



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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***Sigcau v Minister of Cooperative Governance and Traditional Affairs
(612/2016) [2017] ZASCA 80 (7 June 2017).***

MEDIA STATEMENT

Today the Supreme Court of Appeal handed down a judgment dismissing an appeal against an order of the Gauteng Division of the High Court dismissing an application by Ms Wezizwe and Mrs Masobhuza Sigcau, the daughter and wife respectively, of the late Mpondombini Sigcau, the erstwhile paramount chief of amaMpondo aseQaukeni.

At the centre of the appeal is a decision made by the Commission on Traditional Leadership Disputes regarding the identity of the rightful king of amaMpondo aseQaukeni. The decision followed a claim laid by Zanozuko Sigcau to the kingship of amaMpondo aseQaukeni. When Zanozuko lodged the claim with the Commission his brother, Mpondombini Sigcau, was the incumbent paramount chief of amaMpondo aseQaukeni, having succeeded his father Botha Sigcau who had

been installed as a paramount chief, firstly in terms of the Black Administration Act 28 of 1927 and later under the Transkei Constitution Act 48 of 1927.

The Commission found that the appointment of Botha over his brother Nelson (Zanozuko's grandfather) had been irregular and not in accordance with the law and custom of amaMpondo. Both Botha and Nelson were the brothers of Kumkani Marhelane of amaMpondo aseQaukeni who died in 1937 without a male issue. Botha was born of ikunene (the right hand wife) whilst Nelson was born of iqadi (consort). The custom was that only the son of iqadi could succeed ikumkani to the throne and not the son of ikunene, although the latter could establish a semi-independent community.

The government of the day favoured Botha over Nelson and, contrary to amaMpondo custom, Botha was installed as the paramount chief of amaMpondo aseQaukeni. The determination of the Commission that Nelson's grandson, Zanozuko was the rightful king of amaMpondo aseQaukeni thus reversed this distortion.

Following the decision of the Commission the State President officially recognised Zanozuko as the king of amaMpondo aseQaukeni. By that time the Traditional Leadership and Governance Framework Act 41 of 2003, from which the Commission derived its powers, had been amended extensively.

Mpondombini instituted proceedings in the Constitutional Court, challenging the decision of the Commission together with the recognition of Zanozuko by the State President. Amongst other things he contended that the State President should have consulted the royal family of amaMpondo aseQaukeni prior to recognising Zanozuko. Unfortunately Mpondombini died before the Constitutional Court ruled on his challenge.

The Constitutional Court found that, in implementing the decision of the Commission, the State President had incorrectly invoked the provisions of the

Framework Act subsequent to its amendment, instead of following the prescripts of the Act prior to its amendment. For that reason the recognition of Zanozuko was set aside by the Constitutional Court. However, the decision of the Commission remained valid.

Mpondombini's widow, Masobhuza Sigcau, adopted the stance that the Constitutional Court had vindicated her late husband's position as ikumnkani yamaMpondo aseQaukeni. She then took up position as the regent and nominated her daughter, Wezizwe Sigcau, as the queen. Following the endorsement of her decision by some members of the royal family (the Broadly Extended Royal Family) the State President was requested to recognise Wezizwe as queen. The President, together with the Minister of Cooperative Governance and Traditional Affairs approached the high court seeking a declarator that there was no obligation on the President to consult the royal family when implementing the decision of the Commission. Their application in the high court was successful.

In dismissing the appeal against the order of the high court the Supreme Court of Appeal found that implementation of the order of the Commission, as directed under s 26(2) of the Act, prior to its amendment, did not require consultation with the royal family. The court held that although section 26(2) of the Act, prior to amendment, made reference to sections 9 and 10 thereof, the portions of sections 9 and 10 of which provided for consultation with the royal family in the appointment of a king or queen were not applicable where there had been a dispute, and the Commission had, in the exercise of its dispute resolution powers, determined the identity of the rightful king.