



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 23 July 2018

STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Ludidi v Ludidi & others (658/2017) [2018] ZASCA 104 (23 July 2018)

Today the Supreme Court of Appeal (SCA) dismissed the appeal by the appellant and upheld an order of the Eastern Cape Local Division, Mthatha which dismissed his review application.

The appeal concerned the right to succeed as Inkosi (Chief) of the amaHlubi tribe in Qumbu, Eastern Cape.

The appellant Mr Ludidi Ludidi, and the first respondent, Ms Nolitha Ludidi, are first cousins. They are respectively born of the sons of the late Chief Dyubhele Joubert Ludidi, namely the late Messrs Manzezulu Ludidi and Manzodidi Charles Ludidi, who were also chiefs of the tribe during their lifetimes.

Mr Ludidi challenged Ms Ludidi's recognition as the Chief of the amaHlubi by the Member of the Executive Council for Co-operation, Governance and Traditional Affairs, Province of the Eastern Cape (the MEC), pursuant to her identification as such by the Hlubi Royal Family. According to the custom and practice of the amaHlubi, the eldest child from the great or senior house of the royal family ie born of the great or senior wife, inherits a vacant chieftainship of the tribe. In line with the relevant custom and law, after Chief Dyubhele's death, the Hlubi Royal Family and the Hlubi Traditional Council identified and had his eldest son, Manzodidi, installed as the new chief. Chief Manzodidi died in November 1978. He was survived by his wife, his then 12 year-old daughter and his brother, Manzezulu. The latter succeeded him as the Chief of the amaHlubi in 1979 and ruled as such until his death in 2012.

After Chief Manzezulu's death the Hlubi Royal Family identified Ms Ludidi as his successor. Its splinter which was formed by members opposed to being led by a woman chief, the Mancaphayi Royal Family, identified Mr Ludidi. Upon receiving the conflicting recommendations, the MEC referred the matter back to the Hlubi Royal Family for its resolution, in terms of s 18 of the Traditional Leadership and Governance Act, 2005 (Eastern Cape) (Act 4 of 2005) (the Provincial Act). Subsequent to a meeting of the representatives of the Hlubi Royal Family and the Mancaphayi Royal Family held in late June 2013, it was conveyed to the MEC on their behalf by the chairperson of the Hlubi Royal Family that Ms Ludidi had been identified as the next Chief of the amaHlubi. Thereafter, on 15 July 2015, the MEC recognised Ms Ludidi as such chief and issued a recognition certificate to that effect. He further published the notice of recognition in the *Government Gazette* in terms of s 18(1)(b) of the Provincial Act. However, he did not inform the House of the recognition before it was so published as required by s 18(2) of the s 18(4)(c) the Provincial Act.

The SCA held that there was no question on the respondent's evidence, the appellant's contradictory version and his counsel's concession in this regard that the Hlubi Royal Family was a 'royal family' as envisaged in the statutory definition. It comprised Chief Dyubhele's direct descendants, ie the immediate relatives of the ruling family, who had and have maintained its leadership structures and seat and retained the kernel of the historical royal family. It thus remained the custodian of the customs of the amaHlubi and their royal family's lineage and the sole repository of the right to identify the Chief of the amaHlubi.

The SCA held further that the requirement of prior notification to the House was in the nature of a courtesy to that body. It therefore could hardly be concluded in the circumstances that the Legislature intended to unravel the entire recognition process by reason of a mere failure to observe the contemplated administrative formality which would undoubtedly bear a disproportionate, inequitable and impractical result. The SCA however made no order of costs in view of the nature of the right asserted by Mr Ludidi.