



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Bapedi Marota Mamone v Commission on Traditional Leadership Disputes and Claims and Others**

**CCT 67/14**

**Date of hearing: 26 August 2014**

**Date of Judgment: 15 December 2014**

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#### **MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today the Constitutional Court handed down judgment in an appeal against the decision of the Supreme Court of Appeal concerning the Bapedi Kingship.

Under the Traditional Leadership and Governance Framework Act (Framework Act), the Commission on Traditional Leadership Disputes and Claims (Commission) investigates traditional leadership disputes in South Africa. With regard to the Bapedi paramountcy, a dispute had arisen about whether the kingship resorted under the lineage of Kgoši Sekhukhune I or of Kgoši Mampuru II, who fought each other for the throne in the second half of the 1800s. Having considered the evidence before it, the Commission ruled that Kgoši Mampuru II had been the rightful heir to the kingship in terms of the Bapedi customary law of succession at the time. However, it concluded that Kgoši Mampuru II lost the kingship in 1861 when Kgoši Sekhukhune I challenged and drove Kgoši Mampuru II out of the kingdom. It was not unusual at the time, according to the Commission, for kingship to be usurped through “might and bloodshed”. While Kgoši Mampuru II returned in 1881 and killed Kgoši Sekhukhune I, he did not ascend the throne because he fled and was ultimately captured and executed by the Boer government for Kgoši Sekhukhune I’s killing.

Bapedi Marota Mamone (the applicant), a traditional community in Limpopo province representing the descendants of Kgoši Mampuru II, challenged the Commission’s decision. The applicant argued that the decision was irrational because it applied the might and bloodshed rule to Kgoši Sekhukhune I’s driving-off of Kgoši Mampuru II in

1861 but not to Kgoši Mampuru II's killing of Kgoši Sekhukhune I in 1881. And, the applicant argued, the Commission ignored the fact that Kgoši Mampuru II was installed as leader of the Bapedi while Kgoši Sekhukhune I was imprisoned by the British. These arguments were unsuccessful in the High Court and in the Supreme Court of Appeal.

The Constitutional Court granted the applicant leave to appeal but ultimately dismissed the appeal. The majority judgment, written by Khampepe J (Moseneke DCJ, Cameron J, Froneman J, Leeuw AJ, Madlanga J, Van der Westhuizen J and Zondo J concurring) concluded that the Commission's decision was not irrational. After challenging Kgoši Mampuru II in 1861, Kgoši Sekhukhune I took the kingship and ruled the Bapedi for 20 years. By contrast, Kgoši Mampuru II never ruled the Bapedi after killing Kgoši Sekhukhune I in 1881. The events therefore differed in a material respect and it was not irrational for the Commission to distinguish them. In addition, the Commission found Kgoši Mampuru II's brief rule during Kgoši Sekhukhune I's reign was of no legal relevance. His coronation was a unilateral act of the British government and there was no evidence that it was sanctioned in accordance with Bapedi customary law.

The minority judgment, written by Jafta J (Nkabinde J concurring), would have set aside the Commission's decision on the basis that it failed to consider relevant facts and was not rationally connected to the information before it. In addition, Jafta J held that the Commission did not apply the relevant customary law that existed at the time, as it was obliged to do by the Framework Act.