THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable
Case no: 1204/2021

In the matter between:

KGOSHI NGOAKO ISAAC LEBOGO	**FIRST APPELLANT**
BAHANANWA TRADITIONAL COUNCIL	**SECOND APPELLANT**

and

HEADMAN ENOS MATOME KOBE	**FIRST RESPONDENT**
MORUKHU MATOME ALFRED	**SECOND RESPONDENT**
PHALA NTOME SIMON	**THIRD RESPONDENT**
KGATLA MASHILO PHILLIP	**FOURTH RESPONDENT**
KUBU NGOAKO ABRAM	**FIFTH RESPONDENT**
LEBOGO MOLOKO COURTLY	**SIXTH RESPONDENT**
LEKWARA MATLOU ALBERT	**SEVENTH RESPONDENT**
MAILULA KOLOBE PATRICK	**EIGHTH RESPONDENT**
MANAKA NHLODI SAMUEL	**NINTH RESPONDENT**
MABOYA MKGODI WILSON	**TENTH RESPONDENT**
MALEKA NTOME DALTON	**ELEVENTH RESPONDENT**
MONEYA MODJADJI	**TWELFTH RESPONDENT**
THELEDI MANTASE JACOB	**THIRTEENTH RESPONDENT**
PREMIER OF LIMPOPO	**FOURTEENTH RESPONDENT**
MEC OF CO-OPERATIVE GOVERNANACE, HUMAN	

SETTLEMENTS AND
TRADITIONAL AFFAIRS, LIMPOPO **FIFTEENTH RESPONDENT**
CHAIRPERSON OF LIMPOPO
HOUSE OF TRADITIONAL LEADERS **SIXTEENTH RESPONDENT**

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

Coram: MOCUMIE, SCHIPPERS, MOTHLE, WEINER and MOLEFE JJA

Heard: 16 August 2024

Delivered: 18 November 2024

Summary: Customary law – traditional leadership – Limpopo Traditional Leadership and Institutions Act 6 of 2005 – relieving headmen/women from their royal duties – review application – Traditional Leadership and Governance Act 41 of 2003 – undue delay – whether condonation was necessary for the late filing of the review application – s 7(1)*(a)* of the Promotion of Administrative Justice Act 3 of 2000 applicable.

ORDER

On appeal from: Limpopo Division of the High Court, Polokwane (Makgoba JP, Kganyago and Muller JJ sitting as a court of appeal):

1 The appeal is upheld with costs, including the costs of two counsel where so employed.

2 The order of the full court is set aside and substituted with the following order: 'The appeal is dismissed with costs.'

JUDGMENT

Molefe JA (Mocumie, Schippers, Mothle and Weiner JJA concurring):

[1] This is an appeal against the judgment and order of the Limpopo Division of the High Court, Polokwane (the full court), upholding an appeal which emanated from the court of first instance, in the same division, per Phatudi J (the high court). The high court refused an application for condonation of the late filing of the review and dismissed the application to review and set aside the Premier of Limpopo's decision to remove the respondents as headmen and headwomen. The appeal is with the leave of this Court.

[2] 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).

[3] 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).

Background facts

[4] This appeal concerns the ongoing dispute about the traditional leadership of the Bahananwa community. 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.

[5] 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.

Legal framework

[6] Section 1 of the Limpopo Act defines a 'royal family' as –

'[T]he core customary institution or structure consisting of immediate relatives of the ruling family within a traditional community, who have been identified in terms of custom, and includes, where applicable, other family members who are close relatives of the ruling family.'

A 'senior traditional leader' is defined as –

'[A] traditional leader of a specific traditional community who exercises' authority over a number of headmen or headwomen in accordance with customary law, or within those area of jurisdiction a number of headmen or headwomen exercise authority.'

A 'headman' or 'headwoman' is defined as –

'[A] traditional leader who –

(a) is under the authority of, or exercises authority within the area of jurisdiction of, a senior traditional leader in accordance with customary law; and

(b) is recognised as such in terms of the Act.'

The 'traditional community' is defined as a traditional community recognised as such in terms of s 3 of the Limpopo Act.

[7] Sections 12(1) and (2) of the Limpopo Act provide:

'(1) Whenever a position of a senior traditional leader, headman or headwoman is to be filled -

(a) the royal family concerned must, within a reasonable time after the need arises for any of those positions to be filled, and with due regard to the customary law of the traditional community concerned –

(i) identify a person who qualifies in terms of customary law of the traditional community concerned to assume the position in question; and

(ii) through the relevant customary structure of the traditional community concerned and after notifying the traditional council, inform the Premier of the particulars of the person so identified to fill the position and of the reasons for the identification of the specific person.

(b) the Premier must, subject to subsection (2) –

(i) by notice in the Gazette recognise the person so identified by the royal family in accordance with paragraph (a) as senior traditional leader, headman or headwoman, as the case may be;

(ii) issue a certificate of recognition to the person so recognised;

and

(iii) inform the provincial house of traditional leaders and the relevant local house of traditional leaders of the recognition of a senior traditional leader, headman or headwoman.

(2) Where there is evidence that the identification of a person referred to in subsection (i) was not done in accordance with the customary law, customs or processes, the Premier–

(a) may refer the matter to the provincial house of traditional leaders and the relevant house of traditional leaders for their recommendations; or

(b) may refuse to issue a certificate of recognition; and

(c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.'

[8] Sections 13(1); (2) and (3) of the Limpopo Act provides –

'13 Relief of royal duties

(1) Relief of royal duties shall be on the grounds of

(a) a conviction of an offence with a sentence of imprisonment for more than 12 months without an option of fine;

(b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for that senior traditional leader, headman or headwoman to function as such;

(c) wrongful appointment or recognition;

(d) a transgression of a customary rule or principle that warrants removal; or

(e) persistent negligence or indolence in the performance of the functions of his or her office.

(2) Whenever any of the grounds referred to in subsection 1 *(a)*, *(b)* and *(c)* come to the attention of the royal family and the royal family decides to remove a senior traditional leader, headman or headwoman, the royal family concerned must, within a reasonable time and through the relevant customary structure –

(a) inform the Premier of the province concerned of the particulars of the senior traditional leader headman or headwoman to be removed from office; and

(b) furnish reasons for such removal.

(3) Where it has been decided to remove a senior traditional leader, headman or headwoman in terms of subsection (2), the Premier must –

(a) withdraw the certificate of recognition with effect from the date of removal;

(b) publish a notice with particulars of the removed senior traditional leader, headman or headwoman in the Gazette; and

(c) inform the royal family concerned, the removed senior traditional leader, headman or headwoman, and the provincial house of traditional leaders as well as the relevant local house of traditional leaders of such removal.'

Litigation history

The high court (review application)

[9] 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.

[10] The appellants alleged that the headmen/women respondents had committed acts of serious misconduct. On 17 March 2012, they were invited to attend a disciplinary enquiry and to make a presentation before the Royal Council, but they failed to attend. In their absence, they were relieved of their duties in terms of s 13(1)*(c)*, *(d)* and *(e)* of the Limpopo Act. After hearing evidence, the appellants resolved to request the Premier to remove them as headmen/women. The Premier removed them and withdrew their certificates of recognition on 29 July 2013. The review application was launched on 11 February 2019 – nearly six years later.

[11] In the high court, the Premier and the MEC raised three points *in limine*: undue delay, *res judicata* and lack of *locus standi*. Despite the points *in limine* raised, the parties agreed to argue the merits of the application. The high court refused to grant condonation to the headmen/women respondents for the late filing of the review application. It reasoned that the decision sought to be reviewed was taken as far back as 2013, and, furthermore, that the headmen/women respondents

failed to bring a substantive application for condonation to properly explain the inordinate delay. The high court also 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.

[12] 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 this Court.

The full court

[13] The appellants contended that, from the outset, the headmen/women respondents accepted that the review application was out of time, and sought condonation, which was opposed. It was argued that this was the only issue which had to be adjudicated by the full court. The full court 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: 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),[1] in September 2018.

[14] 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 as –

(i) there was no evidence as to when the impugned decision was brought to their attention;

[1] *Netshimbupfe and Another v Cathcart and Others* [2018] ZASCA 98; 2018 (3) All SA 397 (SCA).

(ii) there were other headmen/women respondents who instituted review proceedings, but there was an agreement in place to the effect that those proceedings would be kept in abeyance in order to give the parties an opportunity to exhaust their internal remedies; and

(iii) the high court did not deal with the explanation for the delay, prospects of success, and the prejudice which the respondents might suffer due to the refusal to grant condonation.

(b) The impugned decision was reviewed and set aside as the procedure followed by the appellants had several serious irregularities; and

(c) The headmen/women respondents were reinstated in their respective villages with immediate effect, and the Premier was to pay their arrear monthly salaries from the date of their removal.

In this Court

[15] The first issue to be determined is whether s 21 of the Framework Act is applicable. The second issue is whether the late filing of the review application required condonation and if so, whether it should have been condoned.

[16] Section 21 of the Framework Act provides:

'(1)*(a)* Whenever a dispute or claim concerning customary law or customs arises between or within traditional communities or other customary institutions on a matter arising from the implementation of this Act, members of such a community and traditional leaders within the traditional community or customary institution concerned must seek to resolve the dispute or claim internally and in accordance with customs before such dispute or claim may be referred to the Commission.

(b) If a dispute or claim cannot be resolved in terms of paragraph *(a)*, subsection (2) applies.

(2)*(a)* A dispute or claim referred to in subsection (1) that cannot be resolved as provided for in that subsection must be referred to the relevant provincial house of traditional leaders, which

house must seek to resolve the dispute or claim in accordance with its internal rules and procedures.

(b) If a provincial house of traditional leaders is unable to resolve a dispute or claim as provided for in paragraph *(a)*, the dispute or claim must be referred to the Premier of the province concerned, who must resolve the dispute or claim after having consulted -

(i) the partes to the dispute or claim; and

(ii) the provincial house of traditional leaders concerned.

(c) A dispute or claim that cannot be resolved as provided for in paragraphs *(a)* and *(b)* must be referred to the Commission.

(3) Where a dispute or claim contemplated in subsection (1) has not been resolved as provided for in this section, the dispute or claim must be referred to the Commission.'

[17] In terms of s 21(1)*(a)* of the Framework Act, members of the traditional community and traditional leaders of the community must attempt to resolve the dispute internally and if it is not resolved, it must be referred to the provincial house of traditional leaders,[2] and if the house cannot resolve the dispute, it must be referred to the Premier who must resolve the dispute after consulting the parties to the dispute and the traditional house.[3]

[18] In *Tshivhulana Royal Family v Netshivhulana* (*Tshivhulana Royal Family*), the Constitutional Court held that:

'It is unlikely that the Legislature would have contemplated a dispute between the Premier and a traditional community or a customary institution to fall within the preview of section 21(1)(a) of the Framework Act. This is so because the Premier is part of the internal dispute resolution institution or persons in section 21. It would be absurd to have the Premier simultaneously as a party to and resolver of the dispute. In recognition disputes, the Premier's decision would invariably be impugned because he or she is the recognising authority. Having decided the issue, he or she would be disqualified to resolve the dispute about his or her alleged unlawful conduct.'[4]

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[2] Section 21(2)*(a)* of the Framework Act.

[3] Section 21(2)*(b)* of the Framework Act.

[4] *Tshivhulana Royal Family v Netshivhulana* [2016] ZACC 47; 2017 (6) BCLR 800 (CC) (*Tshivhulana Royal Family*) para 40.

[19] The review application in this matter 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 to remove them from their positions. The Legislature recognises that the Premier may not revoke or review an earlier decision because he or she would be *functus officio*, having discharged his or her office.[5] 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. The full court therefore erred in finding, contrary to *Tshivhulana Royal Family*, that a condonation application was not necessary as internal remedies under s 21 of the Framework Act were not exhausted.

[20] I now deal with the issue of the application for condonation for the late filing of the review. A party applying for condonation must give a full and honest explanation for the whole period of the delay. In *S v Mercer,* the Constitutional Court held that the standard for considering an application for condonation is the interests of justice.[6] Whether it is in the interests of justice to grant condonation depends on the facts and the circumstances of each case. Factors that are relevant to this enquiry include, but are not limited to, the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal, and the prospects of success.[7] An application for condonation must give a full explanation for the delay. In addition, the explanation must cover the entire period of delay. What is more, the explanation must be reasonable.[8]

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[5] Ibid para 42.
[6] *S v Mercer* [2003] ZACC 22; 2004 (2) SA 598 (CC); 2004 (2) SA 598 (CC); 2004 (2) BCLR 109 CC; 2004 (1) SACR 1 (CC) para 4.
[7] *Brummer v Gorfil Brothers Investments (Pty) Ltd and Others* [2000] ZACC 3; 2000 (5) BCLR 465 (CC); 2000 (2) SA 837 (CC) para 3.
[8] *Van Wyk v Unitas Hospital* [2007] ZACC 24; 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC) para 20.

[21] This Court, in *Aurecon South Africa (Pty) Ltd v Cape Town City*,[9] stated that, in determining whether condonation should be granted, the relevant factors that require consideration are the nature of the relief sought; the extent and cause of the delay; its effect on the administration of justice; the reasonableness of the explanation for the delay; the importance of the issues raised and the prospects of the success on review.

[22] In *Opposition to Urban Tolling Alliance v South African National Roads Agency Ltd*,[10] this Court found that s 7 of PAJA creates a presumption that a delay of longer than 180 days is '*per se* unreasonable':

'At common law application of the undue delay rule required a two stage enquiry. First, whether there was an unreasonable delay and, second, if so, whether the delay should in all circumstances be condoned… Up to a point, I think, section 7(1) of PAJA requires the same two stage approach. The difference lies, as I see it, in the legislature's determination of a delay exceeding 180 days as *per se* unreasonable. Before the effluxion of 180 days, the first enquiry in applying section 7(1) is still whether the delay (if any) was unreasonable. But after the 180 day period the issue of unreasonableness is pre-determined by the legislature; it is unreasonable *per se*. It follows that the court is only empowered to entertain the review application if the interest of justice dictates an extension in terms of s 9. Absent such extension the court has no authority to entertain the review application at all. Whether or not the decision was unlawful no longer matters. The decision has been 'validated' by the delay. . .'

[23] It is common cause that the review application was to be adjudicated in terms of s 6(1) of PAJA. It is also common cause that the headmen/women respondents had to exhaust internal remedies, if any, before approaching the court, unless there were exceptional circumstances,[11] as provided for in s 7 of PAJA.[12]

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[9] *Aurecon South Africa (Pty) Ltd v Cape Town City* [2015] ZASCA 209; [2016] ALL SA 33 (SCA); 2016 (2) SA 199 (SCA) para 17. This was reaffirmed by the Constitutional Court in *Cape Town v Aurecon SA (Pty) Ltd* [2017] ZACC 5; 2017 (6) BCLR 730 (CC); 2017 (4) SA 223 (CC) para 18.

[10] *Opposition to Urban Tolling Alliance v Suth African National Road Agency Ltd* [2013] ZASCA 148; [2013] 4 All SA 639 (SCA) para 26.

[11] *Koyabe and Others v Minister for Home Affairs and Others* [2009] ZACC 23; 2010 (4) SA 327 (CC); 2009 (12) BCLR 1192 (CC) para 34-40.

[12] Section 7(1) of PAJA provides:

[24] The impugned decision was made on 29 July 2013. The evidence shows that on 23 August 2013, the headmen/women respondents received, through service by the sheriff, personal notification that the Premier had decided to relieve them of royal duties. On that date, they were aware of the decision. Although the headmen/women respondents alleged that the notice was not served upon them, they did not dispute receipt of the notification.

[25] The explanation of the headmen/women respondents for the delay amounts to this. On 23 August 2013, they received a letter from the traditional council requesting them to desist from performing their duties. Soon after that, the sheriff served them with an interim order from the Magistrates Court, preventing them from attending and conducting community meetings in their respective villages, and also interdicting them from representing themselves as traditional leaders of their respective villages.

[26] During March and April 2014, the Premier initiated the process of internal remedies by delegating a committee on customs and traditions, to investigate whether the appellants followed proper customs and traditions in removing the headmen/women respondents and appointing new headmen/women. The committee promised to release the report within three months, that is before the end of July 2014, but they never received the report. Counsel for the headmen/women respondents submitted that the internal process as initiated by the Premier was therefore never concluded.

'(1) Any proceedings for judicial review in terms of section 6(1) be instituted without unreasonable delay not later than 180 days after the date –
(a) subject to subsection 2*(c)*, on which any proceedings instituted in terms of internal remedies as contemplated in subsection 2*(a)* have been concluded.
(b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.'

[27] On 27 June 2015, the headmen/women respondents attended a meeting arranged by the chairperson of the traditional council. At that meeting they learnt that the Premier had removed them as headmen/women. On 13 July 2015, the headmen/women respondents made a representation to the Premier that he should internally review and nullify his decision to terminate their recognition as headmen/women.

[28] On 19 July 2016, the headmen/women respondents attended a meeting arranged by the advisor to the Premier where the internal review and the memorandum of complaints were discussed. On 15 November 2016, the headmen/women respondents held another meeting with the MEC's representative to discuss the issues of, inter alia, why their salaries were terminated. On 19 November 2016, they held another meeting with the traditional council where it was agreed that the Premier should continue to resolve the issue of the headmen/women respondents as a matter of urgency.

[29] The following year, on 21 February 2017, another meeting was held by the headmen/women respondents with the traditional council where it was resolved that the house of traditional leaders should release a report of the investigations conducted during 2014. During July 2017, the headmen/women received an invitation to combine their representation about their dispute before the house of traditional leaders on 20 July 2017, and they were promised to be provided with a report before the end of 2017.

[30] During February 2018, seeing that the report was not forthcoming, the headmen/women respondents sent their delegates to the house of traditional leaders to enquire about the report. Their delegates were advised that the report had been sent to the Premier for implementation. They never received the report, and, during September 2018, they took a decision to embark on the legal route. Their review

application was only launched on 11 February 2019. This was in summary, the headmen/women respondent's explanation for the delay in instituting the review application.

[31] As stated above, the impugned decision was made on 29 July 2013 and the Premier appointed other headmen and headwomen. It was therefore legally impossible for him to apply the dispute-resolution mechanism, in which the active participation of the Premier, as the decision maker was envisaged.[13]

[32] Taking into consideration the 180-day period prescribed by s 7(1) of PAJA, the review application was brought almost six years later. 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, is without merit.

[33] The relief sought by the headmen/women respondents is that they be re-instated as headmen/headwomen of the Bahananwa community, with retrospective benefits. The undisputed fact is that, shortly after the Premier decided to remove them from their royal duties on 24 August 2013, he appointed other individuals as headmen and headwomen upon recommendation by Kgoshi Ngoako and the traditional council. When it comes to the extent and cause of the delay, the headmen/women respondent's version is that they decided, in September 2018, to challenge the Premier's decision taken on 29 July 2013 and only launched the review application on 11 February 2019. In their founding affidavit, their reasons for the delay are that 'the legal route [was] expensive, and we had to collect funds from the community and supporters in order to give instructions to our legal representatives to pursue the matter'. Furthermore, from July 2013 until September

[13] *Tshivhulana Royal Family* para 47.

2018, they were attending numerous meetings with different parties to inter alia, have the Premier review his decision.

[34] The inordinate delay in this case denies litigants the closure they are entitled to on the issue, and the litigation. To grant condonation after such an inordinate and largely unexplained delay of almost six years would undermine the principle of finality and will have a negative effect on the administration of justice. Even if we accept the version that the respondents only realised that they were no longer headmen and headwomen at a meeting on 27 June 2015, their explanation for the delay in launching the review application in February 2019 is not reasonable. Lack of finality will also cause prejudice to the institution of traditional leadership in the Bahananwa community.

[35] Undue delay should not be tolerated. Delay can prejudice the respondent, weaken the ability of a court to consider the merits of a review, and undermine the public interest in bringing certainty and finality to administrative action. A court should therefore exhibit vigilance, consideration and propriety before overlooking a late review, reactive or otherwise.[14]

[36] Granting condonation in the interests of justice, does not create an unfettered judicial power and must be decided judicially upon the facts and circumstances of the particular case.[15] Subjective sympathy for the litigant should not be conflated with the objective test of the interests of justice.

[37] The headmen/women respondents did not make out a proper case for condonation, and that is dispositive of the matter. There was unreasonable delay

[14] *Department of Transport v Tasima (Pty) Ltd* ZACC 39; 2017 (2) SA 622 (CC); 2017 (1) BCLR 1 (CC) paras 163-164.
[15] *Booi v Amathole District Municipality* [2021] ZACC 36; [2022] 1 BLLR (CC); (2022) 43 ILJ 91 (CC); 2022 (3) BCLR 265 (CC) para 27.

and no good reasons were provided why the delay should be condoned. The proverbial clock started running from the date that the headmen/women respondents became aware or reasonably ought to have become aware of the impugned decision. The enquiry does not end there. There must be reasonable prospects of success if condonation is granted.

[38] The foundation of the headmen/women respondents' case is 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. Consequently, so it was contended, the impugned decision was reviewable because it was beyond the powers of the Premier (*ultra vires*), or a mandatory and material procedure was not followed. However, in law there is no such institution as a 'village royal family', as was held recently by the Constitutional Court in *Chief Avhatendi Ratshibvumo Rambuda and Others v Tshibvumo Royal Family and Others*:[16]

'As a matter of law, the authority to identify a new headman or headwoman rests exclusively with the Rambuda Royal Family. This conclusion is buttressed by several points. Section 12(1) of the Limpopo Traditional Leadership Act provides that the identification for a headman position shall be done by the royal family and in terms of customary law of the traditional community concerned. It follows clearly from the definition of a royal family in section 1 of the Limpopo Traditional Leadership Act, namely, "the ruling family within a traditional community," not "a ruling family within a traditional community" that there can only be one royal family per traditional community.'

For this reason, there are no reasonable prospects of success on appeal.

[39] The full court should have dismissed the appeal on the basis that the review application was out of time. The appellants did not satisfy the requirements for an application to extend the period of time within which proceedings for judicial

[16] *Chief Avhatendi Ratshibvumo Rambuda and Others v Tshibvumo Royal Family and Others* [2024] ZACC 15; 2024 (11) BCLR 1376 (CC) para 49.

review must be instituted under PAJA. The interests of justice in these circumstances militate against the granting of condonation.

[40] In the result, the following order is made:

1 The appeal is upheld with costs, including the costs of two counsel where so employed.

2 The order of the full court is set aside and substituted with the following order: 'The appeal is dismissed with costs.'

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D S MOLEFE

JUDGE OF APPEAL

Appearances

For the appellants:	M Oosthuizen with N Gaisa
Instructed by:	Espag Magwai Attorneys, Polokwane Symington & De Kok Attorneys, Bloemfontein
For the first to thirteenth respondents:	M B Monyemaratho
Instructed by:	Mmaphiwa Phihlela Attorneys, Polokwane Matsepes Inc., Bloemfontein.