



**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:** 24 May 2023

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Maxwele Royal Family & Another v The Premier of the Eastern Cape Province and Others (1176/2021)*  
[2023] ZASCA 73 (24 May 2023)

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Today the Supreme Court of Appeal (the SCA) handed down judgment upholding the appeal against the decision of the Eastern Cape Division of the High Court, Mthatha (the high court). The SCA furthermore set aside the high court's order, substituting it with an order declaring the decision of the MEC Department of Traditional and Co-Operative Affairs (the MEC) as delegated by the Premier of the Eastern Cape Province (the Premier) to appoint the third respondent, Mr Baxolele Maxwele (Baxolele), as the Acting Headman of Zimbane Administrative Area, Mthatha (Zimbane) as unlawful.

The factual background is briefly that upon the demise of Mr Mzimtsha Maxwele, the reigning Headman of Zimbane on 28 April 2008, the first appellant (the Maxwele Royal Family) identified the second appellant, Mr Asiphe Maxwele (Asiphe), who is the surviving son of the late Headman, as the successor. On account of the minority status of Asiphe, his mother Mrs Maxwele, was appointed as the Regent to serve as the Acting Headwoman until Asiphe attained the age of majority.

The Premier, together with the MEC, were involved in the recognition of the Regent. On 26 January 2017, whilst the Regent was still in office, the MEC, exercising power delegated to her by the Premier, instructed the fourth respondent (the Sangoni Royal Family), exercising authority in Qokolweni-Zimbane Traditional Council, to identify the Acting Headman for Zimbane as the term of office for the Acting Regent had expired. Accordingly, the Sangoni Royal Family identified Baxolele as the Acting Headman.

On 20 August 2020, the Premier recognised Baxolele as the Acting Headman, and proceeded to issue a certificate of recognition in his favour. In challenging the decision of the Premier and MEC, the Maxwele Royal Family and Asiphe brought a review application before the high court. That application for review was dismissed. Leave to appeal the review application was granted by the high court.

The SCA, in coming to a conclusion, found that the decision of the high court was wrong for the reasons that, *inter alia*: (a) In terms of s 18 of the Eastern Cape Traditional Leadership and Governance Act 4

of 2005, the appointment of the Regent was an administrative act that was inextricably linked to the identification of Asiphe as the successor to headmanship; (b) when the Premier recognised Baxolele as the Acting Headman, both the regency of Mrs Maxwele and identification of Asiphe had not been set aside by a court of law; (c) the Premier was still obliged in terms of s 23 of the Eastern Cape Traditional Leadership and Governance Act 1 of 2017 to recognise Asiphe by issuing a certificate of recognition in his favour so that he could commence duties as the Headman; and (d) the Premier and MEC could not lawfully recognise the identification of Baxolele by the Sangoni Royal Family.

In the result, the SCA upheld the appeal and accordingly set aside the order of the high court, substituting it with an order declaring the decision of the MEC to appoint Baxolele as the Acting Headman as unlawful.

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