

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT84/12

IN THE NORTH GAUTENG HIGH COURT OF SOUTH AFRICA, PRETORIA

CASE NUMBER: 68501/2010

**IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA,
BLOEMFONTEIN**

CASE NUMBER: 404/2012

In the matter between:

JUSTICE MPONDOMBINI SIGCAU

Applicant

and

**THE PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA**

First Respondent

**THE COMMISSION ON TRADITIONAL
LEADERSHIP DISPUTES AND CLAIMS**

Second Respondent

**CHAIRPERSON OF THE COMMISSION ON
TRADITIONAL LEADERSHIP DISPUTES AND
CLAIMS**

Third Respondent

ZANOZUKO TYELOVUYO SIGCAU

Fourth Respondent

**MINISTER OF LOCAL GOVERNMENT &
TRADITIONAL AFFAIRS**

Fifth Respondent

PREMIER: EASTERN CAPE PROVINCE

Sixth Respondent

NATIONAL HOUSE OF TRADITIONAL LEADERS

Seventh Respondent

NATIONAL HOUSE OF TRADITIONAL LEADERS

Eighth Respondent

IKUMKANI YAMAMPONDO ASE NYANDENI

Ninth Respondent

NOTICE TO AMEND

TAKE NOTICE that the Applicant applies to amend its Notice of Motion. The amendment amounts to an amendment to the numbering of the Notice of Motion, set

out in paragraphs 2.1.5 to 2.1.10 and by the insertion of the words 'an order declaring' at the beginning of paragraph 2.1.6, without amending the substance of the Notice of Motion. The new Notice of Motion reads as follows:

TAKE NOTICE that Applicant intends to apply, on a date to be determined by the above Honourable Court, for an order in the following terms the above-mentioned applicant hereby applies to the above Honourable Court for an order:

1. The applicants are granted leave to appeal to the Constitutional Court of South Africa against:
 - 1.1 The whole of the judgement and orders handed down by his Lordship Acting Justice De Klerk on behalf of the North Gauteng High Court, Pretoria on 12 April and 21 May 2012;
 - 1.2 The whole of the judgment and order of the Supreme Court of Appeal dated 16 August 2012;
2. In addition to the relief sought in the Notice of Motion in the court *a quo* the Applicant be granted leave to seek:
 - 2.1.1 An order declaring that the Traditional Leadership and Governance Framework Act 41 of 2003 as amended has no retrospective application prior to the date of commencement of the amendments in terms of the Traditional Leadership and Governance Framework Act 23 of 2009 (The Traditional Leadership and Governance Framework Act as it was prior to the amendments effected by Act 23 of 2009 is referred to as the "Old Act" and in its form incorporating such amendments is referred to as the "New Act")
 - 2.1.2 An order declaring that President's Minute No. 144 is unlawful, invalid and null and void in so far as the First Respondent purports to accept the Second Respondent's recommendations pursuant to the New Act;
 - 2.1.3 An order declaring that President's Minute No. 407 and Government Notice No 33732 recognising the 4th Respondent as King of Amampondo is unlawful, invalid and of no force and effect;

- 2.1.4 An order declaring that because the investigation of the Commission took place under section 25(2) (a) (iii) read with section 21(1) (a) and (b) of the old Act and therefore without the involvement of the community, the President was obliged under section 26(2) of the old Act to implement the decision of the Commission “*in accordance with section 9 or 10*” of the old Act.
- 2.1.5 an order declaring that the President was obliged in terms of section 10(3) to:
- 2.1.5.1 Inform the Royal family concerned and the applicant of the removal;
- 2.1.5.2 Withdraw the certificate of recognition with effect from date of removal.
- 2.1.6 An order declaring that only the Royal family is entitled to identify a person qualified in terms of customary law to assume the position of King.
- 2.1.7 An order declaring that sections 9 and 10 of the Act (old or new) read with sections 211 and 212 of the Constitution properly construed allows the Royal family (the nation) to remove the fourth respondent as King of Amampondo, if his recognition and appointment is inconsistent with custom read with the Constitution.
- 2.1.8 An order declaring sections 9 and 10 of the Act unconstitutional to the extent that those sections empower the Commission or the President to determine who the traditional leader should be.
- 2.1.9 An order declaring that to the extent that the omission of section 10(1) (c) in section 10(2) and section 9(1) (a) (i) and 9(1) (b), this may be interpreted as excluding the Royal family from the removal and appointment of a King, these sections are contrary to section 211 and 212 of the Constitution.
- 2.1.10 An order declaring that section 28(11)(b) is unconstitutional to the extent that it makes it possible for disputes lodged under the Old Act to be handled by the Commission without the involvement of the community (Royal family) in contravention of section 211 and 222 of

the Constitution which requires traditional leaders to be appointed according to custom.

3. In the event of this application for leave to appeal succeeding, suspending the certificate of recognition in terms of section 9(2) (b) of Act 41, 2003 of the Fourth Respondent and his installation as King pending the outcome of the appeal in this matter.
4. Directing that the costs in this application for leave to appeal shall be costs in the appeal.
5. Further and/or alternative relief.

The accompanying affidavit of **JUSTICE MPONDOMBINI SIGCAU** is annexed in support of this application.

TAKE NOTICE FURTHER THAT the applicant has appointed the address of its attorneys as set out below at which they accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER THAT if you intend to oppose this application, you are required to do so within ten (10) days from the date upon which this application is lodged with the Registrar of the above Honourable Court, and to indicate the grounds of such opposition.

Dated at Johannesburg on

2012.

WEBBER WENTZEL

Applicant's Attorneys

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To:
The Registrar
Pretoria

And to:

BHADRISH DAYA ATTORNEYS

1st, 2nd, 3rd and 5th Respondents

Attorneys

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Ref: B Daya/C266/10

Received copy hereof on
2012

For: 1st, 2nd, 3rd and 5th
Respondent's Attorneys