



CONSTITUTIONAL COURT OF SOUTH AFRICA

Nxumalo v The President of the Republic of South Africa and Others

CCT 162/13

Date of Judgment: 2 October 2014

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today the Constitutional Court handed down judgment in an application for leave to appeal against a judgment of the Gauteng Division of the High Court, Pretoria. The matter concerns the decisions of the Commission on Traditional Disputes and Claims (Commission) and the President not to restore the Kingship of the amaShangana and to recognise the applicant, Mr Nxumalo, as its King.

In 2006 Mr Nxumalo lodged a claim with the Commission in which he sought restoration of the Kingship of the traditional community of the amaShangana and recognition of his title as King. Mr Nxumalo claimed that as the great-grandson of Soshangana who fled from King Shaka, he was entitled to recognition as King of amaShangana.

The Commission found that the kingship of amaShangana existed between 1828 and around 1897. Its disintegration scattered its subjects to different parts of Southern Africa including Bushbuckridge, Zimbabwe and Mozambique. The Commission's authority is limited to investigating and deciding traditional leadership claims and disputes which arose after 1 September 1927. However, where good grounds exist it can consider events which arose prior to this date. The Commission found that the kingship of amaShangana disintegrated long before 1 September 1927 and because no good grounds had been shown for considering events prior to that date, it dismissed Mr Nxumalo's claim.

The Traditional Leadership and Governance Framework Act 41 of 2003 (Act) empowered the Commission to make a final decision on the claim, which the President was required to implement. The Act was amended after the Commission made its finding. The amendment created a new Commission which was only authorised to make

recommendations to the President, who then makes the ultimate decision. The President purported to make a final decision under the amended Act not to recognise the Kingship of amaShangana and publically announced his decision by issuing a Presidential Minute.

Mr Nxumalo applied to the High Court to review and set aside the decisions of the Commission and the President. The High Court dismissed the application. Mr Nxumalo unsuccessfully applied for leave to appeal to the Supreme Court of Appeal. In the Constitutional Court, Mr Nxumalo argued that the judgment of the High Court ignored relevant facts in dismissing his review application. In a unanimous judgment, Zondo J rejected Mr Nxumalo's contention but found that the President acted outside of his powers by making a decision in terms of the amended Act instead of the original Act. Accordingly, this Court granted leave to appeal and set aside the President's decision. However it dismissed the appeal against the High Court's order concerning the Commission's decision.