



**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:** 14 September 2022

**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

***Wenzile Feziwe Sigcau & Another v The President of the Republic of South Africa, the Commission on Traditional Leadership & Others* (Case no 961/2020) [2022] ZASCA 121 (14 September 2022)**

---

The Supreme Court of Appeal (SCA) today upheld an appeal against an order by the Gauteng Division of the High Court, Pretoria (high court), and substituted the order with one reviewing and setting aside the Commission on Traditional Leadership Disputes and Claims' (the Commission) order that Zanozuko Tyelovuyo Sigcau (Zanozuko) was the rightful successor to the throne of the amaMpondo; the President of the Republic of South Africa's (President) report in terms of s 9(2)(a) and (b) of the Traditional Leadership and Governance Framework Act (Framework Act) and the notice of the *Government Gazette* (Notice 1315 of GG 42068 dated 30 November 2018) in which the notice was published, was reviewed and set aside. Furthermore, the Court ordered that, in light of the vacancy in the position of king or queen of the amaMpondo, the incumbent was to be identified in terms of s 8 of the Traditional and Khoi-San Leadership Act 3 of 2019, or legislation relevant at the time the king or queen is to be identified.

In 2006, Zanozuko lodged a dispute with the Commission and contended that he was the rightful king of amaMpondo. This claim was upheld by the Commission which recommended presidential recognition. The Commission found that the customary law of amaMpondo was governed by the principle of male primogeniture where a female could not succeed as a queen

and the status of a wife within the polygamous marriage determines succession to the throne. The Commission determined that the first-born son of the great house succeeds his father and the son of the Iqadi house succeeds his father if there is no male issue in the Great House.

Since 2010 matters pertaining to the succession of amaMpondo have been extensively litigated in the high court, the SCA as well as the Constitutional Court, resulting in Zanozuko being afforded presidential recognition as king. As a consequence of such recognition, an application was brought before the high court to review and set aside the 2010 Commission's recognition, through a report, of Zanozuko. The high court dismissed the application. The appellant appealed to this Court.

This Court held that the issue of amaMpondo kingship has been mired in uncertainty for long enough and required a final resolution. The appellant's challenge was premised on the Commission's interpretation of the relevant customary law, its failure to consider the importance of Mpondombini's appointment as well as the views of amaMpondo expressed in 1979 and lastly, that it incorrectly determined that Botha was not a legitimate successor in 1938.

The SCA agreed with the appellant that the Commission misunderstood its function in adopting the stance it took as it only listened to those witnesses that testified on behalf of the parties to the dispute. Despite that, the SCA found that the amaMpondo customary law incorporated indigenous political processes where the public or the community participated in choosing between eligible candidates, based on both the strength of their familial claim and their ability to lead. The Commission failed to take these processes into account as both in its 2008 and 2010 decisions it only took account of genealogy. Furthermore, the hearings held by the Commission were adversarial in nature and did not have due regard to the manner in which Mpondombini was appointed. That the amaMpondo community had to vote for Mpondombini reflects their living customary practise in 1979. It was indicative of a break from the tradition of genealogy. The Commission erred in disregarding the manner in which Mpondombini was appointed as that formed part of the customary law of amaMpondo when the Commission considered the competing claims to the throne.

In the result, the SCA upheld the appeal.

-----oOo-----