

IN THE HIGH COURT OF NAMIBIA

MAIN DIVISION HELD AT WINDHOEK

Case number: HCMD...../2021

In the matter between:

ANDREAS SINONGE

APPLICANT

and

RECONNAISSANCE ENERGY NAMIBIA (PTY) LTD

FIRST RESPONDENT

NATIONAL PETROLEUM CORPORATION OF
NAMIBIA (PROPRIETARY LIMITED),

SECOND RESPONDENT

SHAMBYU TRADITIONAL AUTHORITY

THIRD RESPONDENT

MINISTER OF MINES AND ENERGY

FOURTH RESPONDENT

MINISTER OF AGRICULTURE, WATER AND LAND
REFORM

FIFTH RESPONDENT

MINISTER OF ENVIRONMENT FORESTRY AND
TOURISM

SIXTH RESPONDENT


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I, the undersigned,

ANDREAS SINONGE

Do hereby make oath and state that:

1. All of the facts deposed to by me herein are within my own personal knowledge and belief, unless I have indicated to the contrary or as the context may imply, and are to the best of my knowledge and belief both true and correct.
2. Where I have made statements of a legal nature, I have done so pursuant to the advice of my legal Practitioners of record which legal advice I verily believe to be correct.
3. I am an adult male Namibian Citizen and I am a member of the Shambyu Traditional Community as referred to in Section 1 of the Traditional Authorities Act, and I accordingly resort under the customary law jurisdiction of the third respondent and reside at Mbambi Village in Kavango East region of Namibia.
4. I am the holder of customary rights of communal land tenure over a certain portion of communal land by virtue of Schedule 5(3) of the Constitution of Namibia as read with Section 28 of the Communal Land Reform Act.
5. I am accordingly the lawful holder of an exclusive customary law tenure right on behalf of my family who occupy under me and that was granted to me in accordance with the prevailing Shambyu customs and laws.
6. I have lawfully lived on the land taken from me for more than forty years and acquired the rights pursuant to the death of my late cousin, the first rights holder, in 2018


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7. My rights of tenure to the land I have occupied and possessed with its forest and soils, were usurped from me by the first respondent and with the facilitation and assistance of the third respondent who had no right in law or any legal basis to seize our land holding but nevertheless proceeded to do so without due process of law.

8. The purpose of this application is therefore to obtain relief by way of a *mandamant of spolie* for the restoration of the status quo ante omnia and in the result to restore possession of my land tenure rights, including all aspects of my beneficial occupation and possession pertaining to the communal land occupied by me and my family at Mbambi Village in the Kavango Region of Namibia. Including the restoration of the top soil so that I may rehabilitate my crop fields and forest.

9. I am advised by my legal practitioners that the purpose of the remedy is to preserve law and order and to discourage the respondents from taking the law into their own hands which I allege the first respondent has done with cavalier impunity to the consequences;

The Respondents

10. The first and third respondent are co-spoliators, the third assisting the first which remains in unlawful possession of my land holdings. The additional respondents are cited by virtue of the direct and substantial interest they may have in the matter and I accordingly do not seek any relief nor costs orders against them.

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11. The first respondent is **RECONNAISSANCE ENERGY NAMIBIA (PTY) LTD**, a private company with limited liability duly registered and incorporated in accordance with the company laws of Namibia, and which has its registered office address/ address for service of all documents and processes in these proceedings at 129 Hosea Kutako Drive Windhoek, alternatively at c/o Pioneer Oil and Gas Consulting City View Building Unit 13 Corner of Pasteur and Freud Street, Windhoek, Namibia.
12. The first respondent, Reconnaissance Energy Namibia (Pty) Ltd holds 90% interest in the petroleum exploration rights under the Petroleum Exploration License (PEL) No. 73 covering the latitude and longitude degree square Blocks 1719, 1720, 1721, 1819, 1820 and 1821 in the Kavango Region of Namibia including the area in and around Mbambi Village..
13. PEL 73 thus covers parts of the Kavango West and Kavango East Regions of northern Namibia including the area of land formerly in my peaceful and undisturbed possession.
14. The first respondent, Reconnaissance Energy Namibia (Pty) Ltd is the operator of the license situated in the Kavango Basin.
15. The second respondent is the **NATIONAL PETROLEUM CORPORATION OF NAMIBIA (PROPRIETARY LIMITED)**, a state-owned enterprise, duly established by registration and incorporation in terms of the company laws of the Republic of Namibia and which has as its principal place of business address at 1 Aviation Road, Windhoek for service of all documents and processes in this application.
16. The remaining 10% of the interest in the petroleum exploration rights in the petroleum exploration rights area under the Petroleum Exploration License

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(PEL) No. 73 are held by the second respondent and hence its substantial interest in the matter.

17. The third respondent is the **SHAMBYU TRADITIONAL AUTHORITY**, a Traditional Authority, duly established as an organ of state administration in accordance with section 2 as read with Section 6 of the Traditional Authorities Act 25 of 2000, and which is represented in these proceedings by its duly appointed chief and head of the Shambyu traditional community, Sofia Mundjembwe, The third respondent has its head office at Kayengona Village, Kavango East Region, Republic of Namibia, alternatively all documents and processes in these proceedings may be served on the third respondent at the Government Attorneys, 2nd Floor, Sanlam Building, Independence Avenue, Windhoek.
18. The third respondent is vested with certain statutory administrative powers, functions and obligations concerning the administration of communal land rights in the Kavango East Region.
19. The fourth respondent is the **MINISTER OF MINES AND ENERGY** cited in his official capacity as the Minister duly appointed as such in terms of Article 32 of the Constitution of the Republic of Namibia and whose executive functions and duties are, inter alia, charged with the implementation of the provisions of the *Petroleum (Exploration and Production) Act 2 of 1991*. The offices of the Fifth Respondent are at 6 Aviation Road, Windhoek and all documents and processes in these proceedings may be served at care of the Government Attorney at 2nd Floor, Sanlam Building, Independence Avenue, Windhoek.
20. The fifth respondent is the **MINISTER OF AGRICULTURE, WATER AND LAND REFORM** cited herein in his official capacity as the duly appointed


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Minister in accordance with Article 32 of the Constitution of Namibia and whose executive functions and duties are *inter alia*, charged with the duties and obligation to oversee the implementation of the Communal Land Reform Act.

21. The fifth respondent has its address for service of all documents and processes in this matter at the care of the Government Attorney, 2nd Floor, Sanlam Building, Independence Avenue, Windhoek, Namibia.

22. The sixth respondent is the **MINISTER OF ENVIRONMENT FORESTRY AND TOURISM** cited herein in his official capacity as the duly appointed Minister in accordance with Article 32 of the Constitution of Namibia and whose executive functions and duties are *inter alia*, charged with the duties and obligation to oversee the Nature Conservation Ordinance and the Forest Act.

23. The Ministry of Environment, Forestry and Tourism has its address for service of all documents and processes in this matter at the care of the Government Attorney, 2nd Floor, Sanlam Building, Independence Avenue, Windhoek, Namibia.

Background

24. In accordance with the long-standing traditions and customs of the Shambyu Traditional Community, I had acquired by customary laws lawful tenure and beneficial occupation rights to a portion of communal land which tenure rights are in the nature of "existing" customary rights envisaged under Section 28 of the Communal Land Reform Act, as read with Schedule 5(3) of the Constitution of Namibia.

25. I have acquired the beneficial customary rights of land tenure according to customary laws and norms of the Shambyu people, from my late cousin and he in turn acquired the customary tenure rights in terms of the prevailing laws of


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pre-independent Namibia and the applicable customary laws of the Shambuyu people by due legal processes from the predecessor land administrators prior to 1991.

26. The customary right which I hold over my family home is held on behalf of my family by me in terms of our customs and the tenure right included the exclusive beneficial use rights over the subject area of communal land, including all of its fruits and produce derived from the forest on it and our crop fields which requires topsoil to grow.

27. The accompanying confirmatory affidavits filed in this application are people who are well known to me because they are my neighbours and relatives and all reside in and around Mbambi Village where I have lived as previously described. They too are descendants of the original founders of Mbambi Village when Hompa Maria Mwengere lawfully gave land rights to this land to the late Fulayi Kalenga Mbwenga, my cousin (who died in December 2018) in 1968 to establish the farming area now known as Mbambi.

28. Mbambi Village has also a water point to service all of its residents that was put in by the South African Government and upgraded in 1993 at the special instance of Kalenga Mbwenga while he was still alive and he also oversaw the establishment of a local school. As are the other deponents, I am also one of the many relatives of the late Kalenga Mbwenga's family and remain resident in our family village which was founded by him.

29. In Mbambi Village all of the residents reside under the same exclusive communal land tenure rights and beneficial use rights including the benefits associated with the fruits of the land we occupy by virtue of our existing


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