**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:** 18 November 2024

**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***

*Kgoshi Ngoako Isaac Lebogo and Another v Headman Matome Kobe and Others* (1204/2021) [2024] ZASCA 160 (18 November 2024)

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Today the Supreme Court of Appeal (SCA) upheld an appeal with costs, including costs of two counsel where so employed. It further set aside and substituted the order of the full court of the Limpopo Division of the High Court, Polokwane (the full court).

The first appellant is Kgoshi Ngoako Issac Lebogo (Kgoshi Ngoako), a recognised senior traditional leader of the Bahananwa Traditional Community (the Bahananwa community). The second appellant is the Bahananwa Traditional Council (the Traditional Council), established in terms of s 4 of the Limpopo Traditional Leadership and Institutional Act 6 of 2005 (the Limpopo Act). The first to thirteenth respondents (the headmen/women respondents) were recognised as headmen and headwomen of the Bahananwa community until they were removed from their positions by the Premier of Limpopo (the Premier) on 29 July 2013. The fourteenth respondent is the Premier, who is empowered by the Limpopo Act to issue and withdraw certificates of recognition and appointments of headmen and headwomen. The fifteenth respondent is the Member of the Executive for Co-operative Governance, Human Settlements and Traditional Affairs, Limpopo (the MEC).

Mr Tlabo Joseph Lebogo (Mr Tlabo Lebogo) was initially recognised as the senior traditional leader of the Bahananwa community in terms of the Limpopo Act. The Premier terminated the recognition of Mr Tlabo Lebogo and issued a certificate of the recognition of Kgoshi Ngoako as the senior traditional leader, with effect from April 2011.

The Bahananwa community had been divided into two factions, with one faction supporting Kgoshi Ngoako and the other faction supporting Mr Tlabo Lebogo. The headmen/women respondents were labelled as being loyal to Mr Tlabo Lebogo. On 17 March 2013, a meeting of the Bahananwa royal family and the Traditional Council was held at which it was resolved that the headmen/women respondents should be removed from their positions. This decision was communicated to the Premier by the Traditional Council on 29 March 2013, and the Premier removed them and withdrew their certificates of recognition on 29 July 2013. New headmen and headwomen were appointed to take over their responsibilities.

Thereafter, the headmen/women respondents instituted a rule 53 application to review and set aside the Premier's decision taken on 29 July 2013, to remove them as headmen/women of the Bahananwa community (the impugned decision), and to be reinstated to their positions with full pay, without any

loss of benefits, with effect from the date of their removal. This application was launched in the court of first instance and adjudicated by Phatudi J (the high court) who refused to grant condonation to the headmen/women respondents for the late filing of the review application, reasoning that the decision sought to be reviewed was taken as far back as 2013 and that, the headmen/women respondents failed to bring a substantive application for condonation to properly explain the inordinate delay. In addition to this, the high court dismissed the application to review and set aside the Premier's decision to remove the headmen/women respondents from their positions, solely on the basis of the undue delay in instituting the review application. Dissatisfied with the order of the high court, the headmen/women respondents applied to the high court for leave to appeal, which was refused. Leave to appeal to the full court was granted by the SCA.

The full court, in addressing the issue of condonation held that, in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), an application for condonation was not necessary because the headmen/women respondents had not delayed in launching the review application as they had followed the internal remedy for dispute resolution under s 21(1) of the Traditional Leadership and Governance Framework Act 41 of 2003 (the Framework Act), in September 2018. Consequently, the full court upheld the appeal with costs, and set aside the order of the high court, replacing it with an order to the effect that: (a) there was no need for the headmen/women respondents to have brought a condonation application in the high court; (b) the impugned decision be reviewed and set aside as the procedure followed by the appellants had several serious irregularities; and (c) the headmen/women respondents be reinstated in their respective villages with immediate effect, and the Premier to pay their arrear monthly salaries from the date of their removal.

The issues before the SCA related to (a) whether s 21 of the Framework Act was applicable to the appeal; and (b) whether the late filing of the review application required condonation and if so, whether it should have been condoned.

In addressing the first issue, the SCA held that the dispute before the full court was not a dispute as envisaged by s 21 of the Framework Act and there was no internal remedy that the headmen/women respondents had to exhaust in terms of that provision. This was so because the review application in the appeal was against the decision of the Premier and the primary relief sought by the headmen/women respondents was to set aside the Premier's administrative action. Given that the Legislature recognised that the Premier may not revoke or review an earlier decision because they would be *functus officio*, the SCA, on this issue, concluded that the full court therefore erred in finding that a condonation application was not necessary as internal remedies under s 21 of the Framework Act were not exhausted.

On the second issue, the SCA found that the headmen/women respondents did not make out a proper case for condonation as there was unreasonable delay and no good reasons provided as to why the delay should be condoned. The Court reasoned that the evidence showed that the headmen/women respondents became aware of the impugned decision made on 29 July 2013 by 23 August 2013, through service by the sheriff. It further reasoned that given that the Premier's impugned decision was made on 29 July 2013, it was legally impossible for him to have applied the dispute-resolution mechanism. Taking into consideration the 180-day period prescribed by s 7(1) of PAJA and that the review application was brought almost six years later, the SCA held that the contention by counsel for the headmen/women respondents that the 180-day period only commenced when they were provided with the full reasons in terms of rule 53, was without merit.

In finding out that there were no reasonable prospects of success on appeal, the SCA stated that, in law, there was no such institution as a 'village royal family', which was contended for by the headmen/women respondents who alleged that the Premier did not follow the procedure for misconduct in Schedule 2 to the Limpopo Act, and s 13 thereof, because the 'village royal family' of the respective respondents had not been consulted.

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