



CONSTITUTIONAL COURT OF SOUTH AFRICA

*Chief Avhatendi Ratshibvumo Rambuda and Others v Tshibvumo Royal Family
and Others*

CCT 255/22

Date of hearing: 30 November 2023

Date of judgment: 17 July 2024

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.

On 17 July 2024, at 10h00, the Constitutional Court handed down judgment in an application for leave to appeal against the whole judgment and order of the High Court of South Africa, Limpopo Division, Thohoyandou (High Court) which reviewed and set aside the decision of the Premier of Limpopo to appoint Mr Ndwambi Donald Rambuda (Mr Rambuda) as headman of the Tshibvumo Village in the Vhembe District, Limpopo.

The first applicant is Chief Avhatendi Ratshibvumo Rambuda (Chief Avhatendi), the senior traditional leader of the Rambuda Traditional Community. The second applicant is Mr Rambuda, the elder brother of Chief Avhatendi. The third applicant is the Rambuda Traditional Council. The fourth applicant is the Rambuda Royal Family. The first respondent is the Tshibvumo Royal Family. The second respondent is Mr Mavhungu, son of the former headwoman, Ms Nthambeleni Tshibvumo Singo (Ms Singo). The third respondent is the Premier, Limpopo (Premier) and the fourth respondent is the Member of the Executive Council for Cooperative Governance, Human Settlements and Traditional Affairs, Limpopo (MEC).

From 1982 until her death on 24 December 2014, Ms Singo served as the headwoman of the Tshibvumo Village. After her passing, two successors were identified. Mr Rambuda was identified by the Rambuda Royal Family and Mr Mavhungu was identified by the Tshibvumo Royal family. The Rambuda Royal Family is that of the senior traditional leader, while the Tshibvumo Royal Family is purported to be that of the headmanship/headwomanship. These “royal families” were in dispute but were both under the governance of the Rambuda Traditional Council. When the Tshibvumo Royal Family selected Mr Mavhungu as successor, the resolution was communicated to the Rambuda Traditional Council, however, Chief Avhatendi refused to acknowledge the identification made by the Tshibvumo Royal Family and instead made an application to the Premier for the recognition of Mr Rambuda as the former headwoman’s successor, giving rise to a dispute between the two families.

Following Chief Avhatendi’s refusal to accept Mr Mavhungu’s identification, the Tshibvumo Royal Family instituted an urgent application seeking an order granting them the authority to identify a successor to the late Ms Singo. Additionally, they sought an interdict preventing the Premier from considering the application to recognise Mr Rambuda as the former headwoman’s successor. After the hearing, the parties reached a settlement agreement, which was made an order of court on 24 March 2016. According to the terms of the settlement, the application of the Tshibvumo Royal Family was to be referred to the Premier. In the event that the Premier had by then decided to recognise Mr Rambuda as the headman, the Tshibvumo Royal Family would be granted leave to supplement their papers to review the Premier’s decision.

In May 2018, the Tshibvumo Royal Family received a letter from the MEC, stating that the Premier had recognised Mr Rambuda as the headman of the Tshibvumo Village with effect from 9 March 2018. Aggrieved by the Premier’s decision, the Tshibvumo Royal Family brought a second urgent application seeking an order to interdict the Premier’s decision to recognise Mr Rambuda as headman, pending finalisation of the review application. The parties eventually reached settlement that the installation ceremony of Mr Rambuda as headman would not proceed, pending the review application. The grounds of review were based on the assertion that the Tshibvumo Royal Family held authority to identify the person for the role of headman/headwoman

and that the Premier failed to resolve the dispute, and instead, proceeded to appoint Mr Rambuda as headman. In response, the applicants contended that the Tshibvumo Royal Family was self-created and formed with the intention of undermining the Rambuda Royal Family in the Tshibvumo Village.

The Premier did not participate in the review proceedings. An explanatory memorandum prepared and submitted to him by the MEC was filed as part of the review record. It contained a recommendation by the MEC that Mr Rambuda be recognised as headman. In sum, the memorandum set out a brief history of the matter and the reasons underpinning the MEC's recommendation. The Tshibvumo Royal Family filed a supplementary affidavit in the review proceedings, asserting that the Premier was misled into believing that the notice of withdrawal they filed related to the merits, when it in fact concerned the question of costs.

The High Court found that the Limpopo Traditional Leadership and Institutions Act (Limpopo Traditional Leadership Act) was silent as to which royal family – that of the senior traditional leader or of the headman – has the authority to identify a successor to the headman or headwoman. It reasoned that the Limpopo Traditional Leadership Act does not establish a hierarchy or distinction in terms of which family plays a lesser role.

The High Court then referred to section 21 of the Traditional Leadership and Governance Framework Act (Framework Act), which prescribes the procedures to resolve disputes concerning customary law or custom. It emphasised that exhausting all remedies provided for by the statute is a prerequisite before approaching the courts. The High Court held that the Premier was obliged to act in accordance with section 12(2)(a), or (b) and (c) of the Limpopo Traditional Leadership Act because there was, as contemplated by that subsection, “evidence . . . that the identification of a person . . . was not done in accordance with customary law, customs or processes”. It further held that the MEC had provided misleading information to the Premier by incorrectly stating that the respondents had withdrawn their application.

It concluded that the Premier failed to act in accordance with section 12(2) of the Limpopo Traditional Leadership Act and reviewed and set aside his decision to recognise Mr Rambuda as headman with effect from 9 March 2018, in terms of section

6(2)(b) of the Promotion of Administrative Justice Act (PAJA). The High Court referred the matter back to the Premier to be dealt with in accordance with the remedies provided for in the Limpopo Traditional Leadership Act.

In the Constitutional Court, the applicants contended that the identification of Mr Rambuda was in accordance with section 12(1)(a)(i) of the Limpopo Traditional Leadership Act because the Rambuda Royal Family is the family under whose authority the Tshibvumo Village was governed by Ms Singo. Further, that the Rambuda Royal Family is the sole customary structure empowered to designate a person for the role of traditional leader in the Tshibvumo Village and that the High Court erred in its finding that there are two royal families.

The respondents contended that once Mr Mavhungu and Mr Rambuda were identified as competing successors, a dispute existed which obliged the Premier to act in terms of section 12(2) of the Limpopo Traditional Leadership Act. Further, that the purpose of section 12(1) of the Limpopo Traditional Leadership Act is to provide for a process of identifying a successor to the senior traditional leadership throne. In the case of a headman or headwoman, the use of the words “the royal family concerned” signifies that, to fill the position of a senior traditional leader, the royal family of that senior traditional leader should identify the successor, but that if the position to be filled is that of a headman or headwoman, then it is the royal family of that headman or headwoman that should identify the successor. The respondents asserted that the Rambuda Royal Family was, therefore, responsible for the identification of a senior traditional leader and not the headman.

In a unanimous judgement by Mathopo J (Maya DCJ, Chaskalson AJ, Dodson AJ, Kollapen J, Mhlantla J, Rogers J, Schippers AJ and Tshiqi J concurring), the Constitutional Court held that its jurisdiction was engaged because the matter raised a constitutional issue relating to the recognition of traditional leaders in terms of the Traditional Leadership and Governance Framework Act, now replaced by the Traditional and Khoi-San Leadership Act (TKLA), that was passed to give effect to section 211 of the Constitution and because it concerned the review of the exercise of

public power. According to the Court, the determination of whether it is the Rambuda or Tshibvumo Royal Family that has a right to nominate the successor to the late headwoman required a proper analysis and interpretation of what constitutes a royal family in terms of the Limpopo Traditional Leadership Act. More importantly, a determination ought to have been made as to whether the provisions of section 12(2) of the Limpopo Traditional Leadership Act were triggered or not.

The Constitutional Court addressed several issues regarding the proper interpretation of section 12(2) of the Limpopo Traditional Leadership Act. The central questions were, inter alia, whether the High Court was correct to review and set aside the Premier's decision to recognise Mr Rambuda as headman of the Tshibvumo Village; and which royal family had the power to identify the person to fill the position of headman or headwoman.

The Court found that the Rambuda family had ruled over the Tshibvumo Village for many generations and met the statutory definition of a royal family as set out in section 1 of the Limpopo Traditional Leadership Act. The respondents, on the other hand, fell under the Rambuda Traditional Council and did not have a statutorily recognised royal family or traditional council that conducts administrative functions or duties like the Rambuda Royal Family and Traditional Council. Therefore, as a matter of law, the authority to identify a new headman or headwoman rested exclusively with the Rambuda Royal Family.

The Court found that the Premier did not exercise his discretion under section 12(2) in a lawful manner. The Premier simply recognised Mr Rambuda on the basis of misinformation in the form of a memorandum received from the MEC which incorrectly interpreted a notice of withdrawal of the application by the respondents. The Premier should have followed the procedures set out in section 12(2) and satisfied himself that proper process was followed in terms of customary law for the nomination of the headman. The Court, therefore, endorsed the finding of the High Court in so far as it related to the Premier's failure to follow a mandatory process in terms of section 12(2). The Court found that the Premier ought to have acted, and must act, in terms of section 12(2)(a) of the Limpopo Traditional Leadership Act.

For these reasons, the Constitutional Court upheld the appeal only to the extent that paragraph 32.2 of the High Court's order was set aside and replaced with an order that remitted the matter to the Premier, with directions that the Premier must refer the matter to the provincial house of traditional leaders and the relevant local house of traditional leaders for their recommendations. Moreover, that in all the further decision-making in the matter the provisions of section 2(1) of the TKLA must be taken into account. The Court made no order as to costs.