

## **Submission on the Traditional Courts Bill – Mmuthi Pilane**

It is difficult for me to understand how, now that we have freedom, we are in a situation where a chief who has been found guilty of corruption can interdict us from holding community meetings to discuss the problems in our community.

The proverb that I know is Kgosi-ke-kgosi ka-batho. But Nyalala Pilane has no support from the people whom he governs, instead he was imposed by government, on the advice of a chief living in Botswana, as a kind of paramount over us. According to history he is not the right successor, plus we never had paramounts in the past. The work of the famous South African anthropologist Isaac Schapera confirms this.

Nyalala uses the power that he got from the government via a chief in Botswana to control the mineral wealth of great platinum deposits that rightfully belong to the Bakgatla people, and not to him. Despite having been found guilty of corruption in 2008 he somehow still manages to control the mining revenue, of which our community has never seen a penny. His power comes from the fact that when apartheid began to really bite us after 1948 the government re-defined the Bakgatla as the Bakgatla baKgafela. Before that we were all equal as Bakgatla and the name Bakgafela was not used to indicate a separate tribe. At the same time the other royal houses of the Bakgatla were converted into being “headmen” under the Bakgatla baKgafela instead of separate and independent Bakgatla royal houses as they had been previously.

My submission includes all the steps that me and my father have taken over the years to try to protect our community and its resources from the actions of the present and previous chief, the late Tedimane Pilane. This is a story of people trying to use proper custom and consultation to contain the actions of chiefs puffed up by official power and recognition. The new laws will make it even more difficult to hold corrupt traditional leaders to account.

My father Mainole Pilane and I have spent the last decades trying to protect our land and resources for our community. We are the descendants of the 11<sup>th</sup> house of Chief Pilane the First and we call ourselves the Bakgatla ba Kautlwale. According to history and custom we should be equal to the Bakgafela. This is a long story and it would take me a long time to explain it here. I am afraid that you would get lost in the details. All I want to say is that three commissions have heard our story and 2 of these supported our contention. But nothing came of this because the apartheid government defined us to fall under the Bakgatla Bakgafela “paramount” and we have never been able to escape this historical mistake.

In 1999 when my father tried to stop Nyalala from secretly using community funds to buy a private farm for himself by insisting that a community resolution

was necessary, Nyalala excluded him from the royal council. He replaced him with a headman whom he appointed. This so-called headman Tlhabane Pilane does not even live in our area, and is not from our royal family. Nobody accepts his authority and Nyalala did not even try to introduce him to the community and hold a celebration because he knew that according to custom only our royal family can appoint our chief in consultation with the community. An outsider had to be appointed because nobody from our family was prepared to go along with Nyalala's secret money deals. (Incidentally, Tlhabane himself admitted to the Restitution Commission that he was forced to take up the position because Nyalala wanted to block my father who was the rightful chief at the time.)

The consequences of the Bakgafela being wrongly elevated above other royal houses and of an outside headman being appointed over us have been very serious. For example:

- We tried to lodge a restitution claim to our original land at Witkleifontein – which is rich in platinum and chrome. However, our restitution claim was lodged under the name of BaKgatla baKgafela and Nyalala is now claiming that the land, which only we as the Ba Kautlwale ever occupied, belongs rightfully to him. He hired a lawyer to follow up the claim and paid him R20,000 a month, collected from the community, until my father managed to stop that.
- The other serious problem for all the Bakgatla is that the revenue from our minerals all goes to Nyalala and we never see any of the proceeds in our communities. This is one of the issues that surfaced in the corruption trial. It has been a thorn in our sides for many years.
- Plus, the proceeds from all the infrastructure that we as the Ba Kautlwale have developed on our own land at Welgewacht (where we have built 3 schools, a post-office, a community hall and a clinic) all go to the coffers of Nyalala at Moruleng in Saulspoort and we never see it again.

We have traveled high and low and approached various structures to try to solve these problems over the years. Most recently (in July 2009) we wrote a letter to Chief Nyalala, the chief magistrate, the station commander, the mayor, the chair of the North West House of Traditional leaders, the MEC for Local Housing and Traditional Affairs as well as the Premier stating that because of ongoing corruption and the historical problems inherited from apartheid the clans of the Ba Kautlwale had decided to establish themselves as a separate traditional community.

The Dept of Traditional Affairs responded by trying to set up a meeting with Nyalala and other neighbouring Bakgatla royal houses at our village on the 18<sup>th</sup>

of December. However Nyalala did not come. The meeting was postponed to the 21<sup>st</sup> of December and again he did not attend. Instead, officials from Traditional Affairs and the House of Traditional Leaders came and advised us to make an application to the Premier's office. They advised us that we must invite the neighbouring villages and inform them of the process.

We thus set up a meeting of all our clans for the 6<sup>th</sup> of February to discuss the issue, take a formal resolution and write the application to the Premier. However Nyalala called the police to stop the meeting taking place on the 6<sup>th</sup> of February. On the 8<sup>th</sup> of January I was served with a summons indicating that Nyalala and his Traditional Council were interdicting us from holding any meetings because we planned to discuss "seceding from the tribe".

Since then I have had to spend all my time trying to find lawyers to defend us in court. Our matter has been postponed to the 19<sup>th</sup> of August. We managed to find the Legal Resources Centre to defend us.

We are not the only Bakgatla royal house and community that wants to be recognized as equal to and separate from the Bakgafela. The other royal houses in surrounding villages have similar complaints about the abuse of power by Nyalala, especially his abuse of mining revenue, his control over the local police station and the way he uses the police to interfere with our human rights. The situation is now so tense that various groups have planned marches and strikes over the coming months. He has no option but to rely on force because he is so unpopular. Moreover, there is widespread consensus that he is not even the rightful chief according to his lineage. He is the nephew of the previous chief and not his son. This is only one of the ways in which proper custom has been manipulated and undermined by official law.

We are very worried about these new laws that entrench the legacy of the Black Administration Act. They reinforce Nyalala's disputed status and the boundaries of the Bakgatla ba Kgafela tribe. Even though he was found guilty after a long trial, he somehow seems to enjoy official protection. How else did he manage to go ahead with the Moruleng soccer stadium during the time that the court ordered he should no longer deal with "tribal" finances?

These laws make it very difficult for people like us to challenge abuse of power. We believe in our customs - in fact, that is what we are trying to protect. But chiefs like Nyalala are protected by laws that give them top-down state-power so that no matter what mistakes they make, the community can never correct them.

We have gone to commission after commission, only to find that the Traditional Leadership and Governance Framework Act confirms the wrong boundaries created by apartheid. Now chiefs believe they can even ban us from meeting to

try to hold them to account and prove our own separate status. That is not only contrary to custom but to the Constitution. Nyalala is putting forward versions of custom that prop up his power to steal our land and mineral resources. We have a duty to our ancestors to fix this problem during our lifetimes.

I only hope that my 82 year old mother is still alive when we ultimately win.