Dear Sir,

Thank you for your letter of the 6th inst in which you ask for my advice regarding your defence in the case in which you are involved. I discussed the matter with the lawyer who acted in Cape Town recently.

The case with which you are faced is a very complicated one and I am a little difficulty in regard to giving advice on this matter as I have not met before me on the judgment of the Supreme Court of Appeal and on your ground of appeal [4] the grounds on which you are appealing to the Appellate Division.

It is clear from the decision that you have been served with an order of removal by the Native Secretariat exercising his powers under paragraph 4 of sub-section 6 of section 5 of the Native Administration Act of 1927, and that your main defence is that as you are a Native exempted from the operation of Native law under Native Act 28 of 1865, the Supreme Court it is ultra vires for the Executive Council to make such an order against you.

Now in order to substantiate this defence I quote necessary sections from the Act and adduce what the object of the Legislature was in enacting and establishing the system of exemption of Native Law 28 of 1865. I think there can be no doubt that the object was to relieve certain Nations from the operation of Native law by exempting them from the operation of the Native Code of Native law.

Under that Code the Governor can, by a warrant, certain powers over Nations who are subject to the Code (see sections 2 to 10 of the Code contained in Vol. 65 of 1922). I submit that the Proclamation of Native law 28 of 1865.

But it will be argued that Natives exempted under Native Law 28 of 1865 have been brought under the operation of the Native Administration Act 38 of 1937 by section 31 of the latter Act which provides in subsection 1 of section 31 that "any Natives exempted from the operation of the Code under Act 28 of 1865:"

[Signature]
Schedule of the Act shall be deemed to have been granted under sub-section (1). In the schedule of Act 35 of 1865 you will find that section 28 of 1865 mentioned in Act 15 of 1865 under section 35 of Act 28 of 1865, and under section 36 of Act 35 of 1865 provides that the Governor-General may grant to any Native a letter of exemption exempting the recipient from such laws especially affecting Natives or so much thereof as may be specified in such letter, provided that no such grant shall be made unless the section from any provision of law regulating the ownership or occupation of land or in respect of taxation or controlling the sale, supply or possession of intoxicating liquors.

6. The effect of this is that every exemption under Act 28 of 1865 as interpreted from laws especially affecting Natives, is deemed to exempt from the Native Act. Your letter of exemption definitely shows that Native laws as defined in the Native Code and Native laws shall be the law from which you are exempted.

7. The question therefore arises, as to whether you are exempted from the Native Administration Act 35 of 1865?

Now the question is that every Native is entitled to an exemption under the Native Administration Act 35 of 1865.

You are not a tribal Natives; there is no member of a tribe. The exemption is ample to recognition of the fact that he is no longer subject to the authority of a Chief or to any longer a member of a tribe. His exemption takes him out of the jurisdiction of Native law.

Now it may be argued that section 1 of the Native Administration Act 35 of 1865 makes the exemption. Several Supreme Chiefs are all Natives in name, not in title, the head of the supreme Chief. On the other hand, section 1 itself seems to indicate that within these classes, there may be under the authority of the supreme Chief. Thus, the Supreme Chiefs must be considered from the authority of the supreme Chief, as the ground that it is not part of the policy of the Government to keep up a tradition in the life of the Natives. It is not an element of the conception of a Supreme Chief extended any less meaning in respect of persons living under tribal influence where the authority of minor Chiefs, other than the Supreme Chief.
chips that can be no Supreme Chief. Similarly, where there are no tribal people, there can obviously be no chief, minor or otherwise. My submission is that the exclusion of certain Natives from the authority of the Supreme Chief applies not only to the Cape, but also to those Natives in the other provinces who have been exempted from the operation of Native Law e.g. the Native exempted under law 25 of 1865. To hold otherwise would mean that it was the intention of the legislature in passing Act 38 of 1927 (section 34) to deprive exempted Natives of voting rights.ドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラドラ德拉
Commission Court (see PAC son the Loks in Kena. Act. 25/17) but
that decision cannot be held to mean that there is
no difference between accepted and unaccepted Nations in legal
rights. Act 38 of 1927 does not contain unaccepted Nations or
accepted Nations. If that had been the intention no provision
would have been made for the continuance of the system of unper-
tent more under Act 38 of 1927, section 38.

10. Whether even if the Native Administration Act 38 of 1927 is not
"Native law," it is possible that the Act as a whole, is to carry that the
primary object of the Act was to provide for the affairs of Africans living
under tribal conditions, without admitting that it was certain sections of the
Act which are of general application.

Section 5, under which no change has been effected deals
specifically with tribal organisation and control. Paragraph 6 of subsection
and of section five deals with the definition of tribal boundary, and the reorganization
in amalgamation of tribes, etc., paragraph 6 of the deal with orders for the removal
of a tribe or portion thereof or any notice for any place the place.
It seems to me that this section was intended to deal with the
issue general to deal in the manner indicated with either a whole tribe or
a portion of a tribe or one individual within a tribe. Where, for example,
we in the general public interest the land occupied by such a tribe
or portion of land or an individual in a tribe is required for public
purposes. It might of course be argued that in the general public interest
it might be found necessary to issue such an order against an individual
on the grounds that the fact of his the land he occupies being required for public
purposes, for example on the ground that such an individual in the area
is unsuitable. But my submission is that reading the chapter of the Act
as a whole it would appear that the section was intended to deal with
individuals in tribal living in tribal areas under tribal conditions. I
doubt whether it was intended that this section should be applied in an
urban area such as Orland. The people in Orland are not a tribe nor
a portion of a tribe. It seems to me that in urban areas individuals who
live in such an area would not be dealt with under the Native Act and Act 25/17.
rather than under the Native Administration Act of 1927 which deals with
the removal of any "Native"
and in the Act "Native" is defined encompassing an "any person who is
a member of any aboriginal race or tribe of Africa". An escaped
Native is defined as a member of any tribe of Africa, but so he is
a member of an aboriginal race of Africa. All I can say against
this argument in that I am prepared to admit that this Act seems to
indicate that the Act can deal with an escaped Native, or
reading the chapter as a whole seems to show that he can only
be dealt with if he is in a tribal area, and not in an urban
area.

As was stated by the Appellate Dominion you may find that the Crown
will quote against you the authority of the Appellate Dominion in case of
the Indian Act as the Union Government, 1928 AR 7 f. 77, where it was held
that a Chief and Chief of Supreme Chief can, according to Native law, treat
instead a rebellious or rebellious Native from the tribe or the tribes properly.
In that the Crown can be construed within an investigation or trial of the Native
or Native concerned.

But my opinion is that the judgment shows that what the Crown
had in mind was the application of these powers by the Supreme Chief in a
tribal area or tribal area. As the doubt whether it is authority
for the removal of such persons in an urban tribal area or an urban
(i.e. escaped) Native.