

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION– MTHATHA)**

Case no: 2765/2013

In the matter between:

AYANDA MADODEBHUNGA FAKU

APPLICANT

And

**THE PREMIER OF THE EASTERN CAPE
PROVINCE**

1ST RESPONDENT

**THE MEC FOR LOCAL GOVERNEMENT
AND TRADITIONAL AFFAIRS**

2ND RESPONDENT

**SUPERINTENDENT-GENEREAL DEPARTMENT
GOVERNMENT AND TRADITIONAL AFFAIRS**

3RD RESPONDENT

NJINGALWAZI SIGCAU

4TH RESPONDENT

NTLENZI TRADITIONAL COUNCIL

5TH RESPONDENT

NTANDAZO CRHISTIAN LWANA

6TH RESPONDENT

**HER MAJESTY, QUEEN MASOBHUZA LM
SIGCAU**

7TH RESPONDENT

QAUKENI TRADITIONAL COUNCIL

8TH RESPONDENT

JUDGMENT

HINANA AJ:

Introduction

[1] The applicant instituted these application proceedings against the respondents, seeking orders in the following terms:

- (i) Directing the third respondent to pay Applicant's salary as a Traditional leader;
- (ii) Directing the first respondent to recognise Mfundisweni as a Traditional community as requested by the late King Justice Mpondombini Sigcau;
- (iii) Declaring that Mfundisweni, Tonti, Lundzwane and Maramzeni as "Ithanga" falling under the territorial jurisdiction of Qaukeni Traditional Council;
- (iv) Declaring that the Royal Family referred in the Act for purposes of section 11 with regard to the areas mentioned (*in*) paragraph 3 above and Ntlenzi, is Qaukeni Royal Family;
- (v) Directing the respondents to pay the cost of this application.

[1.1] In support of his claim, the applicant alleges that:

- (a) He is the traditional leader as defined in the Traditional Leadership and Governance Framework Act, 41 of 2003 (The National Act). The founding affidavit reflects that the purpose of this application is to:
 - (i) *"direct the Superintendent-General to pay my salary as (a) traditional leader;*
 - (ii) *declaring that the installation of the sixth respondent by the 4th respondent as headman of Mfundisweni null and void and of no force and effect;*
 - (iii) *directing the Premier not to issue a certificate of recognition to the fourth respondent in violation of section 12 read with section 11 of the Act;*
 - (iv) *to direct the Premier to consider to the late King's request to recognise Mfundisweni as a Traditional Council;*
 - (v) *to declare that Mfundisweni and Tonti are "Amathanga Kubantwana Bakomkhulu and that they together with Lundzwane, Mabovu and Maramzeni fall under the direct jurisdiction of the Qaukeni Regional Council;*

- (vi) *to declare that the Royal Family referred to in the Act for purposes of section 11 with regard to these areas and with regard to Ntlenzi is Qaukeni Royal Family"*

[1.2] He was appointed a traditional leader of Mfundisweni in terms of the then Transkei Authorities Act, 1965¹ by King Justice Mpondombini Sigcau, and his appointment was recognised by the Honourable Member of the Executive Council for Local Government and Traditional Affairs(the MEC). Annexure **AMF1** is a letter from the MEC dated 16 July 2013 and the following is reflected amongst others:

- "1. *Ayanda Madodebhunga Faku was appointed by Ntlenzi Tribal Authority as headman of Mfundisweni Administrative area in the district of Flagstaff in terms of the now repealed Transkei Authorities Act, 1965 (Act 4 of 1965).*
2. *The appointment of Ayanda Madodebhunga Faku was confirmed by the Honourable MEC in terms section 41(4) of the repealed Transkei Authority Act, 1965 (Act 104 of 1965) with effect from 01 March 2013.*
3. *Gwebizilwane Sigcau was the chief of the Pondo tribe resident within the area of jurisdiction of Flagstaff and as such endorsed the appointment Ayanda Madodebhunga Faku as headman of Mfundisweni Administrative Area.*
4. *In terms of the new Act(Traditional Leadership and Governance Act, 2005), it is responsibility of the royal family to identify a person to be recognised as Inkosi or inkosana, and the royal family is usually chaired by the Inkosi (Chief) who is the head of that particular tribe.*
5. *In the light of the above exposition, the department would not have known that the royal family which identified Ntandazo Christian Lwana and now removing Ayanda Madodebhunga Faku is an illegitimate royal family.*
6. *In the same breath, the department would not have known that Sigcau Royal Family which identified Njingalwazi Sigcau as an Inkosi*

¹ Act 4 of 1965

of Ntlenzi Traditional Council was also an illegitimate royal family and had no right to identify the son of the late Gwebizilwane Sigcau.

7. *Njingalwazi Sigcau had already been recognised as Inkosi of Ntlenzi Traditional Council by the Honourable MEC with effect from 23 April 2013 as identified by the Sigcau royal family.*
8. *The department will soon be arranging a meeting with Her Majesty Queen Mesobhuza Sigcau to address her concerns”.*

[2] It is common cause that the meeting as promised to be arranged did not take place.

[3] After his appointment, there was no process that was set in place to remove him. Instead, applicant’s salary was stopped and Ntandazo Christian Lwana (the sixth respondent) was recognised as a headman. I interpolate here and mention that there is no decision pending in terms of section 26 of the National Act.

[4] On or about 18 October 2012, the MEC wrote a letter ² to the Applicant and the following is reflected therein:

**“Removal from the position of Acting Inkosana Mfundisweni
Administrative Area: Flagstaff**

1. *Numerous reports from Sigcau Royal Family, community of Mfundisweni and Ntlenzi Traditional Council have since December 2011 been received by this office.*
2. *The complaints are as follows:*
 - *Since 01 August 2010 to date, you failed to perform your official duties as Inkosana of Mfundisweni Administrative Area;*
 - *You appointed yourself as Head and Senior Traditional Leader of the so called Mfundisweni Traditional Council without the knowledge of the royal family and Ntlenzi Traditional Council.*

² Annexure AMP6 page 29

- *You further appointed Mr Ntandazo Christian Lwana as Inkosana of Mfundisweni Administrative Area in replacement of yourself.*
 - *You have illegally appointed headman in the area of Mfundisweni, thereby dividing the community, an act which may cause unnecessary blood shed amongst the community of Mfundisweni; and*
 - *You misappropriated an amount of ±R169 000.00 which was meant for the community project development and you were found guilty by the Mthatha High Court.*
3. *As a result of the serious allegations against you, the decision to remove you was taken in the Sigcau Royal Family meetings on 20 November 2011 and 07 March 2012.*
 4. *You are therefore called upon to make representations in writing as to why the decision to remove you from the position of Inkosana of Mfundisweni Administrative Area should not be given effect and made final in terms of section 20(3)(e) of the Traditional Leadership and Governance Act, 2005 (Act 4 of 2005).*
 5. *You are given fourteen days within which to make representations, starting from the date of receipt of this correspondence and failing which the department will have no option but to implement the resolution of the Sigcau Royal Family”.*

[5] Annexure **AMF6** drew a response from applicants attorneys ³ of which the following is reflected:

"Dear Sir

We act for Mr Ayanda Madodebhunga Faku. Your letter dated October 2014 has been handed to us for attention and reply.

We propose to deal with your letter paragraph by paragraph and conclude by setting out certain submissions.

1. AD PARAGRAPH 1

1.1 *The Chairperson of the Sigcau Royal Family is u-Kumkani Mpondombini Sigcau. Our client Mr. Ayanda Faku is with him in Sandton, Johannesburg at the present moment. They are attending a meeting. U-Kumkani denies having communicated any complaints to the Department about our client.*

³ Annexure AMF7 page 33

- 1.2 *We annex hereto, a memorandum written by the King to the Premier. The memorandum is dated 7 July 2010. In that memorandum the King informs the Premier that he, as King and representing the Royal Family had appointed our client to act as a Traditional Leader and further requested that a position of Senior Traditional Leader to be created for the localities mentioned in the letter. The King is still awaiting a reply from the Premier on both requests.*
- 1.3 *We further annex hereto a letter under the King's hand addressed to the Senior Traditional Leader of Nhlenzi Traditional Council requesting the letter (after setting the history) to release the localities mentioned in the letter for transfer to the Qaukeni Regional Council.*

2. **AD PARAGRAPH 2**

- 2.1 *There are accusations that our client did not perform his official duties. These allegations are bald and unsubstantiated. They are denied.*
- 2.2 *There is also an accusation that our client appointed himself. We have already referred to two documents from the King in which the King appointed out client to act as Senior Traditional Leader for the localities and asked the Premier to confirm such an appointment. He further asked the Premier to create a position of Senior Traditional Leadership. The other document referred to was directed at the then head of Nhlenzi Traditional Council to release those localities so that they could be separate and fall under Qaukeni.*
- 2.3 *We further annex minutes of a meeting held on 4 October 2010, in which the decision of the Royal Council or Royal Family was communicated to the Mfundisweni Tribal Authority by delegates sent to that meeting by his Royal Highness. The minutes of the meeting speak for themselves.*
- 2.4 *We further annex to this letter an affidavit deposed to by our client in an application in which he sought to interdict the holding of meetings in his area. One of the problems that the application sought to address was the holding of meetings, one of which was the meeting held to appoint Christian Lwana as the Headman. This*

appointment had been done without our client's knowledge and attention and the interdict was sought to avoid the further holding of meetings and further appointment of Headman without his knowledge and without the knowledge of the Royal Family.

2.5 *There is also an allegation of misappropriation of funds. Our client has no knowledge of these accusations. He states that he has not been charged let alone found guilty for any misappropriation of funds.*

3. *Our client thanks the MEC for granting him an opportunity to make submissions. In these submissions, it is clear that the complaints received are not from the Royal Family. In terms of section 12(2), only the Royal Family decides to remove a Traditional Leader.*

4. *May we take this opportunity Honourable MEC to request you to assist our client with a reply to the King's letter of 7 July 2010. This request is made in terms of section 11(1)(b) read with section 2(2) of the Act".*

[6] On 13 August 2013, the MEC wrote annexure **AFM9** to the applicant advising him of the decision to remove him from office as the Headman of Mfundisweni Administrative Area, Flagstaff due to allegations of misconduct⁴.

[7] Annexure **AMF9** drew a response as reflected in Annexure **AMF10**⁵ wherein the applicant contends that the only Royal Family that can remove him as Inkosana is the Royal Family of the late King Mpondombini Sigcawu and that the so called Ntlenzi Royal Family is an illegitimate Royal Family and Ntlenzi belong to Qaukeni and Mfundisweni as "*Ithanga lase Qaukeni*". He contends that at no stage did he break the law, and that sixth respondent is not from the Royal Family.

⁴ Page 42

⁵ Letter from iKomkhulu lase Mfundisweni signed by the applicant on 29 August 2013

[8] It must be noted that the MEC received a letter from Qaukeni Great Place on 14 June 2013 wherein the following is reflected therein.

"It is not acceptable by the ruling Qaukeni Royal Family to hear that the above mentioned traditional leader has been removed from his position as Inkosana and also an acting senior traditional leader of Mfundisweni traditional council by an unknown and never heard of so called Ntlenzi Royal Family

The only legitimate Royal family that has power to remove Nkosana A.M. Faku is the ruling royal family of his majesty the recently deceased (sic) Justice Mpondombini the only heir of Botha Manzolwandle Sigcau.

After Botha Manzolwandle (sic) taken "NGOKWESIKO" from Ntlenzi to Qaukeni he chose his younger brother by the name of Mpenkulu Sigcau who was also to take over as a Head of Ntlenzi.

Unfortunately Mpenkulu died and his younger brother Vukayibambe was requested now by King Botha Sigcau to take over as new Head of Traditional Council as well as caretaker of all local Royal (sic) family, the homestead of Maphakathi, Botha's mother.

By virtue of birth Botha is the "Heir" and only "HEIR" of Maphakathi's house. The so called Royal family that is said to being (sic) removing Nkosana Faku from His Legal Traditional Positions in the absence of King Mpondombini's Legal ruling house is not permissible (sic) is not only illegitimate but also completely illegal (usurpers).

There is no Royal family under jurisdiction of Qaukeni that has a legal right over Traditional leadership above and beyond the house of recently deceased King Mpondombini whose house is where all files of ubuMpondo are kept. There is no (sic) different between those mentioned above..."

[9] Save for seventh and eight respondents, all other respondents opposed the application and premised their argument on the basis that the applicant was, in law, not a traditional leader, as he was appointed by the King.

[10] Further, so the argument goes, the applicant is not entitled to a salary as a headman. According to the respondents, the King could not initiate proceedings for the recognition of the applicant as Inkosana, instead, the King must be consulted. The court is not bound by the errors of the department, and the appointment of the applicant was in terms of the Transkei Authorities Act, and the removal of the applicant was in terms of section 20 of the Eastern Cape Traditional Leadership and Governance Act.⁶

[11] The applicant has been removed and the decision to remove the applicant has not been challenged. As such, the decision in **Oudekraal Estates (Pty) Ltd v City of Cape Town and Others**⁷ applies against the applicant. The respondent further argued that the applicant must “*set a foundation upon which he seeks his salary*”.

[12] The answering affidavit reflects that the appointment of the applicant was never an issue. Julius Sidumo Meteta⁸ (Meteta) who is employed by the Department of Local Government and Traditional Affairs in the Province of the Eastern Cape in his capacity as Acting Deputy Director-General responsible for Traditional Affairs deposed to the answering affidavit on behalf of all the respondents, save for the seventh and eighth respondents and, alleged the following⁹:

⁶ Act 4 of 2005

⁷ 2004 (6) SA 222 (SCA)

⁸ Page 68

⁹ Page 71

"8.1 The applicant has since been paid his salary for the period from October 2013 to January 2014.

8.2 To continue to pay the applicant when he has been legally removed as a headman will be against legislation governing public finance and remuneration of traditional leaders...

10.6.2 In recent times (2003), during the reign of Chief Gwebizilwane Sigcau of Ntlenzi Traditional Council (Hewu Great Place), after the retirement of headman Vivian Ndamase, the chief came to the Applicant and asked the community to elect him as the new headman of Mfundisweni and, amidst resistance from the community, the applicant was appointed as the headman¹⁰

10.11.13 applicant's appointment in March 2003, was preceded by a lot of contestation by the community of Mfundisweni such that some men's livestock were confiscated as a fine for defying an instruction of the chief as Chief Gwebizilwane Sigcau of Ntlenzi Traditional Council was the one who was (sic) first requested the community to choose the applicant, and when they refused, he imposed him on them as their headman.¹¹

10.11.14 the community of Mfundisweni only accepted the applicant in obedience of Chief Gwebizilwane's instructions, and this signalled the beginning of the impasse the area is currently facing, and the dispute the Honourable Court has now been asked to adjudicate upon.¹²

12. The applicant was the headman of Mfundisweni Administrative Area, Flagstaff from year 2003 until year 2008 when he disappeared only to briefly reappear in 2009 and disappeared again in October 2010, and attempts to remove (sic) him started which finally culminated to his removal in January 2014".¹³

¹⁰ Page 75 par 10.6.2

¹¹ Page 78 par 10.11.13

¹² Par 10.11.14

¹³ Page 82 par 12

[13] The Transkei Authorities Act was repealed by the Traditional Leadership and Governance Framework Act which came into operation on 24 September 2014. The Eastern Cape Traditional Leadership and Governance Act 4 of 2005 came into effect on 1 April 2006. Recently, the Traditional Leadership and Governance Framework Amendment Act, 2009 (Act 23 of 2009) came into effect on 01 February 2014 (the Amendment Act).

[14] The respondents argued that the applicant was appointed and recognised as a traditional leader on March 2013.

[15] Section 12 of the Traditional Leadership and Governance Act¹⁴ (the National Act) provides for the removal of Inkosi or Inkosana and it reads as *follows*:

"A senior traditional leader, headman or headwoman may be removed from office on the grounds of

- (a) conviction of an offence with a sentence of imprisonment for more than 12 months without an option of a fine;*
- (b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for the senior traditional leader, headman or headwoman to function as such;*
- (c) wrongful appointment or recognition; or*
- (d) a transgression of a customary rule or principle that warrants removal."*

[16]The removal of the Senior Traditional Leader or Headman or Headwoman is regulated by subsection 2 and 3(of the Act) which provides the following:

"(2) Whenever any of the grounds referred to in subsection(1) (a) (b) and (d) come to the attention of the royal family and the royal family decides to remove a senior traditional leader, headman or headwoman, the royal family must, within a reasonable time and through the relevant customary structure –

¹⁴ Act 4 of 2005 which came into effect in April 2006

- (a) *Inform the Premier of the Province concerned of the particulars of the senior traditional leader, headman or headwoman to be removed from office; and*
 - (b) *Furnish reasons for such removal.*
- (3) *Where it has been decided to remove a senior traditional leader, headman or headwoman in terms of subsection (2), the Premier of the province concerned must, in terms of applicable provincial legislation –*
- (a) *Withdraw the certificate of recognition with effect from the date of removal;*
 - (b) *publish a notice with particulars of the removed senior traditional leader, headman or headwoman;*
 - (c) *inform the Royal Family concerned, the removed senior traditional leader, headman or headwoman and the provincial house of traditional leaders concerned, of such removal.*¹⁵

[17] The provisions of the Eastern Cape Traditional Leadership and Governance are similar to those of the National Act in so far as the removal of a traditional leader, headman or headwoman are concerned.

[18] It is common cause that:

- (a) The Premier did not withdraw the applicant's certificate of recognition;
- (b) did not publish the removal of the applicant as Inkosana in the provincial gazette;
- (c) did not inform the applicant of his removal, neither the Royal Family nor the Provincial House of Traditional Leaders.

¹⁵ Section 12

[19] The respondents did not argue that the MEC was delegated in terms of section 34 of the Eastern Cape Act. Neither did the issue of the MEC's delegated powers were alleged in the answering affidavit.

[20] The Superintendent-General (third respondent) wrote a letter to the applicant's attorneys (Webber Wentzel) on 13 December 2012¹⁶ and it reflects the following amongst others:

"10 The Defendant, will unfortunately be compelled to terminate his services if he does not attend the meetings of Ntlenzi Traditional Council and holding one meeting per month at the localities that fall under his jurisdiction in terms of section 11(3) and (5) of the Traditional Leadership and Governance Act, 2005 (Act no 4 of 2005).

[21] A Rule 35(12) notice was issued by the applicant and served on the respondent's attorneys on 22 April 2014¹⁷. In the notice, the applicant required the 1st -6th respondents to produce for inspection the following:

- 1 *The delegation of powers Mateta claimed to have by virtue of his position as Acting Deputy Director-General.*
- 2 *The documents removing the applicant as headman in terms of section 2 of the Eastern Cape Act and including*
 - 2.1 *The Premier's decision informing the applicant of her decision and calling upon the applicant to make representations as to why the decision to remove the applicant should not be given effect to.*
 - 2.2 *The Premiers' withdrawal of the certificate of recognition with effect from the date of removal.*

¹⁶ Annexure JSM3 PAGE 102

¹⁷ Page 106-108

- 2.3 *The Premier's notification to the royal family concerned the applicant and the Provincial House of Traditional Leaders concerned, of such removal, and*
- 2.4 *The notice with particulars of the removal of the applicant in the Gazette.*
- 3 *The documents recognising the sixth respondent, including*
 - 3.1 *The notice in the Gazette; and*
 - 3.2 *The certificate of recognition*

[22] It is common cause that the respondents did not provide the applicant with the documents referred to in the Rule 35(12) notice. It could have been a simplest thing to do for the respondents to furnish the applicant with such documents or would have stated that they are not in possession of such documents.

[23] It has been argued by Mr *Mtshaulana* for the applicant that the third respondent could not have been delegated by the Premier, and was not authorised to terminate the services of the applicant.

[24.1] The respondents have alleged that the applicant was removed as headman in terms of section 20 of the Eastern Cape Act.¹⁸ and;

[24.2] He has been recognised but not installed by any of the respondents.

[25] In my view, installation of the applicant is insignificant. The applicant may not be installed as this entails his introduction to the community but recognised by the premier as in this case.

¹⁸ Page 85 par 19.1

[26] Brand JA in **Minister of Environment Affairs and Tourism and Others v Pepper Bay Fishing (Pty) Ltd, Minister of Environmental Affairs v Smith**¹⁹ had this to say about delegation of power:

"As a general principle an administrative authority has no inherent power to condone failure to comply with a peremptory requirement. It only has such power if it has been afforded the discretion to do so"

[27] Sir **William Wade and Christopher Forsyth, Administrative Law**²⁰ say:-

"There is no general principle that administrative functions are delegable. The principle is rather that, where any sort of decision has to be made, it must be made by the authority designated by Parliament and by no one."

[28] **Lawrence Baxter Administrative Law**²¹ states:

"In modern democracies original power is derived from the political authority of elected legislatures. Because of the practical requirements of government it is recognized that such bodies may delegate their powers. In South Africa, Parliament is recognized to have unlimited powers of delegation.....But all other administrative authorities are treated as delegees power having been delegated to them by the original authority"

[29] In **Attorney General, OFS v Cyril Anderson Investments (Pty) Ltd**²² Botha JA stated :

"the maxim delegatus delegere non potest is based upon the assumption that, where the legislature delegated powers and functions to a subordinate authority, it intended that authority itself to exercise those powers and perform those functions, and not to delegate them to

¹⁹ 2004(1)SA 308 (SCA) par 31

²⁰ (2004) p 317

²¹ (1984) p 434

²² 1965 (4) SA 628(A) at 639 C-A

someone else, and that the power delegated does not therefore include the power to delegate...."

[30] A valid exercise of administrative powers requires both a lawful authorisation for the act concerned and the exercise of that power by the proper or lawful authority ²³ and except in the case of an exercise of power under the prerogative, a public authority has no power other than those which have been conferred upon it by legislation.²⁴

[31] In this case, the third respondent failed to provide evidence which authorised him to act in the manner it did, and there is no evidence that suggest that the third respondent acted under express or implied authority or both. I therefore find that the third respondent exercised powers which otherwise were not vested in him.

[32] Mr *Bodlani*, counsel for the respondents argued that the applicant was wrongly appointed and recognised because he was not a headman lawfully appointed. He argued that the stopping of the applicant's salary was valid because that decision has not been challenged. Arguing further, he relied on the case of **Oudekraal**²⁵ referred to above and said "the decision to stop the applicant's salary remains valid until set aside".

²³ page 384

²⁴ At page 386

²⁵ See footnote 7 above

[33] I disagree with his submission and understanding of the **Oudekraal** decision. In my view and applying **Oudekraal's** decision in this case, the appointment of the applicant as a headman and his subsequent recognition is valid until set aside by the court. An administrative decision was taken to appoint and recognise the applicant.

[34] There is no evidence that the applicant's recognition certificate was withdrawn by the Premier²⁶

[35] Mr *Bodlani* argued further that the recognition of the applicant was as a result of an error within the department of the first and second respondent. However, the applicant was recognised and earned his salary.

[36] Once the applicant was appointed and recognised as such and his appointment was confirmed, certificate issued and not withdrawn, the department of the second respondent became *functus officio*²⁷. Even if the Minister's decision (the recognition of the applicant) was based on an error of fact or law, he is still nevertheless *functus officio*. Henning J in **Thompson Trading Maharaj and Sons v Chief Constable ,Durban**²⁸ had this to say:

"In my view where an official in the exercise of a statutory power, makes a decision at which he would not have arrived, but for an oversight, he has no power to reverse it, unless he is authorised, expressly or by necessary implications, by the legislation from which he derives his authority."

²⁶ Footnote 19 at pages 379

²⁷ Baxter, Administrative Law p372 and cases referred therein.

²⁸ 1965(2) SA 296 (D)

[37] It must be noted that during argument, Mr Mtshaulana did not pursue some of the relief's sought in the notice of motion and he premised his argument primarily on the termination of applicant's salary.

[38] In my view the decision of the third respondent is irrational and *ultra vires*. The third respondent including first and second respondent could have handled the applicant's removal differently.

[39] Accordingly, I find that the applicant has made a case against the third respondents' termination of his salary.

[40] Mr *Bodlani* did not argue against the order sought by Mr *Mtshaulana* for an order directing the Premier to consider the request made by the King in terms of AMF8. ²⁹ Similarly, he did not argue against the setting aside of the appointment of Ntandazo Christian Lwana (the 6th respondent)

Costs

[41] This matter appeared in court on 12 December 2013 and costs were reserved. During argument, conflicting submissions were made in this court as to why those costs were reserved and as such, this court is unable to give its decision regarding those costs. Submissions made could not assist this court. As a result, I make no finding with regard to those costs. However, parties agreed that costs should follow the cause.

²⁹ Page 40-41

[42]In the result the following order is made:

1. The decision of the 3rd respondent not to pay applicant's salary as a headman is declared invalid, wrongful and is set aside.
2. That the third respondent is directed to pay applicant's salary as a headman of Mfundisweni Administrative Area with immediate effect.
- 3.1 That the Premier of the Eastern Cape Province is directed to consider and decide on the request made by the Ikumkani which request is contained in a letter dated 15 February 2014 within 12(twelve) months from the date of this order,
- 3.2 and to submit a report to this court of what he has done within 30 days after the expiration of the 12 months referred to in paragraph 2.1 above
4. That the appointment of Ntandazo Christian Lwana (sixth respondent) as a headman of Mfundisweni is declared invalid and is set aside.
5. That the copy of this judgment should be served on the office of the Premier and the State Attorney, Mthatha
6. That the 1st – 6th respondents are directed to pay costs of this application, jointly and severally, the one paying the other to be absolved.

M.N HINANA
ACTING JUDGE OF THE HIGH COURT

Appearances

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Date Delivered : 12 February 2015