



KITSO MINE
TSANTSABANE LOCAL MUNICIPALITY, POSTMASBURG,
NORTHERN CAPE

MEDIATION ON DISTURBED GRAVES

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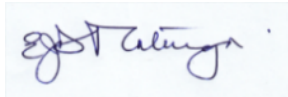
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DECLARATION OF INDEPENDENCE

Archaeological and Heritage Services Africa (Pty) Ltd (AHSA) is an independent consultancy: We hereby declare that we have no interest, be it business, financial, personal or other vested interest in the undertaking of the Heritage Impact Assessment other than fair remuneration for work performed in terms the National Heritage Resources Act (No 25 of 1999).



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1. BACKGROUND

Early this year, part of a burial ground was disturbed by an excavator exposing skeletal material. It is not known how many individuals could have been disturbed, but certainly not many. The act, although purely inadvertent, obviously would have offended public decency, which sparked demonstrations by members of the Maremane community. The Maremane community are an important stakeholder holding surface rights over the mining area through a Community Property Association.

The demonstrations and picketing nearly turned violent, and all overtures by the mine official to strike a code for a peaceful settlement of the matter had been rejected by the community.

The matter was brought to the attention of the Department of Minerals Resources and the South African Heritage Resources Act. SAHRA recommended that the Mine hire a specialist with experience in issues relating to burial grounds, human remains and managing emotions as they relate to communities affiliated to the graves. The relevant statutory provision is Section 36 of the National Heritage Resources Act. It needs to be underlined that SAHRA does not choose or appoint specialists to deal with such matters, but keeps a list of professionals widely respected in this field from which a developer can select a specialist. It should have been obvious to both parties in the matter that even if the prerogative to choose a specialist is given to the community (the aggrieved part), the onus is placed on the Mine to pay for such services. Specialists in the field of heritage adhere to a strict code of ethics which bind them to desist from bias or favouritism, or actions that can cause social unrest.

Archaeological and Heritage Services Africa Pty Ltd was appointed by Kitso Mining Pty Ltd under these circumstances.

2. APPROACH AND METHODOLOGY

2.1. Preliminary contacts

AHSA Pty Ltd proposed a contact meeting between Mine officials and community representatives. In the circumstances inviting a large number of people was not advisable, instead only reaching out to senior representatives of the community. Government officials from the Department Minerals Resources, the superintendent of the local police (SAPS) station and other stakeholders were invited attend as stakeholders.

Mine officials suggested that representatives of the families affiliated to the graves disturbed should also be invited to attend. The reasoning on numbers was that large groups are difficult to manage as the psychology of numbers comes into play. When a majority feels that any verdict must be in their favour, the threshold to mob psychology and rule is crossed, and such situations often end in a fiasco.

AHSA did not have a list of all the important stakeholders to initiate direct communication, (testing the mood and psychological preparation), except the officer in charge of the police station in Khathu and an official from the Department of Mineral Resources. On being contacted both expressed support for such a meeting and mediation process.

2.2. Negotiation and Conflict Resolution

The goal of initiating talks between Kitso Mine and the Maremane Community is to reach a negotiated settlement concerning the graves. Negotiation is a specialized and formal version of conflict resolution most frequently employed when important issues must be agreed upon. It is "a process of combining conflicting positions into a common position under a decision rule of unanimity, a phenomenon in which the outcome is determined by the process". The aim of negotiating is to build a shared environment leading to long-term trust and may involve a third, neutral party to extract the issues from emotions and keep the parties concerned focused. A broker is also critical in correcting power asymmetries between a stronger and weaker party that often causes most negotiation processes to founder. In the case of the Mine and

host communities must act rationally to close gaps of potential conflict, make trade-offs between conflicting values and to prioritize clear goals. In the end the two parties will build trust, cooperate and the outcomes will be spelt out in resolutions and recommendations.¹

Having been involved in a number of protracted cases on graves, we have high confidence on the efficacy of the principle of a negotiated settlement. It is ultimately the only way towards conflict resolution and as such an unquestionable (axiomatic) rule.

3. PROCEEDINGS OF THE MEETING OF 12 JULY 2018

There were two communities represented in the meeting with representatives from the Maremane Community in a clear majority. The Maremane community Property Association was represented by Mr Michael Kgotlagkae (Chairman).

After a brief introductory remarks by the Mine Manager, Mr Frans Wessels and self-introduction by all attending, Mr. Lebogang Lesetedi, the Mine's Stakeholder Relations Manager, presided over the meeting.

The Chairman of the Maremane CPA requested an amendment of the Agenda. Mr Lesetedi proposed that the heritage specialist must make a presentation first to state the purpose of the meeting (in capacity of mediator), despite strong opposition to this from the floor and insistence that the agenda be reviewed. This matter almost caused a standoff.

In the event Mr. Lesetedi prevailed, and Dr Edward Matenga made a short presentation focussing on the graves and stressing the importance of dialogue as the only way to settlement. He also underlined that it was necessary to institute a comprehensive and transparent grievance procedure. I declared my independence in the mediation process and that the reports I will write contain a Declaration of Independence, will be lodged with SAHRA and will be accessible to parties to the

¹ https://en.wikipedia.org/wiki/Negotiation_theory

matter. I had no stake all interest in the matter except providing professional consultancy service.

It was becoming apparent that the senior representatives from the Maremane Community had reservations about the consultant's independence since he was appointed by the Mine. In their view the Consultant could not be expected to preside over a free and fair mediation process, in other words he would be predisposed to rule in favour of the Mine. The mood did not seem to improve much with several questions on the same subject directed at the Consultant. It was clear that beyond a certain point any explanation can be misconstrued as pleading. The mediation process was being prejudged and in the end it was apparent that the meeting was not making headway in terms of its purpose. There was consensus that be adjourned until an environment conducive for constructive engagement can be created.

4. COMPARATIVE ANALYSIS

The onus placed on developers to pay for consultant services in matters pertaining to graves is a statutory provision. In most cases the developer is almost always in a better financial position to pay for costs than communities or individuals affected by a development. Accusations of "natural" bias towards the party that pay for services are not new.

4.1. Case 1

In 2015 we were tasked to mediate on a case of disturbed or desecrated graves at a power station. Some representatives of the aggrieved families are on record for having made accusation that they would not expect a transparent and fair process from experts hired by the power station. In the event half of the affected families took part in the grievance procedure with half of the families boycotting it. When the outcome of the grievance process was concluded and hailed as fair and transparent (appeasement ceremonies were performed, a corporate social investment programme kicked in to assist the aggrieved families), the other families retrospectively came forward asking the power station officials to reopen the

grievance procedure to accommodate them. The matter is coming to a final settlement in August this year after 11 years of protracted negotiation. The lesson is it is difficult to build mutual trust and confidence.

4.2. Case 2

One family has refused to take part in a grievance procedure instituted by a mine concerning missing graves at the request of the Department of Mineral Resources. The family cites as reason the prospect that the grievance process will not be fair and transparent, in other words biased in favour of the mine. The other families cooperate with the Mine in a cultural dialogue programme implemented under its social corporate responsibility programme. The mine has conceded ground and asked the aggrieved family to appoint a specialist of their own choice. The specialist has been developing cold feet advising the family that the outcome of any grievance procedure by two *bona fide* professional specialists were not likely to be fundamentally different. The ball is at the present time in the court of the aggrieved family to appoint a specialist of their choice.

4.3. Case 3

A State Owned Company (SOC) has plans to move about 80 graves to pave way for a massive infrastructure project. We are project-managing the exhumations and relocations. Families affiliated to the graves would prefer direct financial compensation for the graves which is untenable in terms of custom and common practice.

In a meeting to discuss alternative ways of compensating the families (wake fees, financial cover for funerary rites which can still be converted into direct cash), some family members refused to sign an attendance register suspecting that it was a trap to make them sign consent forms (without their consent). Such is the magnitude of mistrust attendant with the issues of graves.

5. RECOMMENDATIONS AFTER THE FIRST ROUND OF DIALOGUE

- 1) It was found that more time was needed for the public mood to improve.
- 2) It was proposed to the Mine that the community must be given an opportunity to choose their own mediator.
- 3) It was also proposed that the Consultant as the mediator must be given an opportunity under the contract to employ his own negotiation toolkit.

6. FURTHER NEGOTIATIONS BETWEEN THE MINE AND THE MAREMANE

During the meeting of 12 July 2018, the Maremane CPA laid down conditions for future dialogue process on the graves. Following that meeting there were further engagements after which the two parties agreed to resume the engagement.

7. SECOND MEETING ON GRAVES HELD IN KURUMAN ON 13 SEPTEMBER 2018

A second meeting was on 13 September 2018 to which the Consultant was invited. The Meeting was held at Oleville Guest Inn & Conference Centre on 13 September 2018 attended by Mr Lebogang Lesetedi representing the Mine and member of the Maremane Community Property Association. In previous meetings between the CPA and the Mine the principle of peaceful engagement on the matter of the graves accidentally disturbed had been accepted.

The meeting confirmed this ethos in efforts to resolve the disputes going forward. It was proposed that a Task Team be set up to steer the process towards rehabilitation of the graves. The composition of the Task Team should be a matter for discussion between the CPA and the Mine, either consisting of all the people who attended this planning meeting or reduced to 2 members of the CPA and 2 from the Mine. [Please note that the Consultant will not be in the Task Team, his role will be limited to advisory].

The CPA proposed that it was necessary for the Mine to keep and display a map in its offices which clearly shows the extent of the Burial Ground. The Environmental Control Officer (ECO) at the mine must be conversant with such essential information and proactively engage with all the operational units of the mine and the communities regarding the graves.

The CPA also proposed that the burial ground must be fenced off, which requires that the boundary are mapped.

The CPA requested for a copy of the Phase 1 HIA Report prepared by the late Peter Beaumont in respect of the Mining Operations.

8. CONCLUSIONS AND RECOMMENDATIONS GOING FORWARD

1. A settlement has been reached to proceed with the process towards rehabilitation of the graves.
2. In the two meetings held to date the importance of peaceful dialogue has been underscored and accepted. The process will be guided by the prescripts of the South African Heritage Agency (SAHRA) Burial Ground Unit, which requires comprehensive public participation in matters where desecration of graves have been raised by the public.
3. A grievance procedure will be instituted. The CPA took the responsibility to identify key witnesses from elderly people of the Maremane communities now living in different places in the Province. The timeframe of the grievance procedure was to be determined by the number of people who will be interviewed and whether these will be brought to single venue or approached in their different locations [**ACTION: The CPA in consultation with the mine**].
4. While the consultation process was open to the public, it was up to the CPA to decide how this was to be managed, whether it was necessary to mount public notices etc. The selection criteria for those from the community to be interviewed was also the responsibility of the CPA. In accordance with the

principle of fair play, the Mine was to be given the opportunity to bring to the inquiry its own witnesses. It was also the responsibility of the CPA and the Mine to ensure that the process was carefully managed to rule out possible opportunistic elements coming in to hijack or disrupt the process.

5. The interventions on the graves (i.e. the rehabilitation) will be to a large extent influenced and shaped by the outcome of the public consultation process.
6. The extent of damage of the graves will be determined from the testimonies obtained from the selected Maremane informants, and a ground survey which will be undertaken by an archaeologist.

9. REHABILITATION OF THE GRAVES

7. The Consultant will submit an application to SAHRA for the rehabilitation of the graves. One of the conditions for the permitting is the public consultation process in which the community will have (hopefully) given a green light for such rehabilitation with specifications how this was to be done.

10. COMPENSATION FOR DISTURBED GRAVES

8. At the present time policy and practice strongly opposes cash payment as compensation for loss or sense of loss as a result of unwitting disturbance / destruction or desecration of graves. This view is predicated on the nature of cultural significance of graves. While graves fall within the definition of cultural property, they must be distinguished from other forms of cultural property such as works of art or buildings. They cannot be subjected to valuation in money terms or liquidated as other cultural assets. They cannot be sold. There is no right of property in a deceased himself/herself. The right of property to a deceased's grave and the remains therein in customary law is claimed by those who are related to the deceased by association or kinship. Claiming compensation for emotional injury is not in accordance with any customary practices in South Africa. Furthermore financial reparations for disturbed graves can create a loophole for false opportunistic claims. In professional wisdom, creating such precedence will breed a culture of commercialisation of graves located in areas earmarked for development, and this should be avoided. Where disturbance of graves is not a result of a wilful

or malicious action, there is no moral or ethical merit for compensation. This view is in concordance with local culture and custom.

11. ACTION PLAN

	TASK	ACTION	STATUS
1	Consultant apply for a permit from the SAHRA Burial Grounds Unit for a permit to mediate in the Kitso Mine Graves. Reporting to Mine and SAHRA.	AHSA	Done
2	Approaches made to and consultation with the Tsantsabane Local Municipality Establish rules of peaceful engagements/Set up Task Team.	AHSA /KM	1 st meeting ended in an impasse 2 nd Meeting 13/09/2018 breakthrough
3	Report of outcomes of meetings and progress	AHSA	Presented July 2018
4	Report of outcomes of meetings and progress	AHSA	Presented 24/09/2018
5	Identify key informants / resource persons among members of the local community and institute a grievance procedure. Consult affected parties about possible remedies.	MCPA, KM	Suspended by the in October 2018 by mutual agreement between the Community and the Mine
6	Condition Survey of the Burial Ground	AHSA, MCPA, KM	To be done
7	Field survey to determine the extent and boundaries of the burial ground.	AHSA, MCPA, KM	To be done
8	Rehabilitation of disturbed of disturbed graves	MCPA, AHSA, KM	To be done
9	Recommendations on Remedial Actions.	MCPA, KM, AHSA	To be done

	Reporting to Mine and SAHRA.		
10	Prepare a Management / Mitigation Plan on the basis of findings and recommendations in Part 3. (It is recommended that the Plan includes (i) Rehabilitation of the Burial Ground, and in particular the disturbed individual graves, (ii) fencing and (iii) erection of a granite memorial, (iv) cleansing / healing ceremony)	AHSA, MCPA, KM	To be advised (if necessary)
10	Reporting / Closeout Report to MCPA, KM, DMR & SAHRA	AHSA, MCPA, KM	To be done

