



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 12 April 2019

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.

Mphephu v Mphephu-Ramabulana & others (948/17)

Today the Supreme Court of Appeal (SCA) upheld the appeal with no order as to costs and referred the matter back to the Limpopo Division of the High Court, Thohoyandou (the high court) for further adjudication on the merits before another Judge.

In December 2012, the appellant, Ms Masindi Clementine Mphephu, instituted review proceedings in the Limpopo Division of the High Court, Thohoyandou (the high court), against the first respondent, cited as Regent Toni Peter Mphephu-Ramabulana. At the commencement of the proceedings before the high court, the appellant and the respondents raised several points *in limine*. They agreed to a separate determination of the points *in limine* and the agreement was made an order of court on 31 August 2015. The agreement isolated fourteen issues for separate adjudication. The high court upheld some of the points *in limine* and dismissed the application as well as the application for leave to appeal. The appeal before the SCA was therefore with its leave.

In 2003 the first respondent approached the high court for his recognition as the king of Vhavenda. The application was dismissed by Lukoto J. In the same year and acting in terms of s 212 of the Constitution, the legislature enacted the Traditional Leadership and Governance Framework Act 41 of 2003. The Act was later amended under the same title, by the Traditional Leadership and Governance Framework Amendment Act 23 of 2009. Both Acts were referred to jointly as the Framework Act.

In 2005, the first respondent lodged a claim with the Commission on Traditional Leadership Disputes and Claims (the old Commission) for the establishment of a Kingship/Queenship of the Vhavenda, to vest in the Mphephu-Ramabulana Royal Family. In addition, he also lodged a claim to be recognised as the incumbent to that throne. Three other Vhavenda communities, namely the Ravhura, the Tshivhase and the Mphaphuli also lodged claims for the Kingship/Queenship. The old Commission investigated the claims for Kingship/Queenship. In January 2010, it issued a determination that it recognised a single Vhavenda Kingship/Queenship (the Throne) which would vest solely in the Mphephu-Ramabulana Royal Family. The old Commission did not pronounce on the incumbency to the Throne, ie it did not determine or announce who in the Mphephu-Ramabulana Royal Family should be the King/Queen.

It was common cause that the appellant neither lodged a claim nor declared a dispute with either the old or new Commission nor in terms of any provision of the Framework Act. The appellant had the opportunity to declare a dispute during the public investigation of the claim for the establishment of the Throne by the old Commission between November 2005 and December 2008. It was submitted in this court that she could not do so as she was a minor aged between 14 and 17 at that time. She turned 18 years of age, the statutory age of majority, in 2009, as the old Commission was finalising its investigation of the claim for establishment of the Throne. She was therefore a major in January 2010, when the old Commission announced its decision to award the Throne to the Royal Family of Mphephu-Ramabulana, with no decision on the incumbent to that Throne. But she still did not stake her claim for the Throne.

The respondents contended in the high court and before the SCA that the court lacked jurisdiction to hear the review as it concerned a matter that could only properly be considered by the specialist Commission. The high court ruled that it lacked jurisdiction as the dispute was not lodged with the Commission in terms of s 21 of the Framework Act, which provided for lodging of claims, declaring of disputes over the traditional leadership positions as well as the resolution of such claims and disputes by the Commission. In this regard the SCA stated that the procedures outlined in ss 9(3) and 21 of the Framework Act were designed such that by the time the dispute was raised in the courts, the customary institutions or structures; specialist entities on customary laws and custom, shall have had the opportunity, as a matter of precedence, to pronounce their views on the customary laws and custom rules applicable. Their views as custodians of that system of laws constituted a part of the record of the decision, essential for any court seized with a review of a decision concerning customary laws and custom. The SCA established therefore that the high court erred in its finding that it lacked the jurisdiction to adjudicate the matter.

The SCA held that it was plain from the language of s 25(2)(a) of the Framework Act that the old and the new Commissions were obligated to conduct an investigation of a leadership dispute to the title or right of the incumbency within the context of a disputed or contested leadership claim. As far as the Commission was concerned, there was thus no evidence that the claim for incumbency lodged by the first respondent was either contested or disputed. Therefore the contention that the appellant had a legitimate expectation that the old and the new Commissions were seized with the investigation of the first respondent's claim for incumbency, was legally and factually incorrect.

The SCA concluded that the Commission did not have the power to identify a person for recognition as King or Queen. Those powers vested with the royal family, in particular, in terms of the custom of Vhavenda, Khadzi (the sister to the incumbent ruler), would announce her choice of successor. The Commission's power in this context was only to resolve a dispute concerning a contested identification.

Therefore the decision by the second respondent to recognise the first respondent as King of Vhavenda, was reviewed and set aside. The outstanding issues and points *in limine* were referred to the high court for evidence and adjudication having a direct bearing on any future identification and recognition of a person, even in an acting capacity, as King or Queen of Vhavenda. Thus, any attempt to appoint anyone to the Throne at this stage of the proceedings, would require a prior resolution of the very same issues pending adjudication in the high court.

The SCA declared that it would be in the interest of all the parties to have those matters resolved before the next process of identifying and recognising a leader in terms of s 9 of the Framework Act commenced. Consequently, the effect of the review and setting aside of the first respondent's recognition as King of Vhavenda and the withdrawal of his recognition certificate as King had to be stayed, pending the completion of the proceedings, including any appeal process that might arise therefrom.

~~~~~ ends ~~~~~