



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 05 May 2023

Status: Immediate

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Magwala v Chief Sinthumule and Others (Case no 744/2021) [2023] ZASCA 62(05 May 2023)

Today the Supreme Court of Appeal (SCA) made an order granting special leave to appeal and further issued an order setting aside and replacing the order from the Limpopo Division, of the High Court, Polokwane (the high court).

The primary parties to the dispute are Ms Matodzi Annah Magwala (Ms Magwala), Chief Rudzani Harold Sinthumule (the Chief), Ms Nyamukamadi Mukondi Mukhuba (Ms Mukhuba), and the Gogobole Royal Family (the Royal Family).

The main issue before the SCA was whether Ms Magwala was properly identified as the next headwoman of Gogobole Village (Gogobole) in terms of its customs or customary laws.

On 7 February 2020, the high court granted an order against Ms Magwala directing, *inter alia*, that she immediately refrain from giving out to be headwoman or performing any function or duty which by law or in terms of custom is performed or reserved for performance by a headwoman of the Gogobole traditional community. Aggrieved by this order, Ms Magwala sought leave to appeal but the high court dismissed her application. Consequently, she approached the SCA, which granted her leave to appeal to the full court. The full court dismissed her appeal with costs. On further application for special leave, the SCA referred the matter for oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013 and directed the parties to be prepared, if called upon to do so, to address the SCA on the merits.

It was common cause that the late Mr Nthatheni Petrus Ramabulana was the headman of Gogobole and following his death in 1986, the Royal Family identified his daughter, Ms Matamela Ndwammbi Ramabulana (Ms Ndwammbi), as headwoman of Gogobole under the Chief. Ms Ndwammbi was married to Mr Tshikumbu Ramadzuwa. She died on 27 May 2008 and was survived by her daughter, Ms Magwala. According to the particulars of claim, after the death of Ms Ndwammbi, the Royal Family identified Mr Maluta Simon (Mr Maluta) as headman to replace Ms Ndwammbi who died before he was recognised by the Premier. Following his death, the Royal family identified Mr Maluta's minor son, Mr Percy Tshifhiwa Ramabulana (Mr Tshifhiwa) to succeed him. Because he was a minor at the time, Ms Mukhuba was identified as regent to act in his position. It was further alleged in the particulars of claim that Ms Magwala was not identified as the headwoman of Gogobole because she was not a descendant of, or born from the Ramabulana lineage, but a Madzuwa by birth.

Disputing the above in her plea, Ms Magwala alleged that after Ms Ndwammbi's death, the Royal Family identified Ms Mukhuba as headwoman of the Gogobole Community, who declined the identification because she did not want to be killed. This allegation was not refuted. Ms Magwala alleged that during 2008, the legitimate members of the Royal Family, including and in the presence of Ms Mukhuba, identified her as headwoman of the Gogobole Community in accordance with the customs of the Ramabulana of the Gogobole Community. She has carried out the duties and responsibilities of a headwoman openly ever since and has never been removed.

At the trial in the high court, several witnesses testified that, amongst others, Ms Mukhuba is the only surviving sibling of the late Ms Ndwammbi and that Ms Mukhuba, Mr Nnyadzeni Ramabulana and Mr Mbulaheni are the legitimate members of the Royal Family. They further testified that before Mr Mbulaheni became a member of the Royal Family, Ms Masindi, Ms Mukhuba and Mr Johannes Ramabulana were members of the Royal Family. According to the witnesses called by the respondents, Ms Magwala was never identified as the headwoman of Gogobole. Ms Mukhuba in her testimony stated that Ms Magwala is her niece and could not be identified as the headwoman because Mr Maluta's minor son, Mr Tshifhiwa, was the legitimate successor.

One of the witnesses, Mr Muvha, testified that where two people have been identified as headman or headwoman, as in this case, the procedure that should be followed is that the parties who have been identified should write a letter to the district office, which then sends the letter to the Premier's office to inform him or her of the situation. It will then be for the Premier to investigate and decide who the legitimate headman or headwoman should be in terms of the community's customs and customary law. This, however, was not done. Mr Muvha testified that the Chief refused to submit the documents to the Premier.

The SCA, in coming to a conclusion, held that it is evident from the pleadings and the evidence led at the trial that there were factual disputes between the parties on the issue of identification of Ms Magwala, which disputes required the application of customary law and customs of the community. The SCA stated further that it was common cause that the Premier had not made a decision to recognise Ms Magwala as the headwoman and that there is no evidence that the Royal Family has informed the Premier, who is obliged to recognise the identified person if there is no evidence that the person was identified other than in terms of customary law. Once identification is disputed, there are dispute mechanisms which the parties should utilise before approaching the courts.

Lastly, the SCA held that the high court and the full court should not have dealt with the merits of the case as this was a matter that should have been referred to the Premier in terms of s 12 of the Limpopo Traditional Leadership and Institutions Act 6 of 2005 for investigation purposes.

In the result, the SCA made an order granting special leave to appeal and setting aside and replacing the high court order.

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