



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 10 May 2024

Status: Immediate

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Molosi and Others v King Phahlo Royal Family and Others (1005/2022) [2024] ZASCA 73 (10 May 2024)

Today the Supreme Court of Appeal (SCA) dismissed an appeal against a judgment and order of the Eastern Cape Division of the High Court, Mthatha (the high court), declaring that the Dosini family is not a royal family entitled to recommend to the President a person to assume the kingship or queenship of AmaMpondomise. The matter arose from a dispute between two families, both claiming to be the royal family of AmaMpondomise; the Dosini family, on the one hand, and the Phahlo family on the other.

The kingship of AmaMpondomise was restored after an earlier judgment of the high court had set aside a decision by the Tolo Commission to the effect that AmaMpondomise never had a kingship. The last king of AmaMpondomise was King Mhlonthlo, who had been divested of his kingship by the colonial government in 1904. With the kingship restored, the position of king, or queen, was vacant. Section 9 of the Traditional Leadership and Governance Framework Act 41 of 2003 (the Act) provides that in the case of a vacancy, the royal family must identify a person to assume the position of king or queen and inform the President of their particulars. The Dosini family identified Ms Maseti as queen, while the Phahlo family identified Mr Matiwane as king.

Mr Matiwane was the grandson of King Mhlonthlo, a direct descendant of Cira. In the 1300s, the king, King Ngcwina, had named Cira as his successor to the exclusion of his natural successor, Dosini. Ms Maseti was descended from Dosini. The Dosini family claimed that Dosini had been unlawfully disinherited in the 1300s, and therefore they were the legitimate royal family to identify Ms Maseti as queen. The Phahlo family disputed the Dosini's claim on the basis that the kingship that had been restored was that of King Mhlonthlo. Accordingly, they were the legitimate royal family.

In the ordinary course, the appeal to the SCA would have been on the merits of this dispute. However, during the appeal hearing, counsel disclosed to the Court that the President had already appointed Mr Matiwane as king and had issued a certificate to this effect. The appointment was made on 21 September 2020, while the parties were still engaged in appeal litigation in the high court. The SCA found that the appointment rendered the issues raised on appeal moot, meaning that there were no longer live issues between the parties requiring a

decision by the Court. No practical purpose would be served by revisiting whether the high court had correctly granted relief in favour of the Phahlo family. The further disclosure that the Dosini family had instituted a review of the President's decision did not change this state of affairs.

The SCA noted that the failure by the legal representatives to disclose these critical facts in the record prior to the appeal hearing was to be deprecated.

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