Name changing of towns

PUBLIC PARTICIPATION AT THE FOREFRONT ONCE MORE

From the COURTS

Chairpersons Association v the Minister of Arts and Culture, the Chairman of the South African Geographical Names Council and the Municipality of Makhado (Case No. 25/2006)

As part and parcel of the transformation process, the changing of municipality, town and city names has generated much debate and contention.

The Supreme Court of Appeal (SCA) recently examined the processes surrounding the changing of town names and the extent to which they must facilitate public consultation in the case of *Chairpersons Association v the Minister of Arts and Culture, the Chairman of the South African Geographical Names Council and the Municipality of Makhado* (Case No. 25/2006). This is to be distinguished from the changing of names of municipalities in terms of section 16 of the Municipal Structures Act.

Background

On 25 January 2002 the Limpopo MEC for local government and housing informed the mayor of the Municipality of Makhado that that the names of certain towns in the Province, including Louis Trichardt, would have to change as these names "remind us of the history of oppressive colonial practices". A few days later this decision was communicated to the municipal council, and ward councillors were instructed to convene people's forums in their wards. They were also instructed to invite all stakeholders to attend a public hearing.

key points

- A municipality, like any other body or individual, may apply to change the geographical name of one of its towns.
- It does not, however, possess any special privileges to propose a new name for the town in the absence of proper public consultation.
- Simply calling for or holding meetings for public consultation is not enough. The municipal council must ensure that proper consultation takes place.
- Courts will not hesitate to set aside name-changes where councils fail to facilitate adequate public consultation.

The public hearing at which new names were suggested for the town was held a day earlier than announced. Regional public hearings were scheduled for the following week. In some wards the scheduled meetings were held, but poorly attended, while in other wards, such as ward 1, which constituted 50% of the jurisdiction of the municipal area (including the town of Louis Trichardt, all businesses in that area and other rural communities) no meeting was held at all. The councillor for the ward attributed this to the short notice given of the meeting.

Representatives of the Soutpansberg Chamber of Commerce (comprising businesses in the area and rural communities) subsequently met with the executive council of the municipality to express their concern that adequate consultation in respect of the name-change had not taken place. The Chamber was requested to put its objections in writing, with the assurance that the name-change process would not proceed until those objections had been considered by the council. The very next day, however, a notice was published in a local newspaper stating that a report on the name-changing had already been sent to the MEC, who would "ensure that the necessary procedures are implemented" to have the name-change gazetted.

The Chamber then lodged objections with the Minister of Arts and Culture and the South African Geographical Names Council (SAGNC). Meanwhile, amendments had to be made to the name-change application because an existing township was already named Makhado. However, despite the objections and the amendments, the name-change of Louis Trichardt to Makhado Town was finally approved by the Minister.

The Chamber immediately objected in writing to the approval of the name-change. The Minister, however, relying on a report received from his Director-General, rejected the Chamber's objections on the grounds that "a process of sufficient consultation was followed before this matter was finalised".

Legal framework

While section 16 of the Municipal Structures Act governs the changing of municipality names, a separate Act, the South African Geographical Names Council Act (Act 118 of 1998), governs the changing of town names and any geographical names of national concern. Section 9(1)(d) of the Act provides that state departments, statutory bodies, provincial governments, municipalities and other bodies or individuals may submit proposals to the SAGNC for name-changes (as discussed in the *Local Government Bulletin* Vol 6 No 1, February 2004). The SAGNC, established in terms of the Act to advise the Minister of Arts and Culture on the "transformation and standardisation of geographical names in South Africa", receives all proposed names and, after proper consultation, determines the proper form of an approved name and recommends it to the Minister for approval. While the final decision lies with the Minister, section 10(3) of the Act provides that any person or body dissatisfied with a name approved by the Minister may, within one month from the date of publication in the *Government Gazette*, lodge a written complaint with the Minister.

The High Court

The High Court rejected the application by the Chairpersons Association to review and set aside the Minister's approval of the name-change.

Supreme Court of Appeal

On appeal, the Minister and the SAGNC argued that different considerations applied to the *transformation* of geographical names as opposed to the *standardisation* of names. They argued that transformation related to "the rejection of names of towns by the community and the acceptance of new names with reference to its history and cultural values". They argued that the provision of the Act allowing the municipality to apply for a name-change "coincides with the capacity of a municipality to represent its community as a consequence of democratic principles". The municipality could thus apply for the transformation of a geographical name on behalf of its residents without consulting them. Public consultation was required in respect of the standardisation of names and not the transformation of names, it was argued.

The Court rejected this argument, pointing out that section 9(1)(d) of the Act clearly provided that "other bodies and individuals" (not only municipalities) may also make application for name-changes.

The Court then considered the difference between transformation and standardisation. With respect to the *transformative* nature of the name-changing process, the guidelines to the Act provide that determining a name "requires balancing historical, cultural and linguistic considerations, communicative convenience, the spirit of a community and the spirit of a nation". On the other hand, *standardisation* refers to more technical aspects, such as the form or language construction of a proposed name. The Court rejected the argument that different consultation requirements applied to the transformation and standardisation of names. The Court stated that "it is difficult to understand why the council would have required consultation, for example, on a question such as whether the correct spelling of 'Messina' should be 'Musina', but not have required consultation with those affected by the change of name of a place such as Louis Trichardt, the chief town in an area inhabited by persons belonging to various ethnic and linguistic groups".

The Court also examined the argument raised by the Minister that adequate consultation had taken place. The short notice of public meetings given by ward councillors, the holding of the public meeting one day earlier than scheduled and the refusal of the mayor to halt the name-changing process during discussions with the Chamber all demonstrated that proper consultation had not taken place. The statement by the mayor that "we consult politicians not Chambers" was a further indication of a lack of proper consultation.

Furthermore, the admission of the mayor in respect of the failure of the councillor of ward 1 to hold meetings in that ward was a self-admitted concession on the part of the council that proper public consultation had not taken place. The court held that "whether it was the councillor's fault or not is neither here nor there; the failure to consult is not disputed".

The Court therefore set aside the decision of the Minister to approve the name-change.

Comment

The Supreme Court of Appeal, following the key judgments of *Doctors for Life* and *Matatiele* (discussed in *Local Government Bulletin* Vol 8 No 4, September 2006), emphasised the importance of public consultation as a cornerstone of the democratic process. The Court rejected the argument that the Act bestows a special representative status on municipalities by empowering them to apply for name-changes. Such an interpretation would render public consultation procedures meaningless. It is clear from the judgment that the duty to consult extends across the board, not only to individuals or politicians, but to public interest bodies such as the Chairpersons Association.

The Court emphasised the importance of implementing not just procedural compliance, by calling or hosting meetings for public consultation, but substantive compliance, by trying to facilitate consultation and engaging the diverse interests of all stakeholders in public interest issues. In this case it is clear that the municipality had scant regard for the public consultation procedures.

However, public consultation procedures in themselves will not always guarantee a favourable result for all interested parties. This is so particularly in the context of name-changing, where diverse ethnic, cultural and linguistic interests essentially 'compete' with each other. While the judgment clearly entrenches the need for public consultation, it sheds little light on how diverse public interests are to be accommodated and balanced in the context of name-changing to ensure that, in this context in particular, it does not become a mere political exercise.

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