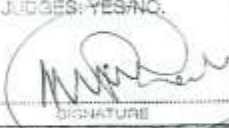


IN THE HIGH COURT OF SOUTH AFRICA
(NORTH AND SOUTH GAUTENG HIGH COURT, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
16/10/2009	
DATE	SIGNATURE

DATE: 16 October 2009
CASE NO: 55175/2009

In the matter between:

INKOSI PRINCE MMELIZWE DLAMINI FIRST APPLICANT

THE NHLANGWINI TRADITIONAL
COUNCIL SECOND APPLICANT

AND

THE CHAIRPERSON OF THE COMMISSION
ON TRADITIONAL LEADERSHIP DISPUTES
AND CLAIMS FIRST RESPONDENT

THE PRESIDENT OF REPUBLIC OF
SOUTH AFRICA SECOND RESPONDENT

JUDGMENT

PHATUDI (J)

- [1] The Applicant instituted an urgent application seeking an order against the First Respondent as set out in the Notice of Motion. No order was sought against the Second Respondent. On the date of the initial hearing (29 September 2009), the Applicants and First Respondent, by agreement, caused amendment of the Notice of Motion and further caused a draft order that was subsequently made an Order of Court.
- [2] In terms of the court order, 'a Rule Nisi was issued calling up on the Second Respondent to show cause before this Honourable Court by no later than 10 am on Friday 9 October 2009 why he should not be ordered to extend the period within which the First Respondent is to complete its mandate for a period long enough to enable the First Respondent to comply with orders 2, 3, 4 4A and 5.'
- [3] The Applicants, acting on behalf of the Ntlangwini nation, lodged a claim with the First Respondent sometime during 2005 for recognition of a Kingship in terms of Section 25 of the Traditional Leadership and Governance Framework Act 41 of 2003 (Framework Act)

- [4] The First Respondent conceded that the Applicant did lodge the claim as aforesaid with them.
- [5] The First Respondent further conceded that they had to complete its mandate as envisaged by the provisions of Section 25(5) of Frameworks Act within a period of 5 (Five) years or within such longer period as the President of the Republic of South Africa may determine.(my underline)
- [6] The Applicant and the First Respondent have since the lodging of the claim by the Applicants, exchanged an umpteenth correspondence that eventually led to this application. It must be borne in mind that they never involved the Second Respondent in their communiqué but for this application.
- [7] At the hearing before me, the First Respondent's counsel, Mr Madianga, submitted that they withdraw the relief sought in the Rule nisi, save, in the event the court grant an order ordering the Second Respondent to extend the time, that such extended time be more than 12 months.

[8] I asked Mr Matthis, counsel for the Applicants, to address me on urgency of this matter. He submitted that the contents of the letter from the First Respondent dated 25 August 2009, annexed to the founding affidavit marked "S", prompted the applicants to launch this application.

[9] He further said that the wording of the second paragraph thereof tipped the scale of urgency in that;

"The commission members were appointed with effect from 1 November 2004, which means that their term of office expires on 31 October 2009."

[10] I further enquired if the Second Respondent was ever contacted to get his feeling to that effect. Mr Matthis said that the applicant never contacted the Second Respondent to that effect.

[11] On perusal of the content of the said letter, I noted that the First Respondent stated

"...the commission must complete its mandate within a period of 5 years OR within such longer period as the President may determine." (My emphasis)

- [12] On further enquiry from Mr Matthis if the Second Respondent had created any impression or intention through any communiqué not to determine an extension of a 5 year period. He said that the First Respondent is a creature of Statute as envisaged in terms of Section 25(5) of the Framework Act.
- [13] Further thereto, counsel for the Applicants submitted that should the said period not be extended, then the present commissioner will become functus officio.
- [14] On the other hand, Mr Madlanga submitted that the First Respondent would need an extension of a reasonable time, which he said to realistically be a calendar year, to complete its mandate.
- [15] I then asked counsel for the First Respondent if the commission had ever summoned the Presidency to extend the time frame? He referred me to paragraph 4 (page 163) of the First Respondent opposing affidavit that state;

"Accordingly, the investigation into the claims and finalisation of the determination could take up to a full calendar year. As a result the commission is working closely with the legal division of the Presidency and will do everything possible to ensure that, if an extension of the term of the commission is granted by the President, it (the extension) will be sufficient."

- [16] It is not clear from the wording of the paragraph if the First Respondent did indeed request or engage the Second Respondent to extend the time prior to this application.
- [17] Mr Nthai, counsel, for the Second Respondent, submitted that this matter is not urgent on the basis that the term of office of the First Respondent expired on 31 October 2009. He further stated that none of the parties (Applicant or First Respondent) had asked for an extension of time from the President.
- [18] He further submitted that this application is premature and stands to be dismissed.
- [19] It is clear from the papers before me that there is no communiqué or conduct on the part of the Second Respondent

that could have created the impression that the Presidency will not consider an extension of time to enable the First Respondent to complete its mandate.

[20] I find it difficult to accept that the contents of the First Respondent letter to Applicants (Annexure "S") and paragraph 4 of the First Respondent opposing affidavit have created the "impression" that the Presidency will not or is not inclined to extend the First Respondent's term of office.

[21] I further find it difficult to accept that urgency was created by the wording of the said communiqué or that of Section 25(5) of the Framework Act.

[22] I, as a result thereof, have no any other option but to struck the matter off.

[23] The following order is thus made:

[23.1] The Application is struck off the roll;

[23.2]The Applicants are ordered to pay the Second Respondent's costs on party and party scale including the costs of 2(two) counsel.



AML PHATUDI
JUDGE OF THE NORTH GAUTENG HIGH COURT

Heard on: 8\10\2009

For the Applicant: Adv MATTHIS

Instructed by: Messrs Roth Wessels Motla Conpadie, Pte.

For the Respondent: Adv NTHAI

Instructed by: Messrs Makwela Zilwa Inco, Pte.

Date of Judgment: 16 OCTOBER 2009