



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

Case No: 1640/2014

In the matter between:

GCINILIZWE LONDILE

1st Applicant

AMATOLANDILE ROYAL FAMILY

2nd Applicant

And

POLLEN SIBONGISENI BIKWE

1st Respondent

**EASTERN CAPE PROVINCIAL COMMITTEE
ON TRADITIONAL LEADERSHIP DISPUTES AND
CLAIMS**

2nd Respondent

**COMMISSION FOR TRADITIONAL LEADERSHIP
DISPUTES AND CLAIMS**

3rd Respondent

**MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE
FOR THE LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS (EASTERN CAPE)**

4th Respondent

THE PREMIER EASTERN CAPE PROVINCE

5th Respondent

MINISTER OF CO-OPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS

6th Respondent

SUPERINTENDENT-GENERAL: DEPARTMENT OF
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS (EASTERN CAPE)

7th Respondent

AMATOLANDILE TRADITIONAL COUNCIL

8th Respondent

JUDGMENT

MHAMBI AJ

[1] The issue in this application concerns the lawfulness of the, Eastern Cape Provincial Committee on Traditional Leadership disputes and claims, “**the committee**,” recommendations, in upholding the claim of the first respondent to be the senior Chief and headman of Amatolandile Traditional Council, Tsolo. The applicants also seek to review and set aside the decision of the Premier of the Eastern Cape, “**the Premier**”, which in essence upheld the findings of the committee. Finally, the applicant seeks for an order to have the decision of the Member of the Executive Council for the Local Government and Traditional Affairs, Eastern Cape, “**the MEC**”, advising the first applicant to vacate his position, reviewed and set aside.

[2] The applicants, dissatisfied with the impugned decisions brought this application as a review application in terms of rule 53 of the uniform rules of this court.

[3] The first applicant has described himself as the Senior Traditional Leader and headman of Amatolandile Traditional Council, Ncembu Administrative Area, Tsolo. The second applicant is the royal family of the first applicant; both are referred in this judgment as the applicants.

[4] The first respondent has been described as the headman of Mbinja, Administrative Area, Tsolo, he is the incumbent senior traditional leader of Amatolandile Traditional Council, Tsolo. He will in this judgment be referred to as the respondent. It is the decision of the Committee, which was subsequently upheld by the Premier, and the subsequent decision of the MEC advising the first applicant to vacate his office that is the subject matter of this application.

[5] The decisions aforesaid are impugned on the basis of what appears in the supplementary affidavit filed by the applicants upon receipt of rule 53 records. That indicates the issues this court has to determine, summarized as follows:-

- a) whether the Commission had an authority or jurisdiction to entertain the dispute by the respondent on the basis that there was no claim lodged before it (that's the submission of the applicants).
- b) whether the claim or dispute was lodged, if lodged at all, within the prescribed time as set out in Section 25(4) (a) read with Section 25(5) of the Framework Act, 2009.
- c) whether the provisions of Section 21 of the Traditional Leadership and Governance Framework Act, "**the Act**" were complied with.
- d) whether the applicants were given adequate notice in respect of attending and making representations before the Commission in a public hearing

[6] The first applicant contends that:-

- 6.1 He was chosen by Amatolo Traditional Community in terms of the then Transkei Authorities Act¹. His appointment, according to him, was authorized by the Amatolo Tribal Authority and later referred to Emboland Regional Authority. He was later recognized by the MEC and a certificate of recognition was issued in that regard.
- 6.2 He submitted that he learnt, during 2012 that a Committee was established by the Premier to investigate and make recommendations as to whether his appointment as the Senior Traditional Leader of Ncembu Administrative Area, Tsolo, was made in accordance with customary law and customs. The Premier appointed the Committee under chairlady, Dr Nokuzola Mndende to deal with the dispute, the dispute/ claim was lodged by the respondent.

[7] In its further supplementary affidavit the applicant has raised several issues, which this court has earlier formulated as issues for determination. I do not intend to repeat them, instead I will deal with them later in this judgment.

[8] The MEC filed an answering affidavit in opposing the reliefs the applicants sought. The affidavit deposed on behalf of the MEC alludes, *inter alia*, that:-

- 8.1 The first respondent claimed the position of senior traditional leadership of Amatolandile Traditional Council, Tsolo “**the claim**”. The claim was based on the ground that the first respondent is the heir to the position by virtue of him being in line of the great house. The claim was submitted in accordance with Section 25 (2)(a) of the Framework Act.² At the time the claim was lodged, the first respondent was the headman of Mbinja Community, an area under jurisdiction of the Amatolandile Traditional Council. Dr Nokuzola Mndende was designed to chair the committee after consultation with the Premier.

¹ Transkei Authorities Act 4 of 1965

² Framework Act, 2003

- 8.2 The deponent to that affidavit admits that, during 2008, the first applicant was recognized as the Senior Traditional Leader of Ncembu Administrative Area, Tsolo, under the Amatolandile Traditional Council, Tsolo.
- 8.3 The Committee investigated the claim, parties made oral submissions on 04 September 2012. In sum, the Committee recommended that the claim of the first respondent be sustained and submitted its final recommendations to the Premier for his final decision. The Premier having considered the first respondents as the Senior Traditional Leader of Amatolandile Royal Council, Tsolo.

[9] Dr Nokuzola Mndende has deposed to an affidavit on behalf of the Commission. In her affidavit, she alludes that she was appointed by 6th respondent as a member of the National Commission and then designated by the Premier to deal with the claim. The claim of the first respondent was lodged with the MEC and was referred to the Commission for resolution. She claimed that the applicants were given a proper notice of the hearing, and contends that applicants were afforded a proper hearing, and she referred this court to a DVD, which this court has not had an opportunity to look at, it was not afforded an opportunity to look at it, the aforesaid DVD was not part of the papers or presented to court.

[10] It is her contention that the Committee applied its mind to the matter and took into account all relevant considerations including the custom of Amatolo. According to her the recommendations of the Committee were properly researched and soundly reasoned, and there would have been no reasons for the Premier not to accept the recommendations.

[11] The averments by Dr Mndende, are confirmed in a confirmatory affidavit signed by the Premier at that time, Mr Phumulo Masualle and his predecessor Ms Noxolo Kiviet.

[12] I now turn to deal with the issues for determination in this application.

[13] It is common cause between that first respondent was in 2008 recognized as senior Traditional leader of Ncembu Administrative area, Tsolo. Before that, he was the headman, he was on the equal status with the respondent, being the headman of Mbinja community, Tsolo. It is common cause that Dr Nokuzola Mndende was the Chairperson of the Committee designated to investigate and make a recommendation to the Premier about the claim. It is further not in dispute that the Premier accepted the recommendations of the Committee and recognized the first respondent as the senior Chief of Amatolandile Traditional Council, Tsolo.

[14] The Crux of this application lies on the manner in which the decision of the Committee was taken and the subsequent decisions by the Premier and the MEC.

[15] It is apposite for me to state and emphasize the role of traditional leadership. The role of traditional leadership, its institutions, its status and role are guided and dealt with in accordance with Customary Law, and are subject to the Constitution.³ Section 211(3) of the Constitution state that the courts must apply Customary Law when that law is applicable, in line with the Constitution and any other applicable legislation that specifically deals with Customary Law.

[16] Section 212 of the Constitution provides as follows:-

ROLE OF TRADITIONAL LEADERS

212(1)

*“National Legislation may provide for a role of traditional leadership as an institution at local government on matters affecting local authorities.”*The Traditional Leadership and Framework Act⁴, the Framework Act is the product of this Constitutional Provision.

³ The Constitution of the Republic of South Africa 1996.

⁴ Act 41 of 2003, as amended

[17] The authority of the courts to adjudicate Customary Law issues and disputes has recently been affirmed by MOTHLE AJA in **Mphephu**⁵, he said:

“This matter indeed concerns customary law and customs, a body of laws recognized by the Constitution. The Commission, with its special knowledge of customary law, was designed mainly to deal with the distortions in traditional leadership, lineages and disputes as a result of interference by the apartheid regime. But, as pointed out by the appellant, the respondents’ argument confuses judicial deference, which a court may appropriately exercise in judicial review proceedings, and the justiciability of the appellant’s application. The jurisdiction of the courts is not dependent on whether or not a person has lodged a claim or declared a leadership with Commission. The exercise of judicial deference is unwarranted in this instance. The courts are vested with authority to adjudicate customary law issues in appropriate cases and to that end s 211 of the Constitution obliges them to apply and give effect to customary law where it is implicated”.

[18] The question of whether the impugned decisions are subject to review has been answered by SCA in *Mphephu*⁶, The court held as follows:-

“The Scheme of Framework Act governs the taking of decisions by the second, third and fourth respondents, the Commission, members of the Executive Council or Traditional Affairs (MEC’s) and Traditional Councils. All these officials and entities are organs of State, exercising public functions in terms of the Framework Act, which may adversely affect the rights of persons where it has direct effect in the manner envisaged in the Promotion of Administrative Justice Act (PAJA). The decisions are of administrative nature, made under empowering

⁵ *Mphephu v Mphephu – Ramabulana and Others* [2019] 3 ALL SA 51 (SCA) at paragraph 14

⁶ See also Section 239 of the Constitution, PAJA refers to Promotion of Administrative Justice Act 3 of 2000.

legislative provisions, which include the Framework Act and thus constitute administrative action, which is reviewable under PAJA”.

[19] The issue of whether the exercise of public power is subject to review was also dealt with by the Constitutional Court in *President of the Republic of South Africa v South African Rugby Football Union and Others*⁷.

[20] On this basis, I find that the impugned decisions are reviewable in nature.

[21] With regard to review of administration decision, *Griffiths J*, once said in *Matiwane*⁸:-

“On the other hand, courts are not to loose sight of the purpose of judicial review which, as expressed in Section 33 of the Constitution, is that everyone has a right to the administrative action that is lawful, reasonable and procedural fair. Where, in any given case, a court comes to the conclusion that the administrative action in question does not pass the master in this regard it should not refrain from exercising its duty to correct administrative action which is just. As stated by Harms JA :-

The right to administrative action that is just is derived from Constitution and different review grounds have been codified by PAJA much of which is derived from Common Law. Pre-Constitutional Case Law must be read in the light of the Constitution and PAJA”

[22] During hearing of this matter, an argument was advanced extensively on the provisions of Framework Act, more specifically Section 21 and Section 25 of the Act. Section 21 of the Act provides as follows: -

[23] **21, Dispute and claim resolution**

⁷ (CCT 16/98) 1999 ZACC 11, 2000(1) SA 1, 1999(10) BCLR 1059 (10 September 1999 para 33.

⁸ *Matiwane v President of the Republic of South Africa and Others* 2014 JOL 31498 (ECM) para 40

- 21(1) (a) whenever a dispute or claim concerning customary law or customs arises between or within traditional communities or other customary institutions on a matter arising from the implementation of this Act, members of such a community and traditional leaders within the traditional community or customary institution concerned must seek to resolve the dispute or claim internally and in accordance with customs before such dispute or claim may be referred to the Commission.
- (b) If a dispute or claim cannot be resolved in terms of paragraph (a), subsection (2) applies.
- (2) (a) A dispute or claim referred to in subsection (1) that cannot be resolved as provided for in that subsection must be referred to the relevant provincial house of traditional leaders, which house must seek to resolve the dispute or claim in accordance with its internal rules and procedures.
- (b) If a provincial house of traditional leaders is unable to resolve a dispute or claim as provided for in paragraph (a), the dispute or claim must be referred to the Premier of the province concerned, who must resolve the dispute or claim after having consulted-
- (i) the parties to the dispute or claim; and
 - (ii) the provincial house of traditional leaders concerned.
- (c) A dispute or claim that cannot be resolved as provided for in paragraphs (a) and (b) must be referred to the commission.
- (3) Where a dispute or claim as provided for in subsection (1) has not been resolved as provided for in this section, the dispute or claim must be referred to the Commission.”

[24] The Parliament, in an attempt to resolve the contentions relating to traditional leadership, acting in terms of Section 22 of the Act, established the Commission on Traditional Leadership Disputes and Claims, (The Commission). In terms of S23(1) (9)

of the Act, the Minister⁹, after consultation with the National House of Traditional Leaders, must appoint a Chairperson and not more than four persons for a period not exceeding five years as members of the Commission. Such members must have knowledge of Customary Law, Customs and Institutions of Traditional Leadership. The Commission's functions included the investigation and resolution of traditional leadership claims and disputes in the Republic.

[25] The authority and functions of the Commission are provided in s 25 of the Amendment Act as follows:-

“Functions of the Commission

(1) The Commission operates nationally in plenary and provincially in Committees and has authority to investigate and make recommendations to any traditional leadership dispute and claim contemplated in Subsection 2.

(2) (a) The Commission has authority and make recommendations on -

(viii) All traditional leadership claims and disputes dating from 1 September 1927 to the coming into operation of Provincial Legislature with traditional leadership and governance matters; and,

(3) Any claim or dispute contemplated in this chapter submitted after six months after the date of coming into operation of this chapter may not be dealt with by the Commission.”

[26] The applicants have challenged the authority of the Commission to investigate the claim. The background to that challenge appear in the further supplementary affidavit filed by the first applicant. It appears, from that affidavit that the second respondent delayed to file the records in terms of rule 53 of the uniform rules. The first

⁹ In terms of S 1 of the Act the Minister, for the purposes of the Act, is the National Minister responsible for traditional leadership matters.

applicant filed an application seeking for rule 53 records, the application succeeded in favor of the first applicant. However, the first applicant complained that the records were incomplete.

The first applicant sought for the following records, amongst others:-

- a) The lodgment documents of the claim to the Commission by the first Respondent.
- b) The date on which the Commission was lodged.
- c) The questioner submitted to the claimant prior to holding of a public hearing.
- d) The invitation of the applicant to the hearing.

[27] There is no evidence that the records sought were provided to the first applicant, hence the challenge on the authority of the Commission.

[28] In response to the first applicant's challenge of the Commission authority, the respondents have filed an affidavit, titled:-

“Respondents’ Answering Affidavit to first applicant’s further supplementary affidavit”. The affidavit is deposed to by, ***“Ntombodumo Vuba”***. This affidavit has been filed in a whimsically and clumsy manner, it does not specify, amongst the respondents, on whose behalf it has been filed. I will simply refer to it as **“affidavit 1”**.

[29] The deponent to affidavit 1 denies that the respondents have failed or refused to provide lodgment documents as first applicant has alleged. It is stated therein, the claim was lodged on 19 August 2005. Affidavit 1 alleges that the claim was lodged in terms of s 25(2) (a) of the 2003 Framework Act. Notably, the lodgment documents are not attached in affidavit 1 as one would expect, instead, the deponent simply says, the lodgment documents are part of the records submitted to first applicants in terms of rule 53.

[30] I have perused the records filed in terms of rule 53 filed in the bundle before court, in it, there are no lodgment documents as alleged by the first applicant. I find the version contained in affidavit as far-fetched, meritless and without basis as no proof is provided about existence of lodgment documents, or the least an explanation has not been proffered about their existence.

[31] Even if it were to be accepted that the claim was lodged in 2005, the content of affidavit 1 failed to provide proof to the extent that the claim was transferred or designated or delegated to the Commission for investigation.

[32] The affidavit deposed by Dr Nokuzola Mndende, titled, “**third respondent’s affidavit**”, specifies that the claim of the respondent was lodged with the third respondent, there are no lodgment documents attached, she is not specific on when and how the claim was lodged, and further how the second respondent was designated to deal with the claim

[33] This court is left in limbo as to whether the claim was lodged, how was it lodged and how the Commission was designated to deal with the claim.

[34] The affidavit by Premier and his Predecessor lacks clarity on this issue too.

[35] The respondents missed the old principle of our law as it was cited in *Minister of Land Affairs and Agriculture v D and F Wevell Trust*¹⁰, that:-

“In motion proceedings, the affidavits constitutes both the pleadings and evidence and the issues and averments in support of the party’s cases should appear clearly therefrom.”

[36] The respondents had an onus and burden to prove that the claim was properly lodged, and Commission was properly designated or had authority to deal with the

¹⁰ 2008 (2) SA 184 (SCA) at 200 D

claim. The respondents failed to do so, in a manner that casts doubts on the authority of the Commission to deal with the claim.

[37] The first applicant has alleged the non-compliance with the Provisions of Section 21 of the Framework Act, 2009, the Provision is the same even in Framework Act 2003.

[38] I have already cited the provisions of Section 21 of the Framework Act, 2003 earlier in this judgment. It is sufficient now to summarize it as follows:-

38.1 When the dispute arises like in this matter, Section 21 prescribes that at first the community members and the concerned traditional leaders must attempt to resolve same internally and in accordance with customs applicable within that community. Should the dispute not be resolved, the relevant house of traditional leaders is next in line and should attempt to resolve the dispute in accordance with its internal rules and procedures. Should the Provincial House not succeed in resolving the dispute it must then be referred to the Premier of the Province, who must attempt to resolve it after consultation with relevant parties and the Provincial House of Traditional Leaders. It is only after this process that the matter is referred to the Commission.

[39] The respondents, in affidavit 1 has alluded that the claim was brought in terms of S25 (2) of the 2003 Framework Act, read with S 21(b), therefore the procedure set out in S 21 (a) is not applicable in circumstances of this claim.

[40] Because these are review proceedings, the starting point is s7(2) of PAJA. The latter Section provides that *“no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.”*

[41] In this matter, s21 of the Framework Act provides for internal remedy before the matter is referred to the Commission.

[42] In this case, the Premier has made his decision based on the recommendations of the Commission, which, in these papers has failed to demonstrate its authority to deal with the claim, put differently it has failed to prove that the claim was indeed lodged by the respondent and or it has not stated that it acted on its own accord to deal with the claim.

[43] The Premier's decision was based on the misinformation that there was a claim, which in fact there is none proved. Under these circumstances, the Premier's conduct is reviewable, without going any further.

[44] I am mindful of what *Mogoeng* JP said in *Mamogale*,¹¹ in the context of Section 21 of the Framework Act, he said:-

"A truly internal dispute is, in the context of this case, capable of being resolved by the Royal Family through customary law, customs and process. On the contrary, a Premier who has already pronounced himself or herself on a matter cannot be summoned to a meeting of the royal family or of the tribe for the purpose of attempting to find any internal solution envisaged in S21(a). Accordingly, once a Premier takes a decision, the dispute loses semblance of being internal. It follows that Section 7(2) of PAJA does not apply. After the Premier decided on the dispute, it was open to the first applicant to bring this application to this court which clearly has jurisdiction to hear it".

[45] The Premier has no obligation to follow internal remedy as prescribed by S21(a), it is the first respondent that has that obligation. In this case there is no evidence that the first respondent followed the prescripts of s21(a). In this case, the Premier's decision is reviewable on the basis that he acted on the misinformation by the Commission that it was properly designated to deal with the claim, whereas it was not.

¹¹ *Mamogale v Premier*, North west [2006] ZANWC 63

[46] Lastly, the applicants have challenged the commission for lack of procedural fairness. The basis for that submission is as follows:

(a) the commissions failure to discover, as part of the record, the questioner submitted to the 1st applicant and the 1st respondent before the public hearing was held.

(b) the notice of invitation to the first respondent to attend the public hearing.

(c) the first applicant was not informed of the version or case of the first respondent he had to answer.

(d) at the hearing, he was deprived an opportunity to hear the version of the first respondent as the claimant. According to him, the first respondent did not make representations during the hearing.

[47] The respondents contend, as per content of affidavit 1, that the allegations of unfair procedure by the first applicant is untrue. It is contended that viewing from the USB that depicts the proceedings of the public hearing shows the allegations by the first applicant are untrue. Affidavit 1 further states that first applicant was provided a period of further two weeks within which to make further representations, if he so wishes. Affidavit 1 contends further that the first applicant utilized that by sending written representations, six days from the date of the public hearing. Those submissions are annexed in the papers at page 20 of the bundle.

[48] The affidavit of Dr Nokuzola Mndende and that of the Premier do not address this issue. They both provide no assistance to this court.

[49] Affidavit 1 lacks particularity in respect of whether the first applicant was notified of the date and time of the public hearing, as and when it was scheduled. It is not clear when that notice was given, and how was the first applicant informed of the public hearing. In fact, affidavit 1 failed to give clarity to the applicants' concerned as summarized from (a) –(b) of the paragraph above. The USB referred to in affidavit 1 is

not part of the court papers, and or it has not been put to the attention of this court for this court to review it.

[50] I now find it difficult to conclude that the first applicant was given adequate notice and fair procedure to attend to the Commission's public hearing as at the date it was scheduled.

[51] It is apposite for me to say the following in respect of fairness before an administrative decision is taken.

[52] **PROCEDURAL FAIRNESS**

52.1 Section 3(2)(b) of PAJA provides as follows:-

“(b) *In order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4), must give a person referred to in subsection (1)-*

- (i) Adequate notice of the nature and purpose of the proposed administrative action;*
- (ii) A reasonable opportunity to make representations;*
- (iii) A clear statement of the administrative action;*
- (iv) Adequate notice of any right or review or internal appeal, where applicable; and*
- (v) Adequate notice of the right to request reasons in terms of section 5.”*

52.2 Section 33(1) of the Constitution gives everyone a right to administrative action that is “**lawful, reasonable and procedurally fair**”. Procedural fairness constitutes a fair hearing by applying the *audi alteram partem* rule by an impartial decision-maker.

52.3 Procedural fairness in the form of the *audi alteram partem* rule is concerned with giving an opportunity to participate in the decision that will affect them, and- crucially-a chance of influencing the outcome of those decisions. Such participation is a safeguard that not only signals respect for the dignity and

worth of the participants, but is also likely to improve the quality and rationality of administrative decision-making.¹²

52.4 In *Janse Van Rensburg v Minister of Trade and Industry*¹³

The Constitutional Court dealt with the provisions of section 8(5)(a) of the Consumer Affairs (Unfair Business Practices) Act¹⁴ which entitled the Minister to stay a business practice and to attach or freeze assets without prior warning to persons affected. At paragraph 24 **Goldstone J** said the following:

“In modern States it has become more and more common to grant far-reaching powers to administrative functionaries. The safeguards provided by the rules of procedural fairness are thus all the more important and are reflected in the Bill of Rights. Observance of the rules of procedural fairness ensures that an administrative functionary has an open mind and a complete picture of the facts and circumstances within which the administrative action is to be taken. In that way the functionary is more likely to apply his or her mind to the matter in a fair and regular manner”.

In *Sokhela v MEC for Agriculture and Environmental Affairs (Kwazulu-Natal)*¹⁵ the following was said at paragraph 55:

“That case illustrates the point that, in order for a hearing or an opportunity to make representations to be effective, it is necessary that the hearing must concern the matters giving rise to the decision, and the opportunity to make representations must relate to those matters. If the occasion identified as the opportunity to make representation is a meeting, but the participants are unaware that it is intended to serve the purpose of enabling representations to be made, and the ultimate decision-maker does not disclose the concerns that might lead him or her to take an adverse decision, it seems to me that no opportunity to make representations has been given.”

¹² Cora Hoexer: “Administrative Law in South Africa” (2nd Ed) at p363

¹³ 2001 (1) SA 29 (CC)

¹⁴ Act 71 of 1988

¹⁵ 2019 (5) SA 574 (KZP)

52.5 In the unreported judgment of *Emanuel Segwagwa Mamagale*¹⁶, Chief Justice **Mogoeng** dealt with provisions of PAJA, where a regent was relieved of his duties. At paragraph 31 of the judgment, the Learned Chief Justice said the following:

“The decision taken by the Premier is administrative in nature, it is adverse to the interests of the applicant, the applicant should have been given some kind of a hearing or an opportunity to make representations before the decision was made by the Premier or her delegate(s) but this was not done. As I have said above, the meetings of the Royal Family held on 5 and 6 June 2005 are a far cry from the compliance of what the spirit of the Constitution and PAJA requires with respect to fair administrative action.”

[56] Gleaned from the facts of this case, it is clear that the procedure followed by the commission before making its recommendations to the Premier is totally flawed and is full of procedural unfairness. I am satisfied that the applicants have a proper case for the reliefs sought in the notice of motion. In the interests of justice the late filing of this review application should be condoned. Consequently, this application should succeed.

[57] In the result the following order shall issue:

Order:

1. The applicants' late filing of its review application is hereby condoned.
2. The recommendations of the Commission sustaining the claim of the first respondent as Senior Chief or Senior traditional Leader and head of Amatolandile Traditional Council, Tsolo, is hereby reviewed and is set aside.

¹⁶ Bophuthatswana Provincial Division, case number: 227/2006 dated 12 October 2006.

3. The decision of the Premier, contained in a letter dated 17th October 2013, upholding the recommendations of the Commission is hereby reviewed and is set aside.
4. The decision of the MEC, contained in a letter dated 24th July 2024, advising the first applicant to vacate his office as Senior Chief of Amatolandile Traditional Council is hereby reviewed and is set aside.
5. The respondents are directed to pay costs of this application, the one paying the other to be absolved, on scale A of uniform rule 67 A.

M. MHAMBI
Judge of the High Court (Acting)

APPEARANCES:

Mr Msindo : Attorney for the Applicants
Instructed by : V.V. Msindo & Associates Inc.
No. 48 Wesley Street
Mthatha
Tel: 047 532 2231

Adv. Halam : Counsel for the Respondents
Instructed by : State Attorneys
Mthatha

DATE HEARD : 12 DECEMBER 2024
JUDGMENT DATE : 27 JUNE 2025

