

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case no: 4491/18P

In the matter between:

MKHULULEKI CYVION DLOMO

APPLICANT

And

**THE PREMIER OF KWAZULU-NATAL
MEC THE DEPARTMENT OF COOPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS**

FIRST RESPONDENT

KWAZULU-NATAL

SECOND RESPONDENT

MANDLAKHE JUSTICE DLOMO

THIRD RESPONDENT

JUDGMENT

MADONDO DJP

Introduction

[1] On 14 March 2016, under case number 6236/2013, this Court granted the following order in favour of the third respondent against the applicant:

- (a) reviewing and setting aside the decision of the first respondent recognising the applicant as an Inkosi of the Dlomo Traditional Community;
- (b) directing the first and second respondents to do all things necessary and publish all notices to withdraw the appointment of the applicant; and

(c) directing the first and second respondents to pay the costs.

[2] The applicant now seeks an order reviewing and setting aside the decision of the first respondent not to appoint him as Inkosi of the eMakhabeleni Community (Dlomo Traditional Community) in terms of the KwaZulu-Natal Traditional Leadership and Governance Act (KZN Governance Act),¹ and among other relief, directing the first respondent to take all the necessary steps in recognising the applicant as such. In fact, the applicant demands that he should be reinstated in the position he held prior to the setting aside of his recognition as Inkosi, within 90 days of the order sought.

[3] The applicant's application is based on the ground that the uMndeni weNkosi has every right to appoint any person as Inkosi. The applicant contends that the order setting aside his recognition as Inkosi did not preclude him from being identified and nominated as Inkosi in the future. It only set aside his appointment. The applicant states that he was appointed by the uMndeni weNkosi on the recommendation of Luthuli Sithole Attorneys and that it now rests with the first respondent whether it carries out that recommendation. According to the applicant, the matter was referred back to the uMndeni weNkosi and that the latter identified and nominated him for re-appointment. It was contented that the first respondent should accordingly recognise him as Inkosi - as the KZN Governance Act directs.

[4] The third respondent has lodged a counter-application in which he seeks the following order:

(a) declaring him to be the Inkosi of the Dlomo Traditional Community;

(b) directing the first and second respondents to do all things necessary in compliance with the KZN Governance Act to appoint him as Inkosi of the Dlomo Traditional Community;

¹ Act 5 of 2005.

(c) directing the first and second respondents to issue a certificate appointing him as Inkosi of the Dlomo Traditional Community; and

(d) ordering the applicant to pay the costs of the counter-application.

[5] The third respondent grounds his counter-application on three grounds. Firstly, that as the oldest son of the deceased Inkosi, he is in terms of Zulu law and customs entitled to succeed his father. Secondly, that the applicant does not in terms of customary law and traditions qualify to assume the position of Inkosi and he is therefore not a rightful heir to the throne. Thirdly, that as the third respondent's grandmother, MaGasa II, was affiliated to the house of MaGasa I, and, ultimately, to the great house as seed-raiser, his oldest uncle, Khumukani, was entitled to succeed Bubula, the son of MaGasa I, and the late Inkosi Zingelwayo.

Factual background

[6] Zingelwayo, the son of Mkhuzangwe of Gayede and of Makhedama, the founder of the Dlomo Traditional Community, was the Inkosi of the Dlomo Traditional Community from 1936 to 1972. He passed away on 19 June 1972. The Dlomo Traditional Community is situated between Kranskop and Nkandla.

[7] Inkosi Zingelwayo had 14 wives. However, for the purposes of determining the issues in this matter, emphasis will be placed on four of his wives, namely, MaNgcobo, MaGasa, MaGasa and MaBhengu, who are prominent, and relevant to the matter, as well as on four of his sons, Bubula, Zenzo, Khumukani and Muntukaboni.² For clarity sake, the first MaGasa will hereinafter be referred to as MaGasa I and the second as MaGasa II.

² For the sake of convenience, the first names of all the parties will be used throughout the judgment. No disrespect is intended thereby.

[8] The Dlomo Traditional Community consists of five royal homesteads, namely Sokheni, Qhudeni, Nhlanhleni, Gulukudela and Ndumakude. The second wife of the late Inkosi Zingelwayo was MaGasa I, and the third wife was MaNgcobo, the great wife (undlunkulu), from whom the successor to the chieftainship had to be drawn. MaNgcobo was a daughter of another Inkosi and her lobolo had been contributed by the Dlomo Traditional Community. The fourth wife was MaBhengu.

[9] Inkosi Zingelwayo moved from his father's homestead, Qhudeni, to establish his own royal homestead, Nhlanhleni. He took along his four wives, MaNgcobo, MaGasa I, MaBhengu and MaMsane, who does not feature much in this matter. The Nhlanhleni homestead is traditionally recognised as the bearer of an heir to the throne of the Dlomo Traditional Community. At Nhlanhleni royal homestead, MaNgcobo's house was the main house, iNdlunkulu, situated at the top centre of the homestead. The house of MaGasa II was rank immediately next to the iNdlunkulu on the right-hand side, and MaBhengu was on the left-hand side and so was MaMsane's house.

[10] Inkosi Zingelwayo fixed the status of his wives who were at Nhlanhleni as follows: MaNgcobo, as she was the daughter of an Inkosi, and whose lobolo was contributed by the Dlomo Traditional Community was ranked as undlunkulu. MaGasa I was affiliated to the house of MaNgcobo, the Great House (iNdlunkulu), and MaBhengu was allegedly affiliated to the house of MaNgcobo, as the second affiliate. No specific status was accorded to MaMsane.

[11] MaNgcobo only had a daughter, Sizani. MaGasa I had only one son, Bubula Siphon Alias and MaBhengu had two sons, Zenzo and Langa. When it became apparent that MaNgcobo could not have any more children due to ill health, Inkosi Zingelwayo, on 12 June 1972, nominated his son by MaGasa I, Bubula, to be his general heir and successor. Such nomination was witnessed by Zephaniah Dlomo, Z Ndlovu and others. Bubula then became MaNgcobo's son. This translated to mean that Bubula was implanted in the womb of MaNgcobo in order to provide an heir. However, this was preceded by the affiliation of Bubula's mother to the house of MaNgcobo. The late

Inkosi Zingelwayo then registered Bubula at the Nkandla Magistrate as his general heir and successor.

[12] MaGasa I died, leaving her son, Bubula, a teenager. In order to ensure that the house of MaGasa I was revived and that Bubula was well cared for, Inkosi Zingelwayo married MaGasa II, the sister of the MaGasa I. This was seen as a practical and reasonable solution to the problem. She was a blood relation of Bubula and was more likely to take good care of him. However, MaGasa II was not only brought to Nhlanhleni royal homestead as a foster mother to Bubula, but was to replace her sister in all respects. She was affiliated to the house of MaGasa I. In fact, MaGasa II was put at Nhlanhleni as seed-raiser and as replacement for MaNgcobo. MaNgcobo approved of her substitution of MaGasa I and her incorporation into the senior house. MaGasa II gave birth to six sons, Khumukani Ntandoyenkosi Dlomo, Muntukaboni Jabulani Dlomo, and four others.

[13] After the death of Inkosi Zingelwayo on 19 June 1972, the uMndeni weNkosi convened a meeting on 11 October 1973 and formally identified and nominated Bubula for appointment as the rightful heir and successor to the deceased Inkosi Zingelwayo. The uMndeni weNkosi thereby endorsed the deceased Inkosi Zingelwayo's wishes of appointing Bubula as his heir and successor. Such meeting was chaired by Zephaniah Dlomo. The Acting Chief (ibambabukhosi) Mlingo Mahlaba was also present at the meeting and announced that he would step down as soon as the new Inkosi assumed the position.

[14] On 25 October 1973, the uMndeni weNkosi, being accompanied by the ibambabukhosi, the Tribal (Traditional) Secretary and headmen (izinduna) presented Bubula to the Nkandla Magistrate for appointment as the successor to the deceased Inkosi Zingelwayo. Unfortunately, Bubula died of a snake bite soon after the letters of his appointment as Inkosi had been issued to him. His wife was pregnant at the time, and later gave birth to a baby girl. As a consequence, Bubula died without a male heir.

[15] The late Inkosi Zingelwayo, before his passing, had properly arranged his affairs and fixed the status of his wives, according to his election. The untimely death of Bubula, offered a section of the uMndeni weNkosi, led by Majubane Dlomo, an opportunity to purportedly alter all what the late Inkosi Zingelwayo had done. At the uMndeni weNkosi's meeting held in 1974, a night preceding the burial of Bubula, such section of the uMndeni weNkosi nominated Zenzo as the general heir and successor of the late Inkosi Zingelwayo. Sihlangu Dlomo presided over this meeting. The basis for nominating Zenzo was allegedly that MaBhengu was affiliated to the house of MaNgcobo (iNdlunkulu), and as she was holding such a position, she was entitled to bear an heir for the Dlomo chieftainship. By identifying and nominating Zenzo as successor, the uMndeni weNkosi purported to revert to the custom and tradition of the Dlomo Traditional Community and thereby restore order in the family. The meeting was said to not have been properly convened and was not representative of the uMndeni weNkosi, and therefore invalid.

[16] At the funeral of Bubula, Majubane made an impromptu announcement, and announced Zenzo as the successor to Bubula. According to witnesses, Majubane did not have the authority to do so. The unruly and unlawful behaviour of Majubane in making such announcement without the necessary permission to do so, infuriated the senior members of the family. A few months after the death of Bubula, an uMndeni weNkosi meeting was held in 1975, and such meeting culminated in the identification and nomination of Khumukani, the first-born son of MaGasa II, as the successor to Bubula. Consequently, at that meeting, the nomination of Zenzo for appointment as successor to Bubula was rejected. The basis for such rejection was that MaGasa II, not MaBhengu, was affiliated to iNdlunkulu as a seed-bearer. The 1975 uMndeni weNkosi meeting was later said at the Commission of Inquiry to have been properly convened and was representative of the uMndeni weNkosi.

[17] The ruling by the uMndeni weNkosi was objected to by the Ethnological Section of the KwaZulu Government on the grounds that Sihlangu was by birth the most senior family member and, he being overruled by the junior members of uMndeni weNkosi

was unacceptable. The Ethnological Section concluded by saying that the 1974 meeting, and not the 1975 meeting, was representative of the uMndeni weNkosi. As a consequence, the Cabinet directed that a further investigation into the dispute should be made. Nevertheless, the nomination of Zenzo as an heir and successor kept on being confirmed by various ethnologists, namely Mr Bradley in 1976 and a Mr Brink in 1977.

[18] In a letter dated 7 July 1978, addressed to the then Chief Minister of KwaZulu Government, Prince MG Buthelezi, Mr ME Dlomo indicated that Zenzo was not the rightful heir to the throne of the Dlomo Traditional Community and warned that Zenzo's appointment would lead to a split in the family and bloodshed. He then requested the KwaZulu Government to investigate the matter through a commission of inquiry. Zenzo was, despite strong objection by the senior members of the uMndeni weNkosi, appointed Inkosi on 3 June 1978.

[19] Zenzo ruled the Dlomo Traditional Community for eight years and was murdered by Khumukani, the oldest son of MaGasa II, on 6 May 1986 over the chieftainship dispute. Zenzo was survived by two wives, MaNtuli and MaNgcobo. MaNtuli had two sons, Phiwokuhle and Mkhululeki, and MaNgcobo had only one son, Siphephelo.

[20] The appointment of Zenzo and his subsequent murder caused dissension in the community with resultant violence, which claimed the lives of more than fifty people. However, after the investigation by the ethnologists, the appointment of Zenzo was once again confirmed by Ms Mhlongo in 1987 and by Mr Van Vuuren in 1989. Nevertheless, it was felt that the situation in the community had deteriorated to the extent that an inquiry into the chieftainship should be held.

[21] The uMndeni weNkosi held a number of meetings but was divided over the issue of a successor, and it split into the MaBhengu and the MaGasa II factions. The Ethnological Section proposed that Langa Dlomo, the brother of Zenzo, be appointed an Acting Chief (ibambabukhosi) to act on behalf of Phiwokuhle, the minor son of Zenzo. However, the uMndeni weNkosi could not agree on such proposal. As a consequence,

the Commission of Inquiry (the Commission) into the Dlomo chieftainship was appointed in terms of s 11(1) and (2) of the KwaZulu Act on the Code of Zulu Law³ to inquire into the rightful heir and successor to the throne and to make its recommendation to the Cabinet.

[22] The Commission commenced carrying out its mandate in 1989 by conducting investigations, taking affidavits from possible witnesses and held sessions in 1991 for the hearing of oral evidence by witnesses from both factions. Such witnesses were cross-examined, as cross-examination is viewed as the greatest machinery for the discovery of truth. I will not delve into the entire evidence tendered before the Commission and will only refer to salient features of the testimony which is necessary and crucial for the determination of this case. In issue at the Commission, was whether MaBhengu was second affiliated to the iNdlunkulu. The uMndeni weNkosi was divided; some said it was MaBhengu, Inkosi Zingelwayo's twelfth wife, in the order of his wives' marriage, and others maintained that it was a younger sister of MaGasa I, Inkosi Zingelwayo's thirteenth wife.

[23] The Commission heard evidence by prominent members of the uMndeni weNkosi and persons of authority in the traditional community. The testimony of Anthony Dlomo was that the late Inkosi Zingelwayo fixed the status of his wives by affiliating MaGasa I (the second wife) to the house of MaNgcobo (the third wife) as the seed-raiser because MaNgcobo (undlunkulu) could not have children. When MaGasa I died in order to ensure the status of seed-raiser, the late Inkosi Zingelwayo married MaGasa II, the sister to MaGasa I. By marrying MaGasa II, Inkosi Zingelwayo revived and resurrected MaGasa I's house as the seed-raiser. The former acquired all the rights and obligations of her deceased sister. MaNgcobo also approved of the substitution of MaGasa II for MaGasa I, and the subsequent incorporation of MaGasa II as the seed-raiser into the senior house. Anthony denied the allegation that MaGasa II only came to Nhlanhleni as a "nanny" to take care of the late Bubula, and he labelled the word "nanny" as ridiculous in the Zulu and Dlomo customs.

³ KwaZulu Act on the Code of Zulu Law 16 of 1985.

[24] Anthony also testified as to how Majubane illegally pronounced Zenzo as the next chief. Mhlabuhlangene Edward Dlomo, the first son of Inkosi Zingelwayo by his first wife, disapproved of the announcement by Majubane and disassociated himself from Majubane and his followers. This piece of evidence found support in the affidavit made by Mhlabuhlangene. The evidence of Anthony found support in the sworn affidavit of Makhosonke Cornelius Dlomo, regarding the marriage of MaGasa II as a seed-raiser and that MaNgcobo accepted MaGasa II and willingly incorporated her into the senior house as the seed raiser., Anthony went on to state that he took minutes of the meeting at which Khumukani, the first born son of MaGasa II, was elected chief. The evidence of Anthony was not contradicted by any other evidence. In his testimony, Anthony stated that in terms of Zulu custom, an heir to Bubula ought to have been the first son of the second seed–raiser, Khumukani Thandinkosi Dlomo.

[25] Anthony supported his statements with factual occurrences and supporting details. Anthony went on to testify that MaGasa II, given all the responsibilities and obligations of the seed-bearing wife, was entitled to use and did in fact use the belongings of MaGasa I and MaNgcobo after their death. He stated that MaGasa II was therefore certainly elevated to the status of being a seed-bearing wife. Under customary practices and tradition, the serving of meat to the women of the uMndeni weNkosi is done by a senior wife. At Nhlanhleni royal homestead, this task was performed by MaGasa II. Furthermore, it was MaGasa II who cashed the late Inkosi Zingelwayo's cheque for him when he had died. Seeing that Khumukani might be disqualified due to his murder conviction, Anthony recommended Muntukaboni Jabulani Dlomo, the second born son of MaGasa II, as a suitable candidate for appointment. In support of his claim that Muntukaboni should be appointed as Inkosi, Anthony stated that the latter had also "ngenaed" the wife of the late Bubula and thereby taken the responsibility of looking after her as his own wife.

[26] The testimony of Vusumuzi George Dlomo, the chairman of the uMndeni weNkosi, related to verifying the fact that a unanimous decision nominating Khumukani

as heir and successor to the chieftainship was taken in 1975 at a meeting which was representative of the uMndeni weNkosi. He denounced the 1974 uMndeni weNkosi meeting. Japheth Dlomo testified that he was much closer to the late Inkosi Zingelwayo and that he had told him that Khumukani was in line as chief after Bubula. He testified as to how much unhappiness the unilateral decision of Majubane announcing Zenzo as Inkosi brought, in particular, to the senior members of the uMndeni weNkosi. Japheth attended the 1975 uMndeni weNkosi meeting held at Qhudeni royal homestead and prominent members of the uMndeni weNkosi were present at such meeting. Magubane, Mshini and others signed the minutes formally nominating Khumukani as Inkosi.

[27] Cornelius Gasa, who was an Acting Chief during 1974, testified that the magistrate had told him that ethnologists would return to the traditional community in order to find a solution. They did not return, and instead, Zenzo was suddenly appointed as Inkosi. Reverend Johannes Dlomo, who was a Tribal Secretary at the time, testified that at the meeting held with the then Chief Minister of the KwaZulu Government, Prince MG Buthelezi at his office, the Chief Minister upon seeing a copy of the minutes of the uMndeni weNkosi meeting nominating Khumukani for appointment as Inkosi stated that he was not in a position to send back Zenzo's appointment. He then suggested that a Commission of Inquiry be held in order to finally determine the issue. Despite the objection of the senior members of the uMndeni weNkosi, Zenzo was taken to the Nkandla Magistrate where he was surreptitiously appointed as Inkosi. All of these witnesses, with the exception of Magubane and Mhlongo, supported the appointment of Muntukaboni as Inkosi instead of Khumukani.

[28] Magubane, the only witness called by the Zenzo faction, testified that the sons of the late Inkosi Zingelwayo had relayed to him that there were very few people who supported Zenzo. The overwhelming majority of the Inkosi's sons supported Khumukani. He conceded under oath that there was no such thing as a "nanny" in their custom. He did not believe that MaGasa II would have been a "nanny". Magubane had sour relations with the late Inkosi Zingelwayo. As a result, he did not visit the late Inkosi Zingelwayo when he was ill in hospital. Nor did he attend his funeral. He was present at

the meeting held in 1974, a night prior to Bubula's funeral, where Zenzo was nominated for appointment as Inkosi. He was also present when Majubane made an impromptu announcement of Zenzo's nomination as Inkosi at Bubula's funeral on the following day. Magubane was hard put to explain why such an important decision nominating Zenzo was taken in such a quick, spontaneous manner without proper representation of the uMndeni weNkosi, without notice being issued to anyone, without minutes being taken and why it should have taken place at the funeral of Bubula.

[29] When asked how it happened that Mshini registered Zenzo with the magistrate when Mshini was in Johannesburg at the time, Magubane struggled to answer. However, he later stated that if Mshini had not done Zenzo's registration, it would not have been done. Magubane was present at the uMndeni weNkosi meeting of 1975 and also signed the minutes of the meeting nominating Khumukani as Inkosi. He was also tasked with telling MaGasa II about Khumukani's nomination, which he willingly carried out.

[30] Apart from the evidence of the prominent members of the uMndeni weNkosi and the tribesmen of authority, Ms F S Mhlongo testified before the Commission in her capacity as an ethnologist. She stated that the death of MaGasa I meant that MaBhengu was the next iNdlunkulu affiliate, considering the order in which they came into iNdlunkulu, and it would have been unreasonable for Inkosi Zingelwayo to move MaBhengu into the house of MaGasa I. However, she did not provide any substantiation for her contention. According to the Commission, the evidence of Anthony annihilated her argument.

[31] Her second argument was that MaBhengu was the daughter of the son of Inkosi of the Ngcolosi Traditional Community and that as such she could not compete with a commoner's daughter, MaGasa II. However, such conclusion was once again unsubstantiated. The customary union register kept at Kranskop mentioned nothing about MaBhengu being affiliated to the Great House upon her marriage.

[32] When weighing, evaluating and assessing all the evidence tendered before it, the Commission found Anthony to be 'an absolutely credible witness who supported his statements with factual occurrences and supporting details'. His evidence was clear and strong and not contradicted. He explained the Dlomo Traditional Community's customs clearly and in a convincing manner.

[33] The Commission found Vusumuzi George Dlomo to be a credible witness 'with a position of authority going back many a year who had no reason to hide anything'. The demeanour of Cornelius Gasas was found to be sincere and his factual account fortified the submissions of previous witnesses. The Commission was impressed with Johannes Dlomo's clarity and forthrightness. He spoke unhesitatingly and clearly. As a Tribal Secretary, he knew the ways of the Dlomo Traditional Community very well. He was constantly involved in trying to end the dispute after it had flared up. The Commission found Japheth Dlomo to have presented a piece of evidence that was simply amazing for his knowledge.

[34] Upon considering the evidence of Magubane, the Commission found his evidence to have destroyed 'any vestige of truth or any doubt the Commission might have had regarding the authority of Zenzo's appointment'. The Commission found, Ms Mhlongo, to not be a credible witness mainly because she often confused the factual situation in the Zulu custom or Dlomo Traditional Community with her perception of Zulu custom as might have been applied in other traditional communities that she had studied. She contradicted her evidence on the application of 'ukungenisa isisu' and 'ukuvusa indlu'. She demonstrated a scant knowledge of custom. She was wrong on the chronological genealogy of the wives of the chieftainship. Ms Mhlongo had no knowledge and could not comment on the validity of the installation of the late Inkosi Zenzo. She quoted in her report the survey done by a Mr Bradley in 1976 and a Mr Brink in 1977 but she could not produce these reports when asked to do so. As a consequence, the Commission rejected her evidence as paltry and doubtful and not being credible.

[35] The Commission found that the decision taken at the meeting on the night preceding the funeral of Bubula in 1974, nominating Zenzo as successor, was suspect since it was taken at the funeral without the uMndeni weNkosi being properly represented. Zenzo's supporters went behind the backs of the leaders of the traditional community and had him surreptitiously appointed by the magistrate. This did not have the support of senior members and the traditional community. As a result, the Commission concluded that the meeting nominating Zenzo as Inkosi was clandestine and, therefore, invalid.

[36] The Commission, on the basis of the evidence tendered before it, finally concluded that the chieftainship of the Dlomo Traditional Community, in terms of the customary law, customs and traditions resided with the house of MaGasa II. It was accordingly held that the oldest son of MaGasa II, Khumukani, should succeed. However, in view of the fact that Khumukani had a conviction for the murder of the late Inkosi Zenzo, the Commission recommended that Muntukaboni Jabulani Dlomo, the second born son of the seed-bearing wife, MaGasa II, should instead succeed Bubula. The second reason for the Commission's recommendation of Muntukaboni as a fit and proper person for such appointment was that Muntukaboni had ngenaed the widow of Bubula and took the responsibility of maintaining her as his own wife.

[37] Muntukaboni was formally appointed Inkosi of the Dlomo Traditional Community in March 1994, ruled the community for 14 years and died in a car accident on 4 March 2008. He was survived by his first born son, the third respondent, who is now clamouring for succession to his father, as his heir and successor.

[38] Upon the death of Inkosi Muntukaboni, the uMndeni weNkosi could not agree on his successor. The MaBhengu faction insisted that the third respondent could not be a successor to Muntukaboni because Muntukaboni's identification and appointment was made by the Secretary and/or the Commission without the involvement of the uMndeni weNkosi. The procedure that was followed in the appointment of Muntukaboni was allegedly somehow manipulated. According to the MaBhengu faction, Muntukaboni was

not supposed to be an Inkosi in the first place. They want the position of Inkosi to be restored back to the house of the late Inkosi Zenzo, who was murdered by Khumukani. The applicant demands the throne on the ground that the uMndeni weNkosi ought to have identified and nominated him for appointment as successor, as the first born son of Inkosi Zenzo.

[39] At a meeting held on 6 March 2010, the uMndeni weNkosi resolved to appoint Nhlamvukayingeni (Khapha) Thandazani Dlomo as ibambabukhosi pending the resolution of the dispute. The first and second respondents endorsed the resolution and Thandazani Dlomo was appointed as ibambabukhosi for a period of one year and his appointment has since expired.

[40] The second respondent, realising that the dispute still existed and that the uMndeni weNkosi was not agreeing on the successor, appointed Luthuli Sithole Attorneys as independent investigators, to investigate, mediate and identify the rightful successor to the throne of the Dlomo Traditional Community. The uMndeni weNkosi is constituted by five royal homesteads and all the descendants of Makhedama, the founder of the Dlomo Traditional Community, regardless of gender, were allowed to participate in the process of identifying and nominating a suitable person for recognition as Inkosi of the Dlomo Traditional Community. In carrying out its mandate, Luthuli Sithole Attorneys obtained affidavits and statements from the members of the uMndeni weNkosi and other persons of authority in the Dlomo Traditional Community.

[41] The investigation established that the wishes of the incumbent Inkosi are followed even if they depart from the customs and traditions practised by the Dlomo Traditional Community. Such wishes supersede the customs and traditions and become binding on the traditional community only if the incumbent Inkosi has made them known. Luthuli Sithole Attorneys found that the late Inkosi Zingelwayo moved MaGasa I from Qhudeni royal homestead to Nhlanhleni and had appointed her son, Bubula, as his heir and successor. According to them, such action was contrary to the custom and tradition practised by the Dlomo Traditional Community, and it was also against the wishes of the

community. They went on to state that MaGasa I was allegedly ikhohlwa of another homestead, Qhudeni, and that she was older than MaNgcobo. Consequently, Luthuli Sithole Attorneys concluded that the uMndeni weNkosi was correct in recognising and appointing Zenzo as the successor of Inkosi Zingelwayo in the absence of his nominee, Bubula. Upon the death of Inkosi Zenzo, the uMndeni weNkosi ought to have convened a meeting and appointed his successor, Mkhululeki.

[42] Luthuli Sithole Attorneys pointed out that the Commission erred in recognising and appointing Muntukaboni as Inkosi. If there was any validity to the claim that MaGasa II became the senior wife, then failing Khumukani due to disqualification, the male heir of Khumukani ought to have succeeded as Inkosi and not Muntukaboni. They then recommended that the second or first respondent should, in terms of section 19(1) of the KZN Governance Act recognise the applicant as Inkosi of the Dlomo Traditional Community.

[43] On 21 November 2012, the first respondent appointed the applicant as Inkosi of Dlomo Traditional Community) in terms of s 19 of the KZN Governance Act. The recognition of the applicant as Inkosi of such traditional community was published in the *Provincial Gazette* of 7 March.⁴

[44] On 5 June 2013, the third respondent lodged an application to this Court under case number 6236/2013 in which he sought an order:

- (1) declaring him as Inkosi of the Dlomo Traditional Community;
- (2) reviewing and setting aside the first respondent's recognition of the applicant;
- and

⁴ Recognition of Amakhosi as Contemplated in section 19(2)(a) of the Kwazulu-Natal Traditional Leadership and Governance Act, 2005, PN 16, *KZN PG* 913, 7 March 2013.

(3) directing the first respondent to publish notices withdrawing the applicant's recognition, and appointing the third respondent as Inkosi.

[45] The application for the relief sought was grounded, firstly, on the basis that the process leading to the appointment of the applicant was invalid for failure to comply with s 19 of the KZN Governance Act and the Promotion of Administrative Justice Act ('PAJA').⁵ Secondly, that the appointment of the applicant as Inkosi was incompetent under customary law, customs and traditions and, that as a result, the applicant's claim was inherently flawed. The third respondent asserted that he was the rightful heir.

[46] The applicant did not oppose the application. However, the first and second respondents opposed the application, mainly on the basis that the applicant was duly identified and nominated for recognition as Inkosi. The first and second respondents contended that the first respondent had logically accepted the nomination of the applicant as Inkosi and recognised him as such, and contended that the first respondent's decision was rational and reasonable.

[47] The matter served before Chetty J on 14 March 2016. The learned judge granted an order that:

'(1) The decision of the third respondent recognising the first respondent be and is hereby set aside.

(2) The third respondent together with the fourth and fifth respondents are directed to do all that is necessary and publish all notices to withdraw the appointment of the first respondent.

(3) The third, fourth and fifth respondents pay the applicants costs.'

⁵ Promotion of Administrative Justice Act 3 of 2000.

[48] The applicant did not apply for the rescission of the order nor did he appeal against it. The applicant avers that the reasons for his inaction were, firstly, that he intended to avert a civil war which might unnecessarily result in the loss of many lives, and result in protracted and costly litigation. Secondly, that the uMndeni weNkosi wanted to move on, convene a meeting and appoint an Inkosi.

[49] The first respondent published the notice of withdrawal of the recognition of the applicant in the *Provincial Gazette* dated 1 June 2016.⁶ On 27 August 2016, the officials of the second respondent advised the uMndeni weNkosi that the applicant's recognition as Inkosi of the Dlomo Traditional Community had been set aside by the court, and that the Government Notice withdrawing the applicant's recognition was issued on 1 June 2016.

[50] The applicant mistook the setting aside of his recognition as Inkosi as having the effect of automatically referring the matter back to the uMndeni weNkosi for reconsideration and resolution. Subsequently, the MaBhengu faction convened a meeting on 18 September 2016 and re-nominated the applicant for recognition as Inkosi of the Dlomo Traditional Community, and submitted the minutes of such meeting to the second respondent.

[51] On 15 October 2016, the MaGasa faction convened the meeting, chaired by the ibambabukhosi, which culminated in the unanimous identification and nomination of the third respondent for recognition as Inkosi of the Dlomo Traditional Community and such minutes were forwarded to the first and second respondents. When the officials of the second respondent visited the uMndeni weNkosi in order to verify the two sets of minutes, they discovered that the uMndeni weNkosi could not unanimously agree on a successor.

⁶ Withdrawal of Recognition of Mkhululeki Cyvion Dlomo as Inkosi of the Gcothoyi Traditional Community, as contemplated in section 21(1)(c) of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005, PN 99, *KZN PG* 1680, 1 June 2016.

[52] In December 2016, the second respondent met the uMndeni weNkosi again, but it still could not agree on a successor. On 1 April 2018, the second respondent once again met with the uMndeni weNkosi and advised it to appoint a regent (ibambabukhosi) until the impasse was resolved in order to ensure that service delivery in the area was not disrupted. On a later date, the second respondent once again visited the uMndeni weNkosi but still no solution could be found for the dispute. The uMndeni weNkosi then undertook to inform the second respondent on further developments in the matter.

[53] There was nothing forthcoming until the applicant instituted the present application on 19 April 2018, in which he seeks an order compelling the first respondent to reinstate him as Inkosi, with further relief against the first and second respondents, claiming among others, that the first respondent should take certain steps in recognising him as such.

[54] When the matter came before this Court on 3 June 2018 the court directed that Mandlakhe Justice Dlomo (the third respondent) should be joined as a respondent, as he had an interest in the matter. On 29 June 2018 the first and second respondents withdrew their notice of opposition, and elected to abide by the court's decision.

[55] The reports by the Commission and Luthuli Sithole Attorneys, evidence tendered before the Commission, the affidavits by witnesses, the findings and recommendations thereof, submissions made by both the MaBhengu and MaGasa II factions, and other relevant information, have been incorporated into the papers as evidence upon which the parties rely for their claims, assertions and relief sought. For that reason, it has not been necessary to refer the matter for the hearing of oral evidence. In any event, the witnesses who testified before the Commission, for instance, have since passed away.

Applicant's submissions

[56] The applicant contends that the order granted against him under case number 6236/20213P did not preclude him from again being identified and nominated by the

uMndeni weNkosi, for recognition as Inkosi. According to the applicant, the identification and nomination of a person by the uMndeni weNkosi as Inkosi is paramount. Once the first respondent is satisfied that the identification of the nominated Inkosi is correct, it should recognise such person as an Inkosi.

[57] The applicant goes on to argue that even if the father of the third respondent had correctly been appointed, the third respondent cannot stand in the way of the uMndeni weNkosi appointing the rightful heir. The applicant argues that the process of identification has already been done but that the first and second respondents have failed to act in terms thereof.

[58] The applicant admits that he was cited under case no 6236/2013P and disputes that he was served with the necessary papers and documents. The applicant states that had he been served with papers, he would have opposed the application. The applicant avers that his claim to chieftainship is based on the fact that his father was the last Inkosi recognised by the uMndeni weNkosi whereas the third respondent's father had not been appointed by the uMndeni weNkosi.

[59] The applicant avers that where the great wife has no male issue at the death of an Inkosi, the uMndeni weNkosi had the authority to decide the successor from the sons of other wives. It is the contention of the applicant that since MaGasa I was senior to MaNgcobo she could not have been affiliated as a seed-raiser to a bride who was younger than her. The applicant contends that such a decision of the late Inkosi Zingelwayo was against the custom and tradition and the wishes of Dlomo Traditional Community.

[60] The applicant goes on to contend that as MaGasa I already had a child, Babula, MaGasa II could not have been affiliated to MaGasa I. He goes on to contend that although MaGasa II was taken to iNdlunkulu by her sister, she was not affiliated to iNdlunkulu. Therefore, the house of MaGasa II was junior to the house of MaBhengu,

and MaBhengu was instead affiliated to iNdlunkulu. According to the applicant, it was thus impossible for either MaGasa I or MaGasa II to have been affiliated to MaNgcobo.

[61] The applicant avers that MaBhengu was implanted in the womb of MaNgcobo, and that the argument that MaGasa II was affiliated to MaGasa I, as a seed-bearer was totally flawed since Bubula was already in the iNdlunkulu.

[62] The applicant disputes that the son of MaGasa II had to succeed Bubula. According to the applicant, the decision to appoint an Inkosi lies solely with the uMndeni weNkosi, and Inkosi Muntukaboni was appointed by the Secretary. Such decision was against the law as the Secretary could not usurp the power and authority of the uMndeni weNkosi to nominate and appoint an Inkosi. The applicant avers that Babula died three weeks prior to his anointment and thus never became the Inkosi. His death marked the end of his lineage.

Third respondent

[63] The third respondent contends that the decision of the first respondent on 1 April 2013 recognising the applicant, the oldest son of Zenzo as Inkosi of the Dlomo Traditional Community was impugned in that the decision was incompetent under customary law and traditions and did not follow the prescripts of administrative fairness.

[64] The third respondent contends that the process of appointment relates to the appointment of a person who qualifies to assume the position of an Inkosi in terms of customary law and traditions. The basis of such appointment, according to the third respondent, is the custom, tradition and norms of a particular traditional community, and not the preference of the uMndeni weNkosi per se.

[65] The third respondent argues, firstly, that the decision to appoint the applicant at the first instance, was materially influenced by an error of law as such appointment or recognition was contrary to customary law and traditions. Secondly, the decision was taken for a reason not authorised by the empowering provision in that in terms of s

19(1) of the KZN Governance Act, the uMndeni weNkosi must identify the person who qualifies under customary law to assume the position of Inkosi. Thirdly, the appointment was procedurally unfair and in violation of the rules of natural justice in that the uMndeni weNkosi was not notified of the impending decision to appoint the applicant, and that the uMndeni weNkosi was not given an opportunity to make representations and submissions in terms of PAJA.

[66] The third respondent avers that as the oldest son of the deceased Inkosi, Muntukaboni Jabulani Dlomo, is in terms of customary law and traditions in line for succession to his father. According to him, the uMndeni weNkosi has correctly identified and nominated him for recognition as the Inkosi of the Dlomo Traditional Community.

[67] The third respondent asserts that he is the rightful Inkosi of the Dlomo Traditional Community and that Zenzo and his son, the applicant, have virtually no claim to chieftainship of this community.

[68] The third respondent avers that MaGasa II took, acquired and assumed all the rights and obligations of her deceased sister, MaGasa I, in the Great House. The third respondent states that notwithstanding the decision of the uMndeni weNkosi appointing Khumukani, the oldest son of MaGasa II, as Inkosi of the Dlomo Traditional Community, the supporters of Zenzo went behind the backs of the uMndeni weNkosi and fraudulently substituted the name of Zenzo for Khumukani at Magistrate for appointment as Inkosi of the Dlomo Traditional Community.

[69] The third respondent avers that the proper person to be identified and recommended to succeed Bubula was the second born son of MaGasa II, Muntukaboni Jabulani Dlomo, as the uMndeni weNkosi had recommended.

[70] The third respondent argues that there is no basis under customary law and traditions for the recognition of both Zenzo and the applicant as Inkosi of the Dlomo Traditional Community.

Common cause facts

[71] The following are common cause facts:

- (a) MaGasa I was affiliated to the house of MaNgcobo, iNdlunkulu, and that it was against that background that the late Inkosi Zingelwayo nominated her son, Bubula, as his heir and successor.
- (b) Once the deceased Inkosi has declared the status of his wives during his lifetime, the uMndeni weNkosi is not entitled to alter such status after his death.
- (c) The Dlomo Traditional Community determines the question of hereditary succession in accordance with Zulu law, custom and tradition.
- (d) MaBhengu was on the ikhohlwa side of the Nhlanhleni royal homestead.
- (e) The third respondent is the firstborn son of the deceased Inkosi Muntukaboni Jabulani Dlomo.
- (f) The applicant was cited as a party in the proceedings under case number 6236/2013P

Issues

[72] The issues that arise in the matter are:

- (a) Was the applicant entitled to disobey the court order granted against him on the subject matter and institute a fresh application proceedings?
- (b) Was the matter *res judicata*?
- (c) Was MaBhengu affiliated to iNdlunkulu?

(d) Was the 1974 uMndeni weNkosi meeting and the resultant nomination of Zenzo legitimate, lawful and valid?

(e) Is the applicant or the third respondent the rightful heir and successor to the throne of Dlomo Traditional Community?

(f) Was the Commission correct in recommending Muntukaboni, the second born son of MaGasa II, for appointment as Inkosi, instead of the male issue of Khumukani?

Analysis

Disobeying a court order

[73] It is common cause that the applicant did not abide by the order of this Court, granted against him on 14 March 2016. Instead, he instituted fresh application proceedings without in any way having challenged such order. The applicant did not seek an order rescinding the order nor did he appeal against it. In his replying affidavit, the applicant states that the reason for not taking any action was that the uMndeni weNkosi had decided not to rescind the court order or to appeal against it since it was going to delay the process of appointing an Inkosi. The uMndeni weNkosi wanted to move on, convene a meeting and appoint an Inkosi. To me such an explanation by the applicant seems to far-fetched.

[74] It is a general principle of law that a court stands by its decision even where a judgment is a nullity for technical reasons.⁷ The rationale behind this, ‘. . . is to avoid uncertainty and confusion, to protect vested rights and legitimate expectations as well as to uphold the dignity of the court’.⁸ If a court gives an order or judgment and that

⁷ *Municipal Manager OR Tambo District Municipality and another v Ndabeni* [2022] ZACC 3; 2022 (10) BCLR 1254 (CC) para 24; *Trade Fairs and Promotions (Pty) Ltd v Thomson and another* 1984 (4) SA 177 (W) at 187.

⁸ *Patmar Explorations (Pty) Ltd and others v Limpopo Development Tribunal and others* [2018] ZASCA 19; 2018 (4) SA 107 (SCA) para 4; see also *Ex Parte Minister of Safety and Security and others: In re S v Walters and another* [2002] ZACC 6; 2002 (4) SA 613 (CC); 2002 (7) BCLR 663 (CC).

order or judgment is simply ignored with impunity, the administration of justice will collapse.

[75] The applicant cannot be allowed to defy the court order and demand that he should be reinstated in the position he held prior to the order. Even if the order had been granted in default, the applicant was required to either have the order rescinded or appealed against and set aside, before embarking on the next course of action.⁹ The first respondent denies that it failed or refused to process the applicant's application but states that it has been acting in compliance with the court order. The first respondent further states that it cannot recognise any claimant until the dispute is resolved.

Is the matter res judicata?

[76] *Res judicata* is defined as '... the legal doctrine that bars continued litigation of the same case, on the same issues, between the same parties'.¹⁰ The order or judgment must have a final effect for the doctrine to apply.

[77] Both parties seek the same relief on the same cause of action, namely that each should be recognised by the first respondent as Inkosi of the Dlomo Traditional Community on the basis that each has been appointed by the uMndeni weNkosi as Inkosi, and each of them claims to be the rightful heir and successor in terms of customary law and traditions.

[78] The cause of action has been litigated to finality between the same parties on the previous occasion.

[79] The applicant, in his heads of argument filed on 29 July 2014,¹¹ has admitted that the matter under case number 6236/2013P was finally dealt with on 14 March 2016, when this court granted an order withdrawing the applicant's recognition as Inkosi of the Dlomo Traditional Community.

⁹ Section 165(5) of the Constitution.

¹⁰ *S v Molaudzi* [2015] ZACC 20; 2015 (2) SACR 341 (CC); 2015 (8) BCLR 904 (CC) para 14.

¹¹ Para 9.

[80] That order was final and there was nothing to show that it had been fraudulently obtained. Therefore, it could not be said that the court was misled into pronouncing a judgment, but for the fraud, it would not have done.

[81] The applicant admits that he was cited as a party in the proceedings under case number 6236/2013P but denies receiving the notice of set down. Therefore, he had no knowledge of such proceedings. His allegation was met with a rebuttal by Mr Nkosinathi Joel Mpungose, the Deputy Director-General in the employ of the second respondent, in his affidavit on behalf of the first and second respondents. He categorically states that the applicant had been served with the court papers under case number 6236/2013P and chose not to oppose the matter. Mr Mpungose goes on to state that the returns of service indicated that service was effected on the applicant - both at his office and at his home. At his office, the court papers were handed to and received by one Cabangile Dlomo and at his home by one Sabani Dlomo.

[82] In the public interest, ‘. . . effect must be given to a final judgment, even if it is erroneous’.¹² Public policy requires that ‘. . . litigation should not be endless’.¹³ The enquiry in respect of *res judicata*, ‘. . . is not whether the judgment is right or wrong, but simply whether there is a judgment’.¹⁴ For this reason, the law allows a defendant ‘. . . to rely upon *res judicata* notwithstanding that the judgment is wrong’.¹⁵ There should be no uncertainty as to the rights of the plaintiff or defendant. The requirements of good faith do not permit that the same thing must be demanded more than once.

[83] Has it not been for the applicant’s averment that the uMndeni weNkosi has a prerogative to identify and nominate any person it prefers as Inkosi, as well as the counter-application, I would have ended the judgment here and found in favour of the third respondent.

¹² *African Farms and Townships Ltd v Cape Town Municipality* 1963 (2) SA 555 (A) at 564C-D.

¹³ *Bertram v Wood* (1893) 10 SC 177 at 180.

¹⁴ *African Farms and Townships Ltd v Cape Town Municipality* 1963 (2) SA 555 (A) at 564D.

¹⁵ *African Farms and Townships Ltd* at 364F.

Was MaBhengu affiliated to iNdlunkulu and the bearer of an heir?

[84] In dispute is whether MaBhengu was affiliated to iNdlunkulu and the bearer of an heir. The applicant contends that MaBhengu, a royalty, was affiliated to the house of MaNgcobo, iNdlunkulu, and that she was therefore the bearer of an heir and a successor to the Dlomo Traditional Community.

[85] The Natal Code of Zulu Law¹⁶ defines the concept “affiliation” as meaning

‘the attachment of one or more junior houses to a senior or superior house, either the *indlunkulu*, the *ikhohlo* or the *iqadi*, for the purpose of providing against the failure of an heir in such senior or superior house, and “affiliated” has a corresponding meaning’.¹⁷

[86] Apart from the applicant’s assertion that the death of MaGasa I meant that MaBhengu was the next iNdlunkulu affiliate, there is no concrete evidence to the effect that MaBhengu was at any stage affiliated to iNdlunkulu. Such an assertion is merely based on the consideration of seniority of the wives of the late Inkosi Zingelwayo, and how they were taken into iNdlunkulu. Such a consideration, in turn, is based on the contention by the MaBhengu faction that MaBhengu, as royalty, could not be equated with MaGasa II, a commoner.

[87] The applicant has argued that MaGasa I was older than MaNgcobo. She could not, therefore, be affiliated to a wife who was younger than her. This does not hold any water since the status of the wives of an Inkosi is not declared until after the assumption by the Inkosi of his chief wife (undlunkulu), who is usually taken later than the first and second wives.¹⁸ In the present matter, MaNgcobo in her capacity as undlunkulu was senior to MaGasa I and nothing could bar the late Inkosi Zingelwayo from fixing the status of his wives as he chose to do it.

¹⁶ Natal Code of Zulu Law Proclamation R151 of 1987.

¹⁷ Section 1.

¹⁸ Section 75(1) of the Code of Zulu Law.

[88] It is apparent that MaBhengu had only an expectation that after the death of MaGasa I, she would be affiliated to iNdlunkulu which did not occur. This is the evident from the conduct of the MaBhengu faction after the death of Bubula. They purported to revert to the custom and traditions of the Dlomo Traditional Community by identifying and nominating Zenzo, the oldest son of MaBhengu, for appointment as the successor to Bubula, the son of MaGasa I. In their version, by so doing, there were restoring the position.

[89] The applicant contends that MaBhengu was implanted in the womb of MaNgcobo. However, customarily, a wife cannot be implanted in the womb of another wife. In the event of a failure of an heir or if a particular wife does not have children, a child of one wife is implanted in the womb of another wife, who cannot bear an heir/children. The applicant might be confusing affiliation with the implanting of a child in a womb of a wife who cannot have children, or who cannot bear an heir, as it happened to Bubula.

[90] Even the witnesses who testified at the Commission could not explain by means of any factual occurrences, incidents, and details the circumstances surrounding the alleged affiliation. Instead, they reiterated that MaGasa II's house was junior to that of MaBhengu, a royalty.

[91] In support of the allegation that MaBhengu was affiliated to MaNgcobo, the applicant states that when Inkosi Zingelwayo realised that the health of MaNgcobo was deteriorating, he married MaBhengu as 'umakoti wendlunkulu' (a newly wedded or married wife helping in the great house). However, this statement is silent on the fixing of MaBhengu's status. Nor is there anything to show that she was affiliated to the house of MaNgcobo and that such alleged affiliation was announced.

[92] The evidence of Sizani, the daughter of MaNgcobo, and the evidence of others who testified or made statements before Luthuli Sithole Attorneys that MaBhengu was a daughter of an Inkosi and that she was affiliated to the house of MaNgcobo is not borne

out by the customary union register, which was kept at Kranskop.¹⁹ According to the register, MaBhengu's father was not an Inkosi, as it is alleged, but his status is described as a 'headman' (an induna) and does not accord any status to MaBhengu. Customarily, the daughter of an induna does not enjoy a higher status than the daughter of an ordinary person. The Inkosi was in terms of the Natal Code of Zulu Law,²⁰ ' . . . upon the assumption of his chief wife, to report to the Secretary through the Commissioner or Magistrate the name of his various wives and the status of each'. In which event she could not have escaped to have her status declared upon marriage, if she was affiliated to indlunkulu or was an heir bearer, as it is claimed. A register of customary marriages is 'kept in the office of the Commissioner or Magistrate in the form prescribed . . . and shall be open at all convenient times for inspections, free of charge. . .'.²¹ From when the Commission was held during 1991 to date, the applicant has not produced any evidence contrary to the entry made in the customary marriages register or provided actual proof that MaBhengu was affiliated to the iNdlunkulu as an heir bearer. In the circumstances, I deem it appropriate to conclude that the entry made in the register in this regard provides conclusive proof that the status of MaBhengu was never fixed.

[93] The evidence tendered before the Commission places MaBhengu on the 'ikhohlwa' side in that her hut was on the left-hand side of the Nhlanhleni royal homestead. This finds confirmation in the submission by Mr Zondi, for the applicant, when addressing the court in this regard. He repeatedly stated that MaBhengu was on the ikhohlwa side. However, when I mentioned that if she was on the ikhohlwa side, her son could not be in line for succession, Mr Zondi then argued that whatever the position was, the uMndeni weNkosi has the prerogative to identify and nominate any person it prefers to be recognised as Inkosi.

[94] On the other hand, the evidence relating to the status of MaGasa II being the seed-raiser in the house of MaGasa I and, ultimately, in the house of MaNgcobo,

¹⁹ Annexure 'F'.

²⁰ Section 75(3).

²¹ Section 44 of the Natal Code of Zulu Law.

iNdlunkulu, is concrete and unshaken. That MaGasa I was affiliated to iNdlunkulu is borne out by the customary marriages register. The evidence tendered both before the Commission and Luthuli Sithole Attorneys, shows that MaGasa I was occupying a right-hand house and when she died she was replaced by MaGasa II, who took care of Bubula until he died.

[95] Since it was the special function of MaGasa II to bear an heir for the house of MaGasa I, she created no house of her own but was an auxiliary wife of the house of MaGasa I. As MaGasa II revived MaGasa I's house who was affiliated to iNdlunkulu, she was entitled to take MaGasa I's house as well as that of MaNgcobo. Her son was also entitled to succeed Bubula, the son of MaGasa I, who had died without a male issue.

[96] It was common cause at the Commission that MaGasa II used the belongings of MaGasa I and those of MaNgcobo after their death, and that she moved into their houses. There is also no evidence substantiating that MaBhengu was second to be affiliated to iNdlunkulu. Further, there is no evidence supporting that as the daughter of an Inkosi she was the next seed-bearer. The customary marriages register is silent on MaBhengu being affiliated to iNdlunkulu upon marriage.

Altering the status of the wives of the late Inkosi Zingelwayo

[97] There was a failure of an heir in the iNdlunkulu. As a practical solution to the problem, the late Inkosi Zingelwayo affiliated MaGasa I to the house of MaNgcobo, iNdlunkulu, as a seed-raiser. He then placed, Bubula, the son of MaGasa I, in the iNdlunkulu with a view to providing an heir. The applicant contends that such a decision by the late Inkosi Zingelwayo was against the custom and tradition and the wishes of the Dlomo Traditional Community.

[98] The applicant argues that according to the custom and tradition practised by the Dlomo Traditional Community, MaBhengu was a rightful wife to enter into the womb of

MaNgcobo, as she was young. He goes on to argue that MaBhengu was the third in line according to the hierarchy of the wives at the Nhlanhleni royal homestead.

[99] Luthuli Sithole Attorneys found that MaGasa I was ikhohlwa of another kraal, Qhudeni, and that she was older than MaNgcobo. According to tradition, she could not be implanted in the womb of MaNgcobo. They went on to find that when Bubula died three weeks before he was anointed, Inkosi Zingelwayo's wishes came to an end.

[100] In the absence of Inkosi Zingelwayo's nomination, Luthuli Sithole Attorneys found that it was correct for the uMndeni weNkosi to revert back to the custom and tradition in order to solve the problem. It is common cause that once the late Inkosi has fixed the status of his wives during his life time, the members of the uMndeni weNkosi are not entitled to alter such status, let alone for the worse.²²

[101] Members of the uMndeni weNkosi are only entitled to confer status upon the wives of the deceased Inkosi or family head, if he died having not fixed their status. In the present case, the late Inkosi Zingelwayo fixed the status of his wives during his lifetime. Interfering with such status by the uMndeni weNkosi was unlawful and had the effect of subverting customary law and traditions, and thereby frustrated the wishes of the late Inkosi. In addition, it was unfair and prejudicial to MaGasa II, for instance, who had been appointed as seed-raiser and heir bearer by her late husband. Her children were thereby precluded from succeeding to Bubula, their half-brother.

1974uMndeni weNkosi meeting with the resultant nomination of Zenzo

[102] Following the wishes of the late Inkosi Zingelwayo, Bubula, the oldest son of MaGasa I, was appointed Inkosi of the Dlomo Traditional Community after his death. However, his appointment was short lived as he died of a snake bite prior to his formal anointment. The MaBhengu faction met on a night preceding the burial of Bubula and resolved that Zenzo, the oldest son of MaBhengu, should be nominated for appointment

²² See also J C Bekker *Seymour's Customary Law Southern Africa* 5 ed (1989) at 129 ('*Seymour's Customary Law*'); *Dhlamini v Dhlamini* 1939 NAC (T&N) 95.

as Inkosi and at the gravesite, on the following day, Majubane without the approval of the elders of the uMndeni weNkosi announced that Enzo would succeed as Inkosi.

[103] The clandestine appointment of Enzo did not enjoy the support of the senior members of the uMndeni weNkosi and the community. Enzo and his supporters went behind the backs of the elders of the tribe and had him quickly appointed by the Nkandla Magistrate.

[104] The Commission correctly found that the appointment of Enzo was incompetent under customary law and traditions, as it was done without the sanction of the senior members of the uMndeni weNkosi. In its own words, the Commission said in this regard:

‘It became apparent that the clandestine decision to appoint Enzo was entirely wrong. It did not have the support of the tribe and was not the decision of the senior members of the Dlomo family. Instead Enzo Dlomo and his supporters went behind the backs of the leaders of [the] tribe and had him appointed quickly and surreptitiously by the magistrate.’

[105] It is quite evident from the finding of the Commission that the 1974 uMndeni weNkosi meeting lacked legitimacy and that it was unlawful. It follows therefore that no lawful effect could be produced by such a meeting, and as a result it was invalid. In the circumstances, the Commission correctly came to the conclusion that in terms of the customs and traditions the chieftainship of the Dlomo Traditional Community resided with the house of MaGasa II. The contention by the applicant that since Bubula died three weeks before his anointment he never became an Inkosi, lacks substance in that the uMndeni weNkosi had unanimously identified and nominated him for appointment. At the time of his death, the letters of appointment had already been issued to him. His anointment in the circumstances was a mere formality, as the actual appointment had already taken place.

[106] Accordingly, the recommendation by Luthuli Sithole Attorneys that the uMndeni weNkosi was correct in identifying and nominating Zenzo, the oldest son of MaBhengu, as heir and successor, was therefore wrong. It was not based on genealogical outcomes and the truth. The 1975 uMndeni weNkosi meeting which had been properly convened and representative of the family put it clearly that an Inkosi should come from MaGasa II because she was affiliated to iNdlunkulu as the seed-raiser and the bearer of an heir.

A rightful heir and successor

[107] The third respondent asserts that he is the rightful heir and successor to the throne of the Dlomo Traditional Community, and that in terms of customary law and traditions the applicant has no legitimate claim to the throne. According to the third respondent the proper person who should have succeeded Bubula was the second born son of MaGasa II, Muntukaboni Jabulani Dlomo, the third respondent's biological father.

[108] It is common cause that the Dlomo Traditional Community practises Zulu law, customs and traditions when choosing an Inkosi. In this regard section 81(1) of the Natal Code of Zulu sets out the principles applicable and the procedure followed when the succession of an Inkosi is determined. Succession

'come[s] to pass upon and through males only in accordance with the following table-

- (a) the eldest son of the *indlunkulu* or if he be dead such eldest son's senior male descendant:
- (b) failing such eldest son or any male descendant through him, the second son of the *indlunkulu*, or if he be dead his senior male descendant and so on through the sons of the *indlunkulu* and their male descendants in due order of seniority:
- (c) if there be no son or male descendant of any son of the *indlunkulu* the eldest son of the house first affiliated to the *indlunkulu* or his senior male descendant and so

on through the sons of such first affiliated house and their male descendants in due order of seniority:

- (d) if there be no son or male descendant of any son of the house first affiliated to the *indlunkulu* the eldest son of the house second affiliated to the *indlunkulu* or his senior male descendant and so on through the sons of such house and their male descendants in due order of seniority and through the various affiliated houses in the order of their affiliation:
- (e) If there be no heir in the *indlunkulu* or in any house affiliated thereto, recourse will be had to the *iqadi* for a general heir and thereafter to the affiliated *iqadi* houses in order of their affiliation to the *iqadi*. If there be no heir in any *iqadi* house, recourse will be had to the *ikhohlwa* with subsequent recourse to the affiliated *khohlwa* houses in the order of their affiliation:
- (f) If there be no heir in the *iqadi* or *ikhohlwa* sections of the family home, the father of the deceased, or if he be dead, the family head's eldest brother of the same house or his senior male descendant and so on through the brothers of that house and their male descendants in order of seniority:
- (g) If there be no brother of the deceased of the same house or male descendant of any such brother, the deceased's eldest brother of the allied or affiliated house of higher rank or the next rank as the case may be or his senior male descendant and so on through the brothers of such allied or affiliated house and their male descendants in order of seniority and thereafter through the brothers of the remaining houses in order of rank and their male descendants:
- (h) If there be no brother of the deceased or male descendant of any brother of any house, the paternal grandfather and failing such the foregoing principles shall in like manner be applied until the male lines of next-of-kin, both collaterals and ascendants, are exhausted.'

[109] MaGasa I was affiliated and seed-raiser to iNdlunkulu, the house of MaNgcobo. When MaGasa I died, her place was taken by MaGasa II, as a replacement. In that way, MaGasa II assumed all the rights and obligations of her deceased sister, MaGasa I, and virtually stepped into her shoes. The affiliation and the seed-raiser status of MaGasa I was thereby revived and resurrected. The senior wife, MaNgcobo, who was still alive, approved of the substitution of MaGasa II for MaGasa I and she incorporated her (MaGasa II) into her senior house as the seed-raiser.

[110] The author JC Bekker,²³ has the following to say regarding the position and function of a seed-raiser:

‘ . . . if a family head marries a wife as seed-raiser to a main wife who is barren or has died or whose customary marriage has been dissolved, the seed-raiser does not create a house, but is absorbed into the house into which she has been placed; if the original wife of that house has died or been divorced, the seed-raiser takes her place in all respects. The position of an intended seed-raiser must be publicly announced at the time of her marriage, otherwise she creates a house which takes its normal rank in her husband’s family home.’

[111] In this case, MaGasa II satisfied all these requirements. Her status as being an affiliate and seed-raiser in the iNdlunkulu was entered into the customary union register, and its announcement is substantiated by the evidence tendered at the Commission, and in particular, the evidence by Makhosonke Cornelius Dlomo and Anthony Dlomo.

[112] In the circumstances, when Bubula died the uMndeni weNkosi should not have looked further than the children of MaGasa II, as substitute for MaGasa I, for succession purposes. It is not correct that the uMndeni weNkosi had no option but to resort to customary laws and tradition. MaBhengu was neither the de jure nor the de facto main wife in the Nhlanhleni royal homestead.

²³ *Seymour’s Customary Law* at 132.

[113] MaGasa II was given all the responsibilities and obligations of the seed-bearing wife. In such a position, capacity and status, MaGasa II was fully entitled to and used all the belongings of MaGasa I and MaNgcobo, the undlunkulu. After their death she was therefore elevated through the status of being a seed-bearing wife into the senior house, to the exclusion of all other wives in the homestead. It was common cause at the Commission that MaGasa II used the belongings of MaGasa I and MaNgcobo, after their death and that she moved into their houses.²⁴

[114] The Commission correctly found that the concept of a 'nanny' or 'nurse-maid' or 'child-minder' was totally foreign to the Dlomo Traditional Community. Anthony labelled it as ridiculous when he testified before the Commission. This also finds support in the evidence of Magubane who testified in favour of the Zenzo faction. The evidence clearly establishes that MaGasa II was purely married for the purposes of becoming a seed-raiser and an heir bearer - not a child-minder.

[115] The evidence does not even establish that MaBhengu was the second affiliated wife to iNdlunkulu. Instead, it establishes that she was on the ikhohlwa side, and therefore in the left-hand section of the homestead. MaGasa II's house was on the right-hand section, which is immediately subordinate to the great house (iNdlunkulu) and precedes the left-hand section in regard to succession to iNdlunkulu. There must have been iqadi, however in this case it is not known which house was iqadi. Iqadi is also a right-hand house which is established for the purpose of providing against the failure of an heir in a senior or superior house. The evidence establishes that MaMsane was also in the ikhohlwa side, and she could therefore not have been an iqadi. It is apparent that had MaGasa I not been not affiliated to the iNdlunkulu as a seed-raiser, she could have been iqadi wife, regard being had to the fact that her hut was on the right-hand side.

²⁴ Commission's report at 6.

[116] MaBhengu, being an ikhohlwa, meant that recourse could only have been had to her house, if there was no heir in the affiliated house, in the iqadi house and in the houses affiliated to it, in terms of s 81(1)(e) of the Natal Code of Zulu Law.

[117] I now turn to deal with the applicant's contention that it is the prerogative of the uMndeni weNkosi to identify and nominate any person for recognition as inkosi. In this regard, s 19 of the KZN Governance Act, provides that:

'19 Recognition of an *Inkosi*

(1) Whenever the position of an *Inkosi* is to be filled, the following process must be followed-

(a) *Umndeni wenkosi* must, within a reasonable time after the need arises for the position of an *Inkosi* to be filled, and with due regard to applicable customary law and section 3-

(i) identify a person who qualifies in terms of customary law to assume the position of an *Inkosi* after taking into account whether any of the grounds referred to in section 21(1)(a), (b) or (d) apply to that person;

(ii) provide the Premier with the reasons for the identification of that person as an *Inkosi*; and

(iii) the Premier must, subject to subsection (3) of this section and section 3, recognise a person so identified in terms of subsection (1)(a)(i) as *Inkosi*. . .'

[118] Section 11(1) (a) of the Traditional Leadership and Governance Framework Act,²⁵ and s 8(1)(a) of the Traditional and Khoi-San Leadership Act²⁶ (which repealed the former), contain similar provisions.

²⁵ Traditional Leadership and Governance Framework Act 41 of 2003.

[119] While it is correct that it is the prerogative of the uMndeni weNkosi to identify and nominate a suitable person for recognition as Inkosi, it must do so in terms of customary law, customs and traditions.²⁷ In this regard, Mossop J in *Mtungwa and another v Premier of KwaZulu-Natal and others*,²⁸ remarked that:

‘A person is elevated to the position of iNkosi because of the observance of the time-honoured practices of custom, tradition, and the prescripts of customary law.’

[120] The uMndeni weNkosi’s identification of a person is circumscribed by the statutory requirement that the person identified must, in terms of customary law, custom and tradition qualify to assume the position of Inkosi.

[121] It therefore follows that the uMndeni weNkosi does not have an unfettered prerogative to identify and nominate any person for recognition as an Inkosi simply because it prefers him to be an Inkosi, irrespective of whether such person in terms of customary law, customs and tradition qualifies to assume such position. Allowing the uMndeni weNkosi to do so will be subversive of the identification and nomination process and, ultimately, turn it into a mockery.

[122] In the present case, the evidence has established that the applicant does not in terms of customary law, custom and tradition qualify to assume the position of Inkosi of the Dlomo Traditional Community. He does not have a legitimate claim to the Dlomo chieftainship. In the premises, the heir and successor should come from the house of MaGasa II, the seed-raiser and bearer of an heir in terms of customary law and traditions. The applicant was therefore lawfully removed from the position, and has not made out any case for reinstatement.

²⁶ Traditional and Khoi-San Leadership Act 3 of 2019.

²⁷ *Maxwele Royal Family and another v Premier of the Eastern Cape Province and others* [2021] ZAECMHC 10 para 68; *Molosi and others v Phahlo Royal Family and others* [2022] ZAECMHC 101; [2022] 3 All SA 160 (ECM); *Zulu v Mathe and others* [2022] ZAKZPHC 6 paras 91 and 99.

²⁸ *Mtungwa and another v Premier of Kwazulu-Natal and others* [2022] ZAKZPHC 74 para 41.

Recommendation of the second born son of MaGasa II for appointment instead of a male issue of her first born son, Khumukani

[123] Luthuli Sithole Attorneys stated that if there was claim for chieftainship by the MaGasa II faction, the first born son of Khumukani should succeed, and not Muntukaboni, the second born son of MaGasa II. Firstly, Khumukani was disqualified due to his conviction for the murder of Zenzo Dlomo, his half-brother. As a result, he forfeited his right to succeed. Accordingly, he could not transfer a right to his children which he did not have. Therefore, the succession to chieftainship had correctly passed on to the second born son of MaGasa II, Muntukaboni Jabulani Dlomo, in terms s 81(1)(c) of the Natal Code of Zulu Law. Secondly, little is known of the children of Khumukani. They have shown no interest in the Dlomo throne and, consequently, they are not parties before this court. This is evident from the confirmatory affidavit to the third respondent's counter-application, filed by Vusi Emmanuel Dlomo, the firstborn son of Khumukani, supporting the appointment of the third respondent as Inkosi of Dlomo Traditional Community.

Conclusion

[124] The applicant's claim rests on two main pillars, firstly, that MaBhengu, a royalty, could not be equated to MaGasa I, a commoner, and secondly, that MaBhengu was affiliated to iNdlunkulu and an heir-bearer. Alternatively, that the uMndeni weNkosi has the prerogative to embark on an identification process and nominate any person it prefers as Inkosi.

[125] However, the applicant's averments have not been substantiated by any concrete and tangible evidence. The customary marriage register is silent on whether MaBhengu was a daughter of an Inkosi and affiliated to iNdlunkulu (the main house). It has also not been alleged that the lobolo of MaBhengu had been paid out of the property of iNdlunkulu, and that she could have thereby been deemed to be somehow affiliated to iNdlunkulu.

[126] In addition, the applicant could not sustain the allegation that MaBhengu was a daughter of Inkosi and therefore entitled to enjoy a better right than a commoner. To the contrary, the customary marriages register describes the status of her father as an induna. Absent proof that MaBhengu was attached to the main house upon her marriage, it could reasonably be inferred that she was simply an unattached woman, creating a junior house.²⁹

[127] In terms of statutory provisions, the uMndeni weNkosi has a prerogative to identify and nominate a person for recognition as an Inkosi provided that such person is in terms of customary law, custom and tradition qualified to assume the position of an Inkosi. The applicant has not proved that he qualifies to assume the position of Inkosi.

[128] An Inkosi under traditional law is appointed on the basis of the status of his mother.³⁰ Regard being had to the fact that the status of MaBhengu was not fixed, Zenzo had no basis to succeed to the chieftainship, and so too the applicant, as he alleges that he is entitled to succeed through MaBhengu. In the premises, the applicant has failed to prove his claim to chieftainship of the Dlomo Traditional Community Leader.

[129] On the other hand, that MaGasa II was affiliated to iNdlunkulu, and that she was a seed-raiser is borne out by evidence tendered before the Commission as well as the customary union register. The resolution taken at the properly convened and fully representative 1975 uMndeni weNkosi meeting, nominating Khumukani, confirmed that MaGasa II was affiliated to iNdlunkulu and a seed-bearer, and that, therefore, an Inkosi should come from her house.

[130] The applicant's contention that the third respondent cannot expect to succeed his father, Muntukaboni, because Muntukaboni was not appointed by the uMndeni weNkosi but by the Secretary to the Department of the Chief Minister, KwaZulu Government or

²⁹ See *Seymour's Customary Law* at 130; *Dhlamini v Dlamini* 1939 NAC (T&N) 95.

³⁰ Madondo MI *The Role of the Traditional Courts in the Justice System* (2017) para 45.

the Commission as well as his allegation that Muntukaboni's appointment process was somehow manipulated, is unfounded and inappropriate. Indeed, the appointment of Muntukaboni resulted from the findings and recommendations of the Commission which was established through statutory provisions to inquire into the rightful heir and to recommend to the Cabinet who the rightful heir was. All the prominent members of the uMndeni weNkosi and persons of authority in the Dlomo Traditional Community recommended and supported the appointment of Muntukaboni as Inkosi. On the basis of the evidence tendered before it, the Commission made findings and recommendations, which, in my view were correct.

[131] Khumukani was disqualified from succeeding to Bubula on the ground that he had a conviction for murder. The members of the uMndeni weNkosi suggested that Muntukaboni would be a better candidate for appointment for the reasons stated above. The chieftainship was still within the house of MaGasa II, an heir bearing wife, where it belonged. Luthuli Sithole Attorneys misdirected themselves on the question of facts, customary law and tradition when concluding, firstly, that MaGasa II was an ikhohlwa of the Qhudeni royal homestead and older than MaNgcobo in terms of age, as such a finding is not substantiated by any evidence. The evidence established that the late Inkosi Zingelwayo only fixed the status of his wives when they were at Nhlanhleni royal homestead. Secondly, they misdirected themselves in finding that after the death of Bubula, the members of the uMndeni weNkosi were entitled to revert to customs and traditions in order to resolve the problem of succession. Prior to such finding, Luthuli Sithole Attorneys had established that the wishes of an incumbent Inkosi are binding on the members of the traditional community if an incumbent Inkosi had announced them. It was well-known how the late Inkosi Zingelwayo had ranked his wives and that he appointed Bubula as his successor. This was the position such members intended to change since they were of the view that such an action by the late Inkosi was against customary law and traditions and Luthuli Sithole Attorneys subscribed to such a view of the members of the uMndeni weNkosi. Such members not only altered the status of the wives, but also changed it for the worse for MaGasa II and her children.

[132] MaGasa II had specifically been married to replace MaGasa I as the seed-raiser and an heir bearer, and thereby revived the latter's house. The unlawful nomination of Zenzo as the next Inkosi caused MaBhengu to wrongly precede MaGasa II and for her children to preclude the children of MaGasa II from succeeding Bubula, their half-brother. It is common cause that members of the uMndeni weNkosi were not entitled under customary law and tradition to alter the status of the wives after the death of the late Inkosi Zingelwayo. By their conduct, the members of the uMndeni weNkosi had therefore subverted customary law, custom and tradition and such conduct was, accordingly, unlawful and wrongful.

[133] Luthuli Sithole Attorneys also misdirected themselves in recommending that the first respondent should recognise the applicant as Inkosi. The evidence led at the Commission established that the meeting which culminated in the appointment of Zenzo was improperly convened, clandestine and not supported by the traditional community and was not sanctioned by the senior members of the uMndeni weNkosi. Such a meeting was therefore unlawful and invalid, and could not produce a lawful result. The end result is that Zenzo was not legitimately and lawfully identified and nominated for appointment, and was thus not lawfully appointed.

[134] Luthuli Sithole Attorneys were wrong and demonstrated a lack of knowledge of customary law, customs and tradition when it concluded that the death of Bubula ended his lineage and the wishes of the late Inkosi Zingelwayo. The death of MaGasa I did not create a vacuum in her and MaNgcobo's house nor did it affect the hierarchy and status of the late Inkosi Zingelwayo's wives. This is especially if regard is had to the fact that MaGasa II stepped into the shoes of both MaGasa I and MaNgcobo, as the seed-raiser and an heir bearer, and thereby revived and resurrected both houses as one. In the circumstances, the death of MaGasa I did not create a space for MaBhengu since the position and status of MaGasa I and MaNgcobo had been taken by MaGasa II who substituted both of them.

[135] The decision of the faction of the uMndeni weNkosi that identified and nominated Zenzo as well as his son, the applicant, for appointment as Inkosi for Dlomo Traditional Community was based on false premises. Firstly, that MaBhengu was the daughter of an Inkosi who could therefore not compete with MaGasa II, a commoner and, secondly, that she was affiliated in iNdlunkulu. Both assertions are not substantiated by any evidence. In addition, that the uMndeni weNkosi has every right in law to embark on a process of identifying and nominating any person for recognition as an Inkosi. In identifying and nominating a suitable person for recognition as an Inkosi, the uMndeni weNkosi must apply customary law, customs and traditions.³¹ This is also required by statute. The Premier is obligated to ensure that such process was in accordance with customary law, customs and traditions. The evidence tendered before the Commission established that Zenzo, in terms of customary law and tradition, did not qualify to assume the position of an Inkosi and so too his son, the applicant.

[136] In the premises, the legitimacy or appropriateness of identifying and nominating Zenzo, and later his son, the applicant, as a successor to the throne falls away, and so too the applicant's claim to the throne. As the matter relating to the disputed chieftainship was finally dealt with when Chetty J granted the order withdrawing the applicant's recognition as an Inkosi of the Dlomo Traditional Community, the matter is now also *res judicata* between the parties.

[137] The third respondent has, therefore, succeeded in proving his claim to chieftainship, and in my view, his claim is legitimate and genuine. Since there is no other contender from the house of MaGasa II, and the third respondent has unanimously been identified and nominated for recognition as Inkosi of the Dlomo Traditional Community, and the matter has since 1973 been the subject of investigations and a Commission, with resultant loss of life, I do not deem it necessary and prudent to refer the matter back to the uMndeni weNkosi for reconsideration and resolution. When this court granted an order in 2016 it also did not refer the matter to

³¹ *Umndeni (Clan) of Amantungwa and others v MEC, Housing and Traditional Affairs, KwaZulu-Natal and another* [2010] ZASCA 142; [2011] 2 All SA 548 (SCA).

the uMndeni weNkosi for consideration and resolution, because it was then finalised. The overwhelming evidence has established that under customary law, custom and tradition, the third respondent is the undisputed heir and successor to the throne of the Dlomo Traditional Community, eMakhabeleni.

Costs

[138] The evidence establishes that the applicant was lawfully removed from the position he held as Inkosi. He did not challenge the order which had resulted in the withdrawal of his recognition as Inkosi. Instead, he instituted fresh proceedings, purportedly seeking an order reviewing and setting aside the decision of the first respondent not recognising him as Inkosi, in defiance of the court order.

[139] It can reasonably be inferred from his conduct that he knew that does not qualify to hold the position of Inkosi.

[140] The applicant thereby unnecessarily hauled the third respondent to court to oppose a frivolous application and, consequently, impoverished him. In any event costs must follow the results.

Order

[141] The following order is granted:

1. The main application is dismissed with costs.
2. It is declared that Mandlakhe Justice Dlomo is the Inkosi of the Dlomo Traditional Community.
3. The first and second respondents are directed to do all things necessary in compliance with the provisions of s 19 of the KwaZulu-Natal Traditional and Governance Act 5 of 2005 to appoint Mandlakhe Justice Dlomo as Inkosi of the Dlomo Traditional Community.

4. The first and second respondents are directed, after due compliance with paragraph 3, to issue a certificate appointing Mandlakhe Justice Dlomo as Inkosi of the Dlomo Traditional Community.

5. The applicant is directed to pay the costs of the main and counter-applications.

MADONDO DJP

Date Reserved: 28 April 2023

Date delivered: 29 May 2023

Counsel for Applicant: Adv Zondi

Instructed by: Ms Dlamini Attorneys
Email: msdlaminiattorneys@gmail.com
TEL: 0710156389

Counsel for the Respondents: Adv Van Jaarsveld

Instructed by: PKX Attorneys
2nd Respondent
TEL: 033-3475354
REF: M POTGIETER

Kunene Attorneys
3rd Respondent
Email: kunene.attorneys@gmail.com
Email: info@kuneneattorneyspmb.co.za
TEL: 033 3453767
REF: MR KUNENE/ad/D0015/21