Farms. However, as at 26 October 2015 there were only three land claims. These related to the Farm Hoedspruit 298 JQ (a claim by Mr R Mabale on behalf of the Bapo Ba Mogale Community) a claim in respect of Boschpoort 288 JQ (which claim did not meet the requirements of Section 2 of the Act) and a claim in respect of Klipfontein 300 JQ (which claim was also dismissed for want of compliance with the Act).



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It may be with the re-opening of the period of lodging of claims there may be additional claims.

Reference is made to a claim in 1906 without any specific detail. In 1908 two cases were adjudicated by the Transvaal Supreme Court (the highest court in the country at the time). These were claims by sections of the Bafokeng Community that, they apart and distinct from the Bafokeng, had purchased the Farm Turffontein 297 JQ and the Farm Klipfontein 300 JQ. The claim in respect of Klipfontein went to trial and the court ruled on the facts that it was a tribal purchase. The court did say that in its view a section of the community could not purchase land apart from that community. However, this was an *obiter dictum* because on facts the court found it was a tribal purchase. The claim in respect of the Farm Turffontein was withdrawn by the claimants who tendered the Bafokeng's costs. In both these properties a defence of *res judicata* can be raised. In the circumstances there are no pending land claims.

In 2005, the Bafokeng resolved to approach the court for a declaratory order that properties purchased by the Bafokeng and presently registered in the name of the Minister of Rural Development and Land Reform "in trust" for the Bafokeng are owned by the Bafokeng. This application is opposed *inter alia* by the Bafokeng Land Buyers' Association on of the basis that these farms were purchased by "syndicates". The Bafokeng Land Buyers' Association has challenged the resolution passed by the Bafokeng and a trial in respect of this challenge has been completed in the North West High Court on 31 March 2016. Judgment is awaited in respect of the challenge. If the challenge is overcome, the court has ordered that the application by the Bafokeng be referred to trial. This will afford all parties who make claims in respect of the land whether for private ownership or lesser communal rights to be heard by a court. This is the appropriate remedy for resolving disputes.

The petition makes much of "*exorbitant prohibitive legal fees and research studies*" but in truth the Bafokeng Land Buyers' Association are being assisted by the Legal Resources Centre, the pre-eminent legal NGO in the country. The LRC fees are being paid by funders and by the Legal Aid Board. In any event much of the research is contained in scholarly works and available to all parties. The documentation which the Bafokeng have themselves uncovered will have to made available to the trial court in the discovery process. Kgosi has on many occasions committed himself to abide by the outcome of court proceedings which he and the Bafokeng initiated.



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The Bafokeng have over the years had a representative Council of the Community prior to the Traditional Leadership and Governance Framework Act being in place. Following the implementation of this Act, the Bafokeng have ensured compliance there with in that the Bafokeng has held 2 elections and 3 By-elections in terms of this Act. This is despite the fact that the Provincial Government has not put in place guidelines as to how these elections should be conducted. The affairs of the Bafokeng are not only conducted in a representative but consultative manner.

Through our massive investments over the years, the Administration has been able to provide social services to our own people. Amongst others, schools, clinics, sports facilities, early childhood development centers, community halls, water and sanitation, bursary scheme for tertiary education and until recently a massive feeding scheme in 11 schools within our area.

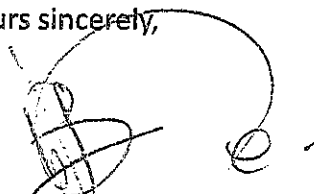
In conclusion, the Bafokeng have always encouraged openness and accountability. We have put in place checks and balances measures which ensures that the affairs of the community are administered in line with the law and most importantly benefits all who live in the area without discrimination. To name but one, the Bafokeng are independently audited on a yearly basis by reputable audit firms in the country.

It is our assertion that the position above would give the Honourable Committee of the Parliament of the Republic a clearer picture of how:

- Kgosi accounts to the Community,
- the Administration operates,
- the relationship we have with government at all spheres, and
- how the unresolved matters are addressed in the open.

Kgosi and the Administration of the Bafokeng remains committed to the development of the Community and to achieve its vision.

Yours sincerely,



BASHI L. MAKGALE
Director OPERATIONS
OFFICE OF KGOSI

