



CONSTITUTIONAL COURT OF SOUTH AFRICA

Justice Mpondombini Sigcau v President of the Republic of South Africa and Others

Case CCT 84/12

Date of Hearing: 21 February 2013

Date of Judgment: 13 June 2013

MEDIA SUMMARY

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 a judgment in a matter regarding a dispute about the rightful king (ikumkani) of the AmaMpondo AseQawukeni.

The applicant, Justice Mpondombini Sigcau, succeeded his father as Paramount Chief of the AmaMpondo AseQawukeni in 1978. The Traditional Leadership and Governance Framework Act (Act) was later enacted and provided that the Commission on Traditional Leadership Disputes and Claims (Commission) could investigate whether paramountcies under pre-constitutional legislation should be recognised as kingships or queenships. The fourth respondent, Zanozuko Tyelovuyo Sigcau, referred a dispute to the Commission claiming that he was the rightful king of the AmaMpondo AseQawukeni. After conducting an investigation, the Commission concluded that the fourth respondent's claim was valid and recommended that the President of the Republic of South Africa confirm the claim. The President then issued a notice confirming the decision in terms of the Act as amended (new Act).

The applicant approached the North Gauteng High Court, Pretoria seeking to review the President's notice confirming the Commission's determination. The High Court dismissed the challenge. An application for leave to appeal to the Supreme Court of Appeal was also dismissed.

On appeal to this Court, the applicant contended that the President erred in issuing the notice under the provisions of the Act as amended (new Act). Under the unamended (old Act), the President would have had to refer the matter to the then existing royal family before deciding whether to recognise the new king. The applicant also contended that the Commission erred in its approach to the recommendation.

The first, second and fourth respondents argued that the President was obliged to deal with the matter in terms of the unamended (old Act). The respondents submitted that by acting in

terms of the amended (new Act), the President gave the applicant the benefit of additional consideration, to which he was not entitled under the unamended (old Act). The Centre for Law and Society (Centre) was admitted as friend of the court. The Centre submitted that the application of living customary law, as required by the Constitution, does not permit the determination of leadership disputes in a manner which excludes the community. Thus, the Commission was mistaken in making findings, later endorsed by the President, without the involvement of the community. The Centre proposed that the matter be remitted to the traditional community for its determination in accordance with customary law.

In a unanimous judgment, the Court upheld the appeal, concluding that because of the material differences between the unamended (old Act) and the amended (new Act), it could not be said that a notice issued under the amended (new Act) can be taken to have been issued under the unamended (old Act). It held that the President purported to exercise powers not conferred on him by the provisions of the amended (new Act). The Court set aside the notice issued by the President recognising the fourth respondent as king of AmaMpondo AseQawukeni insofar as it relates to the applicant and the fourth respondent.