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IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 5948/2018

In the matter between:-

MALULEKE DESMOND N.O. **OBO MDUNGAZI JOSEPH MALULEKE**	**Applicant**
AND	
MALULEKE MPHEPHU TSATSAWANI N.O. **OBO: HASANI THOMAS MULAMULA**	**First Respondent**
MULAMULA ROYAL FAMILY	**Second Respondent**
MULAMULA TRADITIONAL COUNCIL	**Third Respondent**
PREMIER OF THE PROVINCE OF LIMPOPO	**Fourth Respondent**
LIMPOPO PROVINCIAL COMMITTEE ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS	**Fifth Respondent**
COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS	**Sixth Respondent**

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

BE PLEASED TO TAKE NOTICE THAT the Applicant in the above application applies for Leave to Appeal to the Supreme Court of Appeal *alternatively* to the Full Court of the above Honourable Court against the whole judgment and order of His Lordship **Mr Justice Masilo A.J** delivered on **30 January 2026** in which the learned Judge granted several orders affecting the Applicant.

BE PLEASED TO TAKE NOTICE THAT the Applicant contends that the Court erred on numerous questions of law and fact, and that there are reasonable prospects of success on appeal, alternatively that compelling reasons exist why the appeal should be heard.

The grounds upon which Leave to Appeal is sought, include, but are not limited to the following:-

[1] The Court erred by conflating Appeal with review, as a result impermissibly substituting its own genealogical findings for those of the Commission, contrary to PAJA review principles and the deference given to specialist fact finders in traditional leadership disputes. In this case, the Kgatla Commission.

1.1 The Honourable Court made positive determinations on genealogical and factual dispute by finding that the first wife of Hosi Jim Photani namely Xalati was with a child or pregnant when married and that this disqualified Gezani Johannes Maluleke, with further conclusion that the first biological son was Resimati John Mulamula.

1.2 This is a misdirection because on review, the Courts must not cross the line from review to appeal. They must accord the empowered bodies appointed to factually determine disputes and the space to make their own findings. The Courts must avoid

substituting their own open *"superior wisdom"*, on custom laden questions unless the PAJA grounds are made.

1.3 Courts should give due weight to factual findings and policy choices by bodies with special expertise. The separation of power principle dictates so. In traditional leadership disputes, the primary fact-finding function lied with the commission.

1.4 The Kgatla Commission heard oral testimony and had regard to documentary materials including the 17 October 1996 minutes, which indicates that the purported secret about Gezani's paternity was challenged as improbable and rejected. The judgment's approach elevated its own reading of genealogies and an isolated 1996 remark over the commissions heard oral evidence and documentary evidence. It is respectfully submitted that this is a material misdirection warranting appellate court's interference.

[2] The Court erred by putting more reliance on the untested "*Xilumani Centre for Research*" material not properly before the Court on review. In paragraphs 45, 46, 47, and 49 of the judgment, the Court quotes from a document compiled by Xilumani:-

2.1 The misdirection by the Court comes about as this body was not commissioned by a competent statutory function, the authors were not identified or subjected to cross-examination. The royal family custodians were never interviewed by this body, and the report was purportedly submitted after the Commission's hearings.

2.2 The review is ordinarily confined to the decision maker's record. It is impermissible to bolster a review with private, extra record, untested "*expert*" materials to override the administrator's findings. The Court erred by accepting such material without a proper evidential foundation or process which undermined fairness, the rule in

motion proceedings about provenance and the careful review/ appeal divide. The Honourable Court ought to have given no weight to Xulumani's purported report.

[3] The Honourable Court erred by disregarding material record evidence that supported the restoration to the first house. In the 17 October 1996 minutes, it's recorded that the illegitimacy narrative which was presented by Hahani Tsatsawani was rejected by the family. Importantly, because she was younger than Gezani and could not have been privy to any such secret at the time. This assertion was roundly rejected by everyone.

[4] The Honourable Court disregarded the evidence of Mackson Mafemane Maluleke who was the surviving last born son of Hosi Jima Photani. He testified that Gezani was first born of both his father and mother. This remained uncontroverted. The Honourable Court did not consider that the family tree placed by the Applicants in the main action had factual errors in the form of inconsistent dates, misdescribed relationships, for example, Tomu-Dumela, and had skewed arrows undermining its probative value.

[5] The Court erred by accepting the pregnancy at marriage assertion as a determinative fact without addressing the contradiction and confirmation resulting in a misdirection on the facts and on the evaluation of the review record.

[6] The Court committed an error by not adjudicating on the *locus standi* point *in limines* raised by the Applicant who was the Third Respondent in the main application.

6.1 The contentions which remained uncontested evidence is that Mr Mzamani Maxwell Mingayimani was not the lawfully elected chairperson of Mulamula Royal Council and is a mere commoner. His only connection was as a neutral scribe and facilitator at the **17 October 1996** meeting as recorded in the minutes. The legitimate office bearers were identified, and they filed confirmatory affidavits to that effect.

6.2 An affidavit of one Terrence Nhombelani when he was withdrawing his signature from the traditional council resolution on the basis of being misled was also filed. The Court either ignored the points *in limine* or implicitly treated Mingayimani as authorised to launch the application on behalf of the three Applicants in the main application. It is submitted that the Honourable Court erred by considering an application that was not properly placed before it as Mingayimani was not authorised.

6.3 The Honourable Court took issue with the authority of the deponents on behalf of the State parties. However, such stringency was not applied evenly. This constituted a misdirection.

[7] The Court erred further by misinterpreting and misapplying the statutory scheme and difference owed to the Premier and Commission. The Commission had authority to investigate and make recommendations on contested

leaderships in terms of the Framework Act 41 of 2003 and Limpopo Act 6 of 2005.

7.1 The Application does fit squarely within the restoration brief intended to correct apartheid era or otherwise a legitimate placement of leadership. The Honourable Court ought to have exercised institutional respect towards the Commission's determination and only intervene only for PAJA missteps and avoid substituting its own genealogical assessment.

7.2 The Court recognised the authorisation defects in affidavits deposed to for the State parties and it suggested that they ought to be struck out. However, it elected to accept them for the purposes of hearing the matter.

7.3 The Court inconsistently approached the three Applicants in the main applications' own authority problems. The Court ought to have equally discounted defective materials relied on by the Applicants, for instance, Xilumane report and defective authority. The court ought to have applied the review lenses fairly. The inconsistencies amount to a misdirection.

[8] The Court erred by misapplying customary law. Customary law is living and must be ascertained primarily from the communities' own present day practices and authoritative structures.

8.1 Apartheid era administrative documents and external experts must be treated with caution. The Kgatla Commission had and recorded the community's assertions about the rules of first wives on whether a

deflowered maiden could marry into the royal house and the practical historical path to the chieftaincy.

8.2 The Court's preference for archival snippets and disputed pregnancy narrative over the community's evidence contravenes what has been recorded, on how customary law must be approached.

8.3 The Court erred further by treating biological paternity from a DNA testing, and burial location as determinative of customary succession. This is a misdirection. Customary law is determined by the community.

8.4 The Court erred by holding that the Commission was obliged to order DNA testing or exhumation. There is no statutory or customary basis for such a requirement.

8.5 The Court erred further by disregarding uncontroverted evidence that a chief cannot marry a pregnant woman under Tsonga custom.

[9] The Court erred in finding that the "*Premier*" dissolved the senior traditional leadership, when the Premier merely implemented the Commission's recommendations under Section 26 of the Framework Act.

[10] The Court erred in holding that the Premier was required to comply with Section 30 of the Limpopo Act, despite the Premier acting under Section 26 of the Framework Act. The Court erred in finding that the Premier acted *ultra vires.*

[11] The Court erred in substituting its own decision for that of the Commission and the Premier despite the highly contested fact and that the Commission was the specialised body.

[12] The Court erred by finding that there were exceptional circumstances which caused it to substitute the decision. The Court erred by holding that the outcome was a foregone conclusion despite the existence of a complex factual dispute.

[13] The Court ought to have dismissed the application with costs.

BE PLEASED TO TAKE FURTHER NOTICE that the Applicant contends that the Appeal has a reasonable prospect of success and there are compelling reasons why the appeal must be heard.

The issues have produced divergent approaches in High Court judgments and are of general public importance and the Applicant accordingly seeks an order:-

[a] Granting leave to appeal to the Supreme Court of Appeal, *alternatively* to the Full Court of this Division.

[b] To ordering that the cost of this application be costing the appeal.

DATED AND SIGNED AT POLOKWANE ON THIS THE 19 DAY OF FEBRUARY 2026.

MPHO WILLIAM MANGENA
(An Attorney with the right of appearance in the High Court as envisaged in Section 25(3) of the Right of Appearance in Court Act (No.28 of 2014)

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