REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO. 5948/2018

(1) REPORTABLE: YES/~~NO~~
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

.....

.....

DATE: 30 January 2026 SIGNATURE.....

In the matter between:

Maluleke Mphephu Tsatsawani N.O

Obo Hasani Thomas Mulumula **1st Applicant**

Mulumula Royal Family **2nd Applicant**

Mulumula Traditional Council **3rd Applicant**

And

Premier of the Limpopo Province **1ST Respondent**

Limpopo Provincial Committee

on traditional leadership disputes and claims **2nd Respondent**

Maluleke Desmond N.O

Obo Mdungazi Jospeh Maluleke **3rd Respondent**

Commission on traditional leadership

disputes and claims **4th Respondent**

Limpopo Provincial House of

Traditional Leaders **5th Respondent**

JUDGMENT

Masilo AJ:

Introduction

[1] The Applicants brought a review application in which they sought to review and set aside two decisions, namely:

[a] the Kgatla Commission's decision to uphold the claim for Senior Traditional Leadership by Mdungazi Joseph Maluleke.

[b] the decision of the Premier of Limpopo to recognize Desmond Maluleke as acting Senior Traditional Leader of Mulamula Traditional Community.

[2] An Affidavit deposed and signed by one Mr Mohlala, who is a director of Traditional Affairs at COGHSTA for and purportedly in behalf of the 1st Respondent. The very self-same Mr Mohlala, who is a director of Traditional Affairs at COGHSTA also for and purportedly on behalf of the second, fourth and fifth Respondent deposed to an 'Answering Affidavit'.

[3] The Third Respondent also filed opposing papers in which he opposed the application and the orders sought.

[4] With the passing of the deponent to the Founding Affidavit, who was also the First Applicant, and the demise of the Third Respondent who was also a deponent to the Third Respondent's Answering Affidavit, substitution by the respective executors was done.

[5] The parties then went through a Rule 37 process before Madam DJP Semenya, wherein they agreed to file Amended Notice of Motion and Supplementary Founding Affidavit. Consequently, the other parties would then file in terms of the Rules of court the necessary papers, which resulted in the Supplementary Affidavit on behalf of the 1st Respondent deposed to by one Ms Malahlela, who is the Head of Department of Coghsta.

[6] At the commencement of the proceedings the court sought clarity from the parties if they wish to persist with points in limine raised in the papers, as there was a Rule 15(4) notice, a special plea regarding the locus standi of the second and third Applicants.

[7] The court on the other hand was concerned that at least on two occasions the deponents to Answering and Supplementary Affidavit deposed for the Respondents without either alleging or attaching the necessary authority to act or depose to such an affidavit. This, the court had occasion to see in Mr Mohlala's two separate answering affidavits purportedly on behalf of the 1st Respondent and secondly on behalf of the second, fourth and fifth Respondent. In relation to Ms Malahlela, she alleged authority to act on behalf of the first Respondent in the Supplementary Answering Affidavit, but took no effort to attach proof of such authorization.

[8] Depending on the set of eyes with which one looks at this fact, and the position from whence the person looks at it, the status of this affidavit, and the ramification of orders emanating from the filed affidavits needs to be illuminated on by this court. Ms Malahlela, asserts that she is the Head of Department of Coghsta. This assertion must be looked at the context, that the MEC for Coghsta in his nomine officio or the Department of Cogsta is not cited as a party in these proceedings.

[9] The assertions by the officials of Coghsta in these proceedings with no confirmatory affidavits of the cited parties, or allegation and proof of authorization to partake in this proceeding on behalf of the cited parties raises a lot of questions. This is so simply because, the Constitution has clearly set apart the role and 'administrative territorial area' at each level of government, namely, National, Provincial and Local government. The Executive Authority of the Limpopo Province is vested in the Premier, in term of section 125 of the Constitution. This authority the Premier exercises in Council with the Members of the Executive Council.

[10] The Minister of Public Administration, in Schedule 3 of the Public Service Act,103 of 1994 as amended established Departments at National level in Part A and in Part B, established Provincial Departments. The second and fourth Respondent is each a statutory body in its own right which had a specific time framed lifeline, with an automatic and timed self-destruction clause. These bodies operated at different levels of government, specifically the fourth Respondent after the 2009 amendment was confined to deal with national level matters, and the second Respondent confined to the Limpopo Province only. The fifth Respondent is equally a creature of statute, established in terms of Limpopo House of Traditional Leaders Act, 2005.

[11] It is inconceivable how, Mr Mohlala deposes to an answering affidavit on behalf of the second, fourth and fifth Respondent. He also purports to

depose to an answering affidavit on behalf of the first Respondent, without attaching anything from which it can be deduced that he is authorized by any of the parties. This begs the question, is Mohlala acting on a frolic of his own or not? If he is not, then why is the cited principal on whose behalf he claims to be acting, not confirming his instruction or delegation either in the form of a confirmatory affidavit or delegation of authority or the resolution from the institutions cited herein as respondents. The same sentiments are apposite in relation to Ms Malahlela.

[12] Van Loggernberg & Farlam, in Erasmus Superior Practice B1-38 posits that-

> "The applicant's right to apply that is his or her locus standi.
> In Scott v Hanekom it is said that it is '**trite law that appropriate allegations to establish locus standi of an applicant should be made in launching affidavits and not in the replying affidavits**'
>
> When notice of motion is brought by a legal persona such as a company, evidence must be placed before court that the applicant has duly resolved to institute the proceedings and that the proceedings are instituted at its instance. **The best evidence that the proceedings have been properly authorised would be provided by an affidavit made by an official of the company annexing a copy of the resolution.**"

[13] **Gauntlet JA in Wing on Garment (Pty) Ltd v Lesotho National Development Corporation (Indc) and Another (C of A(CIV) No. 6/99**

CIV/APN/39/99) (CIV/APN/39/99) [1999] LSHC 159 (15 October 1999), quoted with approval **Mall (Cape) Pty) Ltd v Merino Ko-operasie Beperk 1957 (2) SA 347 (C),** wherein the court said

"This issue is not a matter of mere technicality. In the leading decision **in Mall (Cape) Pty) Ltd v Merino Ko-operasie Beperk 1957 (2) SA 347 (C)**, Watermeyer J (delivering a judgment of the Full Bench) held (at 351-2) as follows:

> *"I proceed now to consider the case of an artificial person, like a company or co-operative society. In such a case there is judicial precedent for holding that objection may be taken if there is nothing before the court to show that the applicant has duly authorised the institution of notice of motion proceedings..... Unlike an individual, an artificial person can only function through its agents and it can only take decisions by the passing of resolutions in the manner provided by its Constitution. An attorney instructed to commence notice of motion proceedings by, say, the secretary or general manager of a company would not necessarily know whether the company had resolved to do so, nor whether the necessary formalities had been complied with in regard to the passing of the resolution. It seems to me, therefore, that in the case of an artificial person there is more room for mistakes to occur and less reason to presume that it is properly before the court or that proceedings which purport to be brought in its name have in fact been authorised by it..... Each case much be considered on its own merits and the court must decide whether enough has been placed before it to warrant the conclusion that it is the applicant which is litigating and not some other authorised person on its behalf."*

[14] In **Ganes and Another v Telecom Namibia Ltd. 2004 (3) SA 615 (SCA)** at paragraph 19 as support for this proposition stated:

> *'There is no merit in the contention that Oosthuizen AJ erred in finding that the proceedings were duly authorised. In the founding affidavit filed on behalf of the respondent Hanke said that he was duly authorised to depose to the affidavit. In his answering affidavit the first appellant stated that he had no knowledge as to whether Hanke was duly authorised to depose to the founding affidavit on behalf of the respondent, that he did not admit that Hanke was so authorised and that he put the respondent to the proof thereof. In my view it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. In the present case the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the respondent. In an affidavit filed together with the notice of motion a Mr Kurz stated that he was a director in the firm of attorneys acting on behalf of the respondent and that such firm of attorneys was duly appointed to represent the respondent. That statement has not been challenged by the appellants. It must, therefore, be accepted that the institution of the proceedings was duly authorised. In any event, [r]ule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The appellants did not avail themselves of the procedure so provided. (See Eskom v Soweto City Council 1992 (2) SA 703(W) at 705C-J.)"*

[15] In **Reformed Presbyterian Church in Southern Africa v Minister of Police and Two Others**, (ECM) unreported case number CA 77/2017 of 13 February 2018, the court accordingly having regard to the facts of that case found at paragraph 17:

> *"Consequently, there is no need for the deponent to be authorised to depose to an affidavit in motion proceedings. However, the institution thereof must be authorised by the legal entity purporting to sue. The deponent in casu does not appear to have been authorised by the Applicant."*

[16] In **Kouga Municipality v South African Local Government Bargaining Council and Others (P513/08) [2009] ZALC 158; [2010] 4 BLLR 414** (LC) Musi AJ (as she then was) at paragraph 28, the lamented that -

> *'It must be remembered that if the applicant did not authorize the launching and prosecution of the proceedings it is open to it to repudiate the proceedings in which case the third respondent, even though successful, may incur costs without being able to recoup it from the applicant. See* ***Durban City Council v Minister of Labour and Another*** *1947 (1) SA 373 (D) at 376.'*

[17] In **North Global Properties (Pty) Ltd v Body Corporate of the Sunrise Beach Scheme** it was held:

> *"[9] Any party to legal proceedings bears the onus of proving that its legal representative is properly authorised and that it has the authority to instruct its*

legal representatives. In this case meeting this onus is not accomplished by simply filing powers of attorney and resolutions on behalf of the applicants..."

[18] It is of course trite that not only must an applicant in motion proceedings make out a proper case in the founding papers and that an applicant is bound to the case made out therein and may not make out a new case in the replying affidavit. (See **National Council of Societies for the Prevention of Cruelty to Animals v Openshaw** [2008] ZASCA 78; 2008 (5) SA 339 (SCA) at paragraphs 29 to 30). Reliance on specific content of annexures in affidavits must be clearly identified (see **Genesis Medical Aid Scheme v Registrar, Medical Schemes and Another** 2017 (6) SA 1 (CC) at paragraphs 169 to 171).

[19] It is important to appreciate that the principle that a party must stand and fall by his papers cuts both ways, that is also applies to a respondent. This means that whatever averments are made in the Answering Affidavits is to be accepted as their evidence and version.

[20] Turning back to the fact at hand, this means that the averments by Mohlala in which he does not aver any authorisation for and on behalf of the Respondents must be accepted as such. The averment by Malahlela that she is duly authorised to depose on behalf of the respondents, without further confirmation.

[21] Counsel for the Applicants, intimated that the Applicants take issue with the fact that the second, fourth and fifth Respondents are purportedly represented by Mohlala with no allegation of authority to act on their behalf. Further, Counsel, for the first Respondent indicated that he holds instructions to act for the first Respondent. Counsel for the Applicants contended that the decision which is the subject of the review by the Kgatla Commission lays bear and undefended as there is no opposition and as such the court should grant an order on an unopposed basis. Counsel for the first Respondent sought a stand down to take instructions and proposed to file the necessary authority for the deponent on behalf of the first Respondent.

[22] Langa J, in the unreported judgement of **Selma Daude Da Cunha (Pty) Ltd v FNB t/s Wesbank** 17 October 2023 ZAMPMHC stated that:

> *"[10] It is, however, common cause that the respondent raised this issue in the opposing/answering affidavit as the first point in limine and it is therefore a fact that Ms Da Cunha's authority is disputed. Although the applicant seems to suggest that the correct procedure was not followed, it however appears from case law that the rule does not lay down any procedure to be followed by the party challenging the authority of a person acting for a party. It would seem that such a challenge may be raised for example by notice, with or without supporting evidence (See SA Allied Workers' Union v De Klerk NO 1990 (3) SA 425 (E) at 437), in the defendant's plea or special plea (See Foreign Traders Co Inc v Castle Wine & Brandy Co Ltd 1921 CPD 541), in an answering*

*affidavit or **orally at the trial** provided that prior notice has been given (See Ravden v Beeten 1935 CPD 269)*

*[11] It is trite that such a challenge may also be brought in interlocutory proceedings such as an application for summary judgment, or in an application for rescission of a summary judgment. See Creative Car Sound v Automobile Radio Dealers Association 1989 (Pty) Ltd 2007 (4) SA 546 (D) at 553I–554D) where it was held that the challenge should not be raised for the first time as a technical point in heads of argument and that it should be raised in terms of this subrule and, if necessary, in the answering affidavit. In Erasmus the authors state that subrule 7 does not lay down the procedure to be followed by the party challenging the authority of a person acting for a party. They make a point that based on case law authority, **such a challenge, which may be brought at any time before judgment,** may be raised by notice, with or without supporting evidence, in the defendant's plea or special plea, in an answering affidavit and even orally at the trial."*

[23] The court, per Langa J at paragraph 15 proceeded to posit that: -

"[15] In these circumstances, where the applicant chose to deal with the issue raised in relation to authority as she did, and is resolute that it was not necessary to file the company resolution authorizing Ms Da Cunha to act on its behalf, I am of the considered view that the applicant has failed to prove that Ms Da Cunha is properly authorized to act on its behalf. The institution of these proceedings have been shown not to be authorized by the applicant and as such on the basis of this finding alone, the application ought to be dismissed. However,

notwithstanding this finding I will still proceed to deal with the merits of the application."

[24] I am of the firm belief that the sentiments of Langa J, although relating to the applicant's failure to attach authorization in a founding affidavit, are apposite to the failure to file the necessary authority on behalf of a state machinery. Our courts have on numerous occasions lamented the failure of the state to follow the law and the rules. The Constitutional court in per Cameron J writing for the majority decision had occasion to posit and settle the ever arising question by the obligations of the state, in the matter of MEC for Health, **EC v Kirkland Inv (Pty) Ltd t/an Eye & Lazer Institute** 2014(3) SA 481 (CC) at para 82, where it was said –

"To demand this of government is not to stymie it by forcing upon it senseless formality. ***It is to insist on due process, from which there is no reason to exam government****. On the contrary,* ***there is a higher duty on the state to respect the law to fulfil procedural requirements and to tread respectfully when dealing with rights.*** *Government is not an indigent or bewildered litigant, adrift on the sea of litigious and certainty, to whom the court must extend a procedure-circumventing lifeline.* ***It is the constitution's primary agent it must do right and it must do it properly."***

[25] The lackadaisical manner with which the state agents have handled this matter, is worrying and is a cause for concern. The director in a different department, claims to act for parties who have been cited without any

smidgeon of evidence attached, nor an assertion of authority. This official claims to act for the only person whom the Constitution has vested with executive authority of the province in section 125. This for me without adducing evidence to confirm authority, suggest that he may just as well be a busy body who is on a frolic of his own, this is worsened by the fact that his employer, or the Executing Authority in his department has not been cited in these proceedings.

[26] Malahlela on the other hand deposes to a Supplementary Affidavit on behalf of the Respondents and claims to be duly authorized, even for a national department's statutory body. Without care to take the averment a notch up and either confirm her authority in the form of a confirmatory affidavit or a resolution or delegation of authority. To make matters worse, she is not bothered to explain and bring the court into her confidence as to why the change of deponent, as the deponent in the Answering Affidavit was Mohlala for the respondents in two separate answering affidavits.

[27] Although this may be seen as more of a technical point, and to decide this matter on such a point which some may see as trivial, and not disposive of the real issue between the parties. I am of the view that these answering affidavits by Mohlala and Malahlela ought to be jettisoned and struck out, for they have not been authorized by the parties they claim to act for.

[28] I am however, alive to the fact that to do so would be read as a denial of the first, second, fourth and fifth Respondent's Constitutional rights which are guaranteed in section 34 of the Constitution. Further, it would expose the parties to a never ending battle, to higher courts only to be returned to the same court at great costs to the innocent non-state parties, who did not make the decision which is the subject matter of this review.

[29] For these reasons, with the forlorn hope of this not being misread as setting precedent that the state parties may decide not to comply with the rules and not attach the relevant authority to act. This court will accept the Answering Affidavits of Mohlala and the Supplementary Affidavit of Malahlela for the purpose of hearing this matter. This will most certainly allow the parties to fully ventilate the substantive issues before court and afford this court an opportunity to consider all the averments and evidence, with a view to evaluate the findings and recommendations of the Kgatla Commission and subsequently the decision of the Premier.

Factual details of the dispute and the review

[30] On 4 October 2018, the Applicants launched out of the office of the Registrar, a review application, to review and set aside the findings and recommendations of the Kgatla Commission and subsequent decision of the Premier. The third Respondent filed his answering affidavit, so did the first,

second, fourth and fifth respondents. Subsequently, Supplementary Founding Affidavit and Supplementary Answering Affidavits were filed by the parties in this matter.

Background

[31] One Joseph Mdungazi Maluleke, on 31 August 2012 signed and completed **a claim to the Commission on Traditional Leadership Disputes and Claims. The claim form specifically in clause 6.3 reads**

"6.3 Select from the following the relevant description of your claim or Dispute:

Description	Mark your choice with a cross	
Dispute of an existing traditional leadership position	Kingship	
	Principal Traditional leader	
	Senior Traditional leader	*x*
	Headman	

[32] In his brief explanation of the dispute, at para 6.4 he stated the following:

" ... that the present chief Hasani Thomas Mulamula be removed from traditional leaders because his father is a third born son of the late Chief Mkhacani Jim Maluleke who passed away in 1947- From 1948 the successor of the deceased was Rismati John Maluleke third born son the first-born son Johannese was disadvantaged by the late Rismati when the third born son passed away in 1977 his first born son Hasani Thomas was succeeded up to date. The commission of Ralushai compelled or ordered the family to go back home to finalise this case since it was very clear...."

[33] In the questionnaire on traditional leadership disputes and claims form, Khanyizeni Ishmael Maswanganyi, on 30 August 2012 completed and wrote the following answers:

"2.a. When was your traditional leadership status lost?

November 1947

2.b. How was your traditional leadership status lost?

When my grandfather passed away

4.b How many recognized headmen/women in your area of jurisdiction...

Four headman in jurisdiction which form part of the Mulamula area.

5. Explain your customary law of succession in detail from the first traditional leader.

"Our customary law of succession of our traditional leader it goes by the first house or the first-born son or if they has passed away all they goes to the second house if the first house is all passed away."

[34] The Mulamula traditional community dates back to 1824 under the leadership of Chavani/Mulamula, who ruled until around 10 June 1919. His first born son was Mbhabhai who was born lived between 1851-1917. Mbhambhai predeceased his father. When Hosi Chavani died, Mbhaimbhai's heir and first born son being Jim "Photani" Mkhacani was too young to ascend the throne. Hence, Tomu/Dumela acted on the throne from 1919-1932.

[35] In 1932 Mbhambahi's first born son Jim "Photani" Mkhacani was appointed chief of the Mulamula traditional community, and held the position until 1947 when he demised.

[36] Hosi Jim "Photani" Mkhacani had 5 wives, namely Xalati, Madzivandhlela, Nwamakhasa, Nwamusisinyani and Nwampenyisi. Apparently, Xalati was with a child or pregnant when Hosi Jim "Photani" Mkhacani married her. This child was Mr Gezani Johannes Maluleke. Seemingly, this meant that Gezani Johannes Maluleke was not of royal blood of the Mulamula Royal family and not a direct descendant of Hosi Jim Mkhacani. This disqualified him from the position of heir to the throne, as the customary practice of the selection of Hosi of the Mulamula, is that the contender must be the first born son of the Hosi.

[37] The first biological son of Hosi Jim "Photani" Mkhacani, by his first wife Xalati was Risimati John Mulamula. It is because of his position as the first son, despite being the third born child of Xalati, that Risimati John Mulamula stood in contention for the position of Hosi of the Mulamula traditional community from 1948-1977.

[38] Gezani Johannes Maluleke, married two wives. The claimant who signed the dispute referral form being Mdungazi Joseph Maluleke is the fourth child from the second house of Gezani Johannes Maluleke.

[39] When Risimati John Mulamula demised, his first-born son Hasani Thomas Mulamula succeeded his father as the first-born son. Hosi Hasani Thomas Mulamula ruled the Mulamula traditional community from 30 March 1977 until his demise in 2023.

[40] On 31 August 2012 Mdungazi Joseph Maluleke fourth child of Gezani Johannes Maluleke referred a dispute to the Kgatla Commission.

[41] On 11 April 2017, the Kgatla Commission issued a Notice of Public Hearing to be held on 17 May 2017 at 9h00 at the Vhembe District Municipality Chamber.

[42] On 31 July 2017 the Mulamula Royal Council delivered their submission to the Kgatla Commission. On 7th August 2017 the Secretariat of the Kgatla

Commission acknowledged receipt of the submission by the Mulamula Royal Council.

[43] In a submission to the CTLDC, which this court has cause to believe must have served and been considered by the Kgatla Commission, they attached documents, from which the following passages were extracted –

[44] In a document dated 17 October 1996, being minutes of proceedings at the Mulamula Royal Family meeting states: -

> *'In his turn, Hosi TH Mulamula sought recourse from Hahani Nwa Photane Tsatsawani Vukeya who has seen better days and should be a guiding spirit in the whole debate. She immediately made a sad revelation that her late brother Gezane Johannes Mulamula was born outside of wedlock and this social stigma disqualified him as heir to the throne. An eerie silence followed:*
>
> *In this view, she was lone holdout. All appeared to learn about this sorry betrayal for the first time except, of course, the chief."*

[45] On 29 November 1960 a tribal resolution of the Mulamula traditional community was passed wherein Jim Mulamula was recorded as the chief in the presence MJ Vercueil in his capacity as the Native Commissioner.

[46] On 6 December 1977 in minute no N1/12/2/20 addressed to the secretary of the *Department of the Chief, Minister, Giyani,* -

"kapteinskap: Mulamula 6/1/2-4 van 14 Oktober 1977 verwys

1. *Ek gaan antwoord me die aanstelling van Thomas Hasani Maluleke as kaptein van die Mulamula staam.*

2. *2. 'n Geneologie word aangeheg"*

[47] In a Cabinet Memorandum 6/1/2-4 Mulamula, signed by the Chief Minister dated 23 January 1978, state-

1. The Chief Minister has the honour to inform the Cabinet: -

(a) that Chief JR Mulamula died in August 1977.

(b) That at a meeting of the Chief's inner family circle held on 13 September 1977, Thomas Hasane Mulamula ... was designated successor to the late chief.

According to the attached genealogical tree he is the first son of the late Chief's principal wife. ....'

[48] In the submission to the Kgatla Commission by Mdungazi Joseph Maluleke regarding the reason and basis why his grandfather was overlooked for the position of the Mulamula Senior Traditional leadership, he pointed out, which was noted in paragraph 2 of the Kgatla Commission report that:

"When his father was to ascend the throne after the death of his grandfather, Jim Potani Maluleke, there was an allegation that his father killed his own father therefore

he could not take over the senior traditional leadership. His father's younger brother became a regent for the children of Gezani Johannes Maluleke. The senior traditional leadership never returned to its rightful house since then."

[49] I have considered paragraph 6 of the Kgatla Commission's report and the detail with which the version of the claimant is set out at paragraph (a). I also had an opportunity to considered the terseness with which the Kgatla Commission in paragraph 6(b) in only three paragraphs summed up the Respondent's version. This was despite the fact that the Kgatla Commission was in possession of a detailed submission with archival records which included the following-

"(a) Tribal resolution dated 29 November 1960, certified by MJ Vercueil, confirming that it was a tribe under chief Jim Mulamula, for collecting monies to build schools and hostels;

(b) The genealogical tree compiled on 6 December 1977 by ethenologist;

(c) Mulamula Royal Family meeting Minutes of meeting of 17 October 1996;

(d) Memo from Sibasa Native Commissioner dated 16 September 1958;

(e) Letter to Sibasa Native Commissioner dated 14 July 1964;

(f) Letter from Sibasa Native Commissioner confirming dated of appointment of Kaptein JR Mulamula as 20 May 1958 and recommendation for salary increase with effect from 1 April 1964;

(g) Letter from Sibasa Native Commissioner regarding bonus payment of chief John Risimati Mulamula dated 17 December 1965;

(h) Letter from office of the Chief Minister of Gazankulu Government services dated 30 March 1978 regarding appointment of Thomas Hasani Mulamula;

(i) Memo from Head of Ethnological Services, regarding the appointment of Thomas Hasani Mulamula as Kaptein dated 20 February 1978;

(j) Handwritten Memo to Secretary of Chief Minister regarding Kaptein Thomas Hasani Mulamula dated 6 December 1977;

(k) Memo to Secretary of Chief Minister regarding Cabinet decision to appoint Thomas Hasani Mulamula dated 6 December 1977;

(l) Minute 543 approved 10 March 1978 confirming that Kaptein R Mulamula died and cabinet of Gazankulu approved the appointment of Thomas Hasane Mulamula;

(m) Letter to Secretary of Bantu Administration from Chief Minister: Gazankulu regarding appointment of Kaptein Thomas Hasane Mulamula dated 26 January 1978;

(n) Cabinet Memo from Chief Minister: Gazankulu regarding appointment of Kaptein Thomas Hasane Mulamula dated 23 January 1978;

(o) Certificate of appointment of Thomas Hasane Mulamula as chief of the Mulamula tribe sign dated 11 April 1978."

[50] The Kgatla Commission in its findings at paragraph 9 found that –

'9.1 The senior traditional leadership is not in the rightful house as the rightful house is that of Gezani Johannes Maluleke.

9.2 The senior traditional leadership should go to George Maluleke who is the son to Samuel who is the first-born son of Gezani Maluleke.'

[51] In its recommendation to the Premier, it recommended that –

> "10.1 It is recommended that the claim by Maluleke Mdungazi Joseph be upheld.
>
> 10.2 That the Premier call both the claimant and the present senior traditional leader Hasani Thomas Maluleke to agree on a road map to correct the anomaly.'

Applicable law

[52] In order to give effect to section 212, and comply with section 237, Parliament passed the Traditional Leadership and Governance Framework Act, Act No. 41 of 2003. As its name speaks for itself, the Framework Act, provided a legal framework to deal with provincial peculiarities, which resulted in the Limpopo Provincial legislature promulgating the Limpopo Traditional Leadership & Institutions Act No. 6 of 2005, as empowered by section 104(1)(b).

[53] **Ad Traditional Leadership and Governance Framework Act, Act No. 41 of 2003**

[53.1] The long title thereto states that –

> *"To provide for the recognition of traditional communities; to provide for the establishment and recognition of traditional*

councils; to provide a statutory framework for leadership positions within the institution of traditional leadership, the recognition of traditional leaders and the removal from office of traditional leaders; to provide for houses of traditional leaders; to provide for the functions and roles of traditional leaders; to provide for dispute resolution and the establishment of the Commission on Traditional Leadership Disputes and Claims; to provide for a code of conduct; to provide for amendments to the Remuneration of Public Office Bearers Act, 1998; and to provide for matters connected therewith."

[53.2] Since this is a Constitutional Legislation, as it is arched in section 212 of the Constitution, it contains a Preamble, which reads-

"WHEREAS the State, in accordance with the Constitution, seeks-

**to set out a national framework and norms and standards that will define the place and role of traditional leadership within the new system of democratic governance;*

**to transform the institution in line with constitutional imperatives; and*

**to restore the integrity and legitimacy of the institution of traditional leadership in line with customary law and practices;*

AND WHEREAS the South African indigenous people consist of a diversity of cultural communities;

AND WHEREAS the Constitution recognises-

**the institution, status and role of traditional leadership according to customary law; and*

**a traditional authority that observes a system of customary law;*

AND WHEREAS-

**the State must respect, protect and promote the institution of traditional leadership in accordance with the dictates of democracy in South Africa;*

**the State recognises the need to provide appropriate support and capacity building to the institution of traditional leadership;*

**the institution of traditional leadership must be transformed to be in harmony with the Constitution and the Bill of Rights so that-*

-democratic governance and the values of an open and democratic society may be promoted; and

-gender equality within the institution of traditional leadership may progressively be advanced; and

**the institution of traditional leadership must-*

-promote freedom, human dignity and the achievement of equality and non-sexism;

-derive its mandate and primary authority from applicable customary law and practices;

-strive to enhance tradition and culture;

-promote nation building and harmony and peace amongst people;

-promote the principles of co-operative governance in its interaction with all spheres of government and organs of state; and-

promote an efficient, effective and fair dispute-resolution system, and a fair system of administration of justice, as envisaged in applicable legislation."

[53.3] Section 11 deals with Recognition of senior traditional leaders, headmen or headwomen. It provides that -

"(1) Whenever the position of senior traditional leader, headman or headwoman is to be filled-

(a) the royal family concerned must, within a reasonable time after the need arises for any of those positions to be filled, and with due regard to applicable customary law-

(i) identify a person who qualifies in terms of customary law to assume the position in question, after taking into account whether any of the grounds referred to in section 12 (1) (a), (b) and (d) apply to that person; and

(ii) through the relevant customary structure, inform the Premier

of the province concerned of the particulars of the person so identified to fill the position and of the reasons for the identification of that person; and

(b) the Premier concerned must, subject to subsection (3), recognise the person so identified by the royal family in accordance with provincial legislation as senior traditional leader, headman or headwoman, as the case may be.

(2) (a) The provincial legislation referred to in subsection (1) (b) must at least provide for-

(i) a notice in the Provincial Gazette recognising the person identified as senior traditional leader, headman or headwoman in terms of subsection (1);

(ii) a certificate of recognition to be issued to the identified person; and

(iii) the relevant provincial house of traditional leaders to be informed of the recognition of a senior traditional leader, headman or headwoman.

(3) Where there is evidence or an allegation that the identification of a person referred to in subsection (1) was not done in accordance with customary law, customs or processes, the Premier-

(a) may refer the matter to the relevant provincial house of traditional leaders for its recommendation; or

(b) may refuse to issue a certificate of recognition; and

(c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.'

[53.4] Section 12 deals with removal of senior traditional leaders, headmen or headwomen-

'(1) 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 that 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.

(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 concerned must, within a reasonable time and through the relevant customary structure-

(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 in the Provincial Gazette; and

(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.

(4) Where a senior traditional leader, headman or headwoman is removed from office, a successor in line with customs may assume the position, role and responsibilities, subject to section 11.

[53.5] Section 21 deals with Dispute and claim resolution. It provides that -

"(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 contemplated in subsection (1) has not been resolved as provided for in this section, the dispute or claim must be referred to the Commission."

[53.6] Section 25 sets out the Functions of Commission. It states that -

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

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

(iii) a traditional leadership position where the title or right of the incumbent is contested;

(iv) claims by communities to be recognised as kingships, queenships, principal traditional communities, traditional communities, or headmanships;

(v) the legitimacy of the establishment or disestablishment of 'tribes' or headmanships;

(vi) disputes resulting from the determination of traditional authority boundaries as a result of merging or division of 'tribes';

(viii) all traditional leadership claims and disputes dating from 1 September 1927 to the coming into operation of provincial legislation dealing with traditional leadership and governance matters;

[53.7] Section 26 deals with the Recommendations of Commission. It states that -

"(1) A recommendation of the Commission is taken with the support of at least two thirds of the members of the Commission.

(2) A recommendation of the Commission must, within two weeks of the recommendation having been made, be conveyed to-

b) the relevant provincial government and any other relevant functionary to which the recommendation of the Commission applies in accordance with applicable provincial legislation in so far as the consideration of the recommendation does not relate to the recognition or removal of a king or queen in terms of section 9, 9A or 10.

(3) The President or the other relevant functionary to whom the recommendations have been conveyed in terms of subsection (2) must, within a period of 60 days make a decision on the recommendation."

[53.8] The insertion of section 26A introduces Committees of Commission. It provides that –

> *"(1) There is [sic] hereby established provincial committees to deal with disputes and claims relating to traditional leadership.*
>
> *(2) (a) Each provincial committee contemplated in subsection (1) consists of as many members as the Premier concerned may determine after consultation with the Minister and the Commission and such members are appointed by the Premier, by the notice in the Provincial Gazette, for a period not exceeding five years.*
>
> *(b) The term of office of committee members must be linked to that of members of the Commission contemplated in section 23 (1) (a).*
>
> *(c) The committee members of the Commission must have the same knowledge as the members of the Commission as contemplated in section 23 (1)(a).*
>
> *(3) Each provincial committee contemplated in subsection (1) must be chaired by a member of the Commission designated by the Minister after consultation with the Premier concerned and the Commission: Provided that a member of the Commission may chair more than one committee.*
>
> *(4) The provisions of sections 24, 24A, 24B and 25 (2) to (5) and (7) apply, with the necessary changes, to provincial committees.*
>
> *(5) A provincial committee must perform such functions as delegated to it by the Commission in terms of section 25 (6) after a review as contemplated in section 28 (10).*

(6) A provincial committee may make final recommendations on all matters delegated to it in terms of 25 (6): Provided that where a committee is of the view that exceptional circumstances exist it may refer the matter to the Commission for advice.

(7) The provisions of section 26 (2) (b) apply, with the necessary changes, to the recommendations of a committee."

[53.9] The legislature in section 28 sought to preserve and to maintain the status quo within tribes, and to set parameters to regulate a smooth transitional arrangement into the Constitutional dispensation for traditional institutions. It provides that-

"(1) Any traditional leader who was appointed as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before the commencement of this Act, is deemed to have been recognised as such in terms of section 9 or 11, subject to a decision of the Commission in terms of section 26.

[54] The Limpopo Provincial Legislature gave effect to section 212 read with the framework set out in the Preamble of the Framework Act,2003, promulgated the Limpopo Traditional Leadership & Institutions Act, 2005.

Ad Limpopo Traditional Leadership & Institutions Act No. 6 of 2005

[54.1] The long title thereof provides as follows -

"Act to provide for the recognition of traditional communities; the recognition of traditional councils, the election and appointment of members of traditional councils, recognition of traditional leaders, their removal from office, their roles and functions, recognition of acting traditional leaders and regents, to provide for funds of traditional councils and management thereof; to provide for payment of allowances for travelling expenses of members of traditional councils; to provide for meetings of royal family and traditional councils; to provide for code of conduct; and for matters connected therewith."

[54.2] The Preamble thereof recorded the following-

"PREAMBLE

WHEREAS the Constitution recognises-

- the institution, status and role of traditional leadership according to customary law; and

- a traditional authority that observes a system of customary law;

AND WHEREAS the institution of traditional leadership must-

- promote freedom, human dignity and the achievement of equality and non-sexism;

- strive to enhance tradition and culture;

- promote nation building and harmony and peace amongst people;

- promote the principles of co-operative governance in its interaction with all spheres of government and organs of state;

AND WHEREAS it is necessary to enact provincial legislation within the framework provided by Traditional Leadership and Governance Framework

Act, 2003 (Act 41 of 2003) in order to provide for matters which are peculiar to the Province;

AND WHEREAS it is the intention of the provincial government to transform the institution of traditional leadership in line with the Constitution, by taking into consideration, amongst others, gender equality;

AND WHEREAS it is necessary for traditional leaders within the Province to exercise their powers within a statutory framework that enhances certainty and uniformity;

AND WHEREAS it is within the competence of the Province to legislate on matters of traditional leadership."

[54.3] CHAPTER 4, section 12 deals with recognition of senior traditional leader, headman or headwoman. It state -

"(1) Whenever a position of a senior traditional leader, headman or head woman is to be filled-

(a) the royal family concerned must, within a reasonable time after the need arises for any of those positions to be filled, and with due regard to the customary law of the traditional community concerned-

(i) identify a person who qualifies in terms of customary law of the traditional community concerned to assume the position in question; and

(ii) through the relevant customary structure of the traditional community concerned and after notifying the traditional council, inform the Premier of the particulars of the person so identified to fill the position and of the reasons for the identification of the specific person.

(b) the Premier must, subject to subsection (2)-

(i) by notice in the Gazette recognise the person so identified by the royal family in accordance with paragraph (a) as senior traditional leader, headman or headwoman, as the case may be;

(ii) issue a certificate of recognition to the person so recognised; and

(iii) inform the provincial house of traditional leaders and the relevant local house of traditional leaders of the recognition of a senior traditional leader, headman or headwoman.

(2) Where there is evidence or an allegation that the identification of a person referred to in subsection (1) was not done in accordance with customary law, customs or processes, the Premier-
(a) may refer the matter to the provincial house of traditional leaders and the relevant local house of traditional leaders for their recommendations; or
(b) may refuse to issue a certificate of recognition; and
(c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.

(3) Where the matter which has been referred back to the royal family for reconsideration and resolution in terms of subsection (2) has been reconsidered and resolved, the Premier must recognise the person identified by the royal family if the Premier is satisfied that the reconsideration and resolution by the royal family has been done in accordance with customary law."

[54.4] Section 13 deals with relief of Royal duties. It provides that -

"(1) Relief of royal duties shall be 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 that senior traditional leader, headman or headwoman to function as such;

(c) wrongful appointment or recognition;

(d) a transgression of a customary rule or principle that warrants removal; or

(e) persistent negligence or indolence in the performance of the functions of his or her office.

(2) Whenever any of the grounds referred to in subsection (1)(a), (b), (d) and (e) 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 concerned must, within a reasonable time and through the relevant customary structure-

(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 must-

(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 in the Gazette; and

(c) inform the royal family concerned, the removed senior traditional leader, headman or headwoman, and the provincial house of traditional leaders as well as the relevant local house of traditional leaders of such removal.

(4) Where a senior traditional leader, headman or headwoman is removed from office, a successor in line with customs may assume the position, role and responsibilities, subject to section 12.

(5) Whenever it comes to the attention of the Premier that the grounds referred to in subsection (1)(a) exist and the royal family has not decided to remove the senior traditional leader, headman or headwoman as the case may be, the Premier must forthwith terminate the salary of the traditional leader concerned with effect from the date when the said grounds came into existence, after the Premier has given the royal family thirty days to respond to the allegations. grounds came into existence, after the Premier has given the royal family thirty days to respond to the allegations."

[54.5] Section 30 deals with Implementation of decisions of commission, it provides that –

"(1) The Premier must, within seven days of receipt of the decision of the commission in terms of section 26(2) of the Framework Act, refer such decision to the provincial house of traditional leaders for its advice on implementation.

(2) The provincial house of traditional leaders must submit its advice contemplated in subsection (1) to the Premier within 14 days of receipt: Provided that the Premier may, if he or she deems it necessary, require the

provincial house of traditional leaders to submit its advice within a specified shorter period.

(3) The Premier must implement the decision of the commission within 30 days of receipt of such decision from the commission."

[54.6] Transitional arrangements are regulated by section 33 which says-

"(1) Any provision in this Act requiring consultation with a body which has not yet been established shall remain inoperative to the extent that it requires such consultation, until the relevant body is established.

(2) Any traditional leader who was appointed as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before the commencement of this Act, is deemed to have been recognised as such in terms of the relevant provisions of this Act.

(3) A person who, immediately before the commencement of this Act, had been appointed and was still recognised as a regent, or had been appointed in an acting capacity or as a deputy, is deemed to have been recognised or appointed as such in terms of the relevant provisions of this Act."

Ad Commission Act, 1947

[55] Commissions Act, 1947 in section 3 empowered the Commission as follows:

-

'(1) For the purpose of ascertaining any matter relating to the subject of its investigations, a commission shall in the Union have the powers which a

Provincial Division of the Supreme Court of South Africa has within its province to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects.

(2) A summons for the attendance of a witness or for the production of any book, document or object before a commission shall be signed and issued by the secretary of the commission in a form prescribed by the chairman of the commission and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in a superior court at the place where the attendance or production is to take place.

(3) If required to do so by the chairman of a commission a witness shall, before giving evidence, take an oath or make an affirmation which oath or affirmation shall be administered by the chairman of the commission or such official of the commission or such official of the commission as the chairman may designate.

(4) Any person who has been summoned to attend any sitting of a commission as a witness or who has given evidence before a commission shall be entitled to the same witness fees from public funds, as if he had been summoned to attend or had given evidence at a criminal trial in a superior court held at the place of such sitting, and in connection with the giving of any evidence or the production of any book or document before a commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in such a court, shall apply.'

Application and analysis

[56] The Kgatla Commission in the three paragraph summary of the Respondent before them listed two persons being Phahlele Ian and Jafta Maluleke suggesting that they are the two witnesses for the Respondent. This must be read against the background that Thomas Hasani Maluleke in paragraph 41 stated that 'Only the Claimant and I were heard.' Further, the Kgatla Commission noted contradictions about how Rismati John Mulamula came about to be appointed as chief. Sadly, in their filed record of proceedings I did not have the benefit of getting the transcribed record of the actual proceedings.

[57] I also noted that in paragraph 6(b) there is mention of NwaJacob as the mother of Gezani Johannes, who is the father to the claimant. According to the family trees provided, there is no mention of Nwa Jacob as one of the wives of Hosi Jim Photani Mulamula. Even the Respondents before the Kgatla Commission had noted Gezani Johannes Maluleke as the son of Xalati, the first wife of Hosi Jim Photani Mulamula.

[58] As to where the Kgatla Commission deduced this as I carefully scrutinised the submission by the Respondent compiled by the Xilumani Centre for Research, and nowhere do they mention Nwa Jacob as a wife or mother of Gezani Johannes Maluleke.

[59] Instead interestingly, the name Nwa Jacob, I found in the summary of the evidence before the Kgatla Commission by the claimant, wherein they projected Nwa Jacob as the principal wife of Hosi Jim Photani Mulamula. I also noted that despite all the archival records referring to Hosi Jim Photani as Mulamula. The Kgatla Commission in the summary at paragraph 6(a) referred to him as Potani Jim Maluleke.

[60] In the submission by the Respondents at paragraph 1.2 an important point was made, that –

> '...However, oral evidence submits that the first wife, Xalati, was already carrying a child when she married Hosi (chief) Jim Photani Mkhancani Mulamula. The child, Mr Gezani Johannes Maluleke, was not the Hosi's (chief's) child as he was not sired by him.'

[61] This for me tilts towards the contention that irrelevant considerations may have been taken into account in making the finding and recommendation by the Kgatla Commission. The biggest elephant in the room for the Kgatla Commission, was whether or not Gezani Johannes Maluleke was the biological son of Hosi Jim Photani Mkhancani Mulamula?

[62] Instead in their analysis the Kgatla Commission placed emphasis at paragraph 8.3 on the averment that it was Hosi Jim Photani Mkhancani Mulamula who said Risimati John Mulamula must succeed him. The Kgatla

Commission was quick to remonstrate that "It cannot be the prerogative of a traditional leader to appoint a successor as this is an institutional matter guided by custom. The view that Potani Jim - sick as he was summoned the royal family to tell them that Risimati John is his successor cannot hold water."

[63] What I find rather baffling is in paragraph 8.4 where the Kgatla Commission records that "There is no dispute that the royal family agreed that Gezani Johannes cannot succeed his father because they believed that he was responsible for his father's death. But they could not also punish his children for their father's sins."

[64] The Kgatla Commission buttresses this fact at paragraph 8.5 when they state that – 'In the minutes of a royal family held on 17 October 1996... one old woman suggested that Gezani Johannes Maluleke was illegitimate and that this is the reason someone else was appointed to the throne...It was therefore agreed that Gezani Johannes Maluleke was indeed the first born son of Jim Potani Maluleke and he was disinherited from chieftaincy because he stood accused of foul play in the death of his father.'

[65] I find it strange that the identity of the person who revealed this family secret is not acknowledged by the Kgatla Commission as she is only referred to as 'one old woman', instead of the second born child and eldest daughter of

Hosi Jim Photani and biological sister to Gezani Johannes Maluleke, being Hahani Nwa Photani Tsatsawani Vukeya.

[66] The veracity of this assertion by Hahani Nwa Photani Tsatsawani Vukeya, warranted that the Kgatla Commission investigate it and not just dismiss it on the basis that in the Maluleke custom senior traditional leaders are not allowed to marry principal wives who have children with other men. Also the assertion that the royal family can disinherit an heir, but not his children is not encored on any customary practice or archival records relating to the resolution to disinherit Gezani Johannes Maluleke. Further, it is not supported by any evidence to bolster the fact that Hosi Thomas Hasani was appointed as regent for the children who were not disinherited as their father Gezani Johannes Maluleke.

[67] Section 22(2) enjoins the Kgatla Commission to carry out its functions in a manner that is fair, objective and impartial. In section 25(7) of the Framework Act, 2003, Parliament clothed the Kgatla Commission with the powers set out in sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act 8 of 1947), with the necessary changes, to the Commission.

[68] The Kgatla Commission in its findings at paragraph 9 found that –

> "9.1 The senior traditional leadership is not in the rightful house as the rightful house is that of Gezani Johannes Maluleke.

9.2 The senior traditional leadership should go to George Maluleke who is the son to Samuel who is the first born son of Gezani Maluleke."

[69] In its recommendation to the Premier, it recommended that –

"10.1 It is recommended that the claim by Maluleke Mdungazi Joseph be upheld.

10.2 That the Premier call both the claimant and the present senior traditional leader Hasani Thomas Maluleke to agree on a road map to correct the anomaly."

[70] I have worn through the record of proceedings in the quest to find anything to support, how and what led the Kgatla Commission to arrive at the fact that senior traditional leadership is not in the rightful house as the rightful house is that of Gezani Johannes Maluleke. Save to find that de facto, Gezani Johannes Maluleke is the first born son of the first wife of Hosi Photani Jim Mulamula.

[71] The Kgatla Commission, failed to investigate the assertion that Hosi Jim Photani Mulamula, convened a royal family meeting and informed them that Hasani Thomas Mulamula should succeed him and not Gezani Johannes Maluleke. Instead they accepted that it was due to the fact that Gezani Johannes Maluleke was suspected of foul play. The missed opportunity was when the second born child of Hosi Jim Photani Mulamula, who was the eldest surviving member of the royal family who could shed light as to what

had actually transpired in the meeting with his father before his demise, was not asked to provide clarity why his father had disqualified Gezani Johannes Maluleke.

[72] Further, the Kgatla Commission failed to objectively investigate the assertion by Hahani Nwa Photani Vukeya who was the second born child of Hosi Jim Photani Mulamula, who was also the eldest surviving member of the royal family, that his own biological brother, Gezani Johannes Maluleke was not the biological son of Hosi Jim Photani Mulamula. This constituted a serious indictment on the claimant, as well as the Kgatla Commission to investigate the veracity of this statement.

[73] The only way for anyone to can ascertain whether Gezani Johannes Maluleke is the biological son of Hosi Jim Photani Mulamula was through DNA testing. In the absence of any credible evidence, in traditional leadership dispute, once the biological origin of the Claimant's lineage was put to question, then it was for the Kgatla Commission to utilise its powers in terms of the Commissions Act, 1947 to order the genetic testing of the claimant and Hosi Thomas Hasani Mulamula. This is simply because, since both are sons of their fathers, they both carrying the Y-chromosome as males which would be the same as Hosi Jim Photani Mulamula.

[74] In the alternative, the Kgatla Commission, utilising section 3(1) of the Commissions Act, 1947 which are equivalent to the powers of the High Court, it could order the exhumation of Hosi Jim Photani Mulamula and Gezani George Maluleke to be exhumed and have samples taken for genetic testing to confirm if indeed, they are father and son through DNA testing results. This opportunity was missed, and the elephant in the room remains to date, namely whether, what the sister to both Gezani George Maluleke and Thoma Hasani Mulamula stated that the mother Xalati came expectant with a child that is not biological child of Hosi Jim Mulamula before the solemnization of her marriage to Hosi Jim Photani Mulamula is true.

[75] Upon receipt of the recommendation, the Premier in a letter dated 25 April 2018, addressed to Mr Maluleke Mdungazi Joseph, communicated that –

'...

3. I in my capacity as Premier, hereby inform you that the claim for restoration and/or recognition of Mulamula senior traditional leadership is accepted.

4. The responsibility to implement the decision herein rests with the royal family concerned.'

[76] The Premier, then on 11 June 2018 wrote a letter to Hosi Maluleke Hasani Thomas, wherein he communicated that –

'...

3. Kindly be informed that the claim /dispute for restoration and/or recognition of the Mulamula senior traditional leadership by Mr Maluleke Mdungazi Joseph is accepted.

4. The senior traditional leadership in the lineage of Risimato John is dissolved with immediate effect.

5. In case you disagree with the recommendation/s, you are advised to app

6. roach the court of law for review.'

[77] I have scoured through the record for the minutes of the meeting of the royal family where a decision was taken that Mdungazi Joseph Maluleke is and be hereby appointed as senior traditional leader and was unable to find any trace of such a minute. I have also in line with the recommendation, sought to find minutes of the meeting wherein the Premier called both the claimant and the incumbent senior traditional leader Hasani Thomas Mulamula to agree on the road map to correct the 'anomaly', and could not find any proof of such meeting taking place.

[78] To the extent that the Premier elects to deviate from the recommendation of the Kgatla Commission, he was enjoined by law as contemplated in section 30(3) to reduce reasons for not adhering to and deviating from the recommendation. The recommendation was for the Premier to call the

incumbent Hosi Hasani Thomas Mulamula and Mdgungazi Maluleke to a meeting to agree on a plan and wayfoward to deal with the 'anomaly' of senior traditional leadership being in the house of Risimati Mulamula. In the record of decision of the Premier, I was unable to find anything to show that the reasons were provided for the deviation. Alternatively, to show strict compliance with the recommendation.

[79] Further, since there was a recommendation by the Kgatla Commission, I have searched inordinately for the Premier's compliance with the provisions of section 30. Specifically, I searched for a referral to the Provincial House of Traditional Leaders within seven days of receipt of the Kgatla Commission report dated 6 September 2017. I was unfortunately, not able to find anything in the record of decision to that effect, as part of compliance with the provisions of section 30(1).

[80] I also studied the record of proceedings filed, to find a report and advice from the Provincial House of Traditional Leaders, as contemplated in section 30(2) before the Premier made a decision in terms of section 30(3) to implement the 'decision' of the Kgatla Commission. Unfortunately, there was none to be found. This then leads to the conclusion that the Premier failed to follow peremptory procedure in section 30, prior to his purported implementation of the recommendation in terms of section 30.

[81] Whilst at this point I also had occasion to consider the fact that there was an incumbent Hosi of the Mulamula traditional community. The appointment of a new Hosi, required that there be a revocation of the previous appointment and recognition of the incumbent Hosi Hasani Thomas Mulamula. This required compliance with section 13 of Limpopo Act, 2005 dealing with relief of royal duties. The Premier could not appoint Mdungazi Maluleke prior to the withdrawal of recognition of incumbent Hosi Hasani Thomas Mulamula.

[82] The Premier, instead in a letter 11 June 2018 addressed to Hosi Maluleke Hasani Thomas, communicated a decision to dissolve senior traditional leadership in the house of Risimati Mulamula. Firstly, the letter is addressed to the wrong addressee, as the incumbent was Hosi Hasani Thomas Mulamula. Secondly, the letter purported to dissolve, when there is no provision in the Limpopo Act, 2005 or the Framework Act, 2003 empowering the Premier to dissolve senior traditional leadership in the house of Risimati Mulamula. The Premier therefore acted ultra vires, when he purported to dissolve senior traditional leadership in the house of Risimati Mulamula.

[84] To the extent that there was also no withdrawal of the recognition of the incumbent Hosi Hasani Thomas Mulamula, the Premier could not recognise another senior traditional leader for the Mulamula traditional community. The

legislature specifically understood that there can be no two senior traditional leaders recognised at the same time for the same traditional community over the same territory, hence the need to first withdraw recognition in terms of section 13, in instances wherein there is an incumbent who is recognised in respect of a particular traditional community.

[85] I have also considered that in the event that it may be contended that the Premier, did not act in terms of section 30 of the Limpopo Traditional Leadership & Institutions Act, 2005. Instead acted in terms of the Framework Act, 2003, in line with what is written in his correspondence to both Thomas Hasani Mulamula and Mdungazi Maluleke, I have considered the various provisions relating to the recommendations of the Commissions and consequential actions attendant thereat.

[86] Section 26 deals with recommendations of the Commission and provides that –

> "(2) *A recommendation of the Commission must, within two weeks of the recommendation having been made, be conveyed to-*
>
> *(b) the relevant provincial government and any other relevant functionary to which the recommendation of the Commission applies in accordance with applicable provincial legislation in so far as the consideration of the recommendation does not relate to the recognition or removal of a king or queen in terms of section 9, 9A or 10.*

(3) *The President or the other relevant functionary to whom the recommendations have been conveyed in terms of subsection (2) must, within a period of 60 days make a decision on the recommendation.*

(4) *If the President or the relevant functionary takes a decision that differs with [sic] the recommendation conveyed in terms of subsection (2), the President or the relevant functionary as the case may be must provide written reasons for such decision."*

[87] The Framework Act, 2003 enjoins the Premier if he takes a decision that differs with [sic] the recommendation conveyed in terms of subsection (2), then the Premier must provide written reasons for such decision. As I have already pointed out this did not happen, and to the extent that the Premier did not follow and adhere to the strict and peremptory procedure set out in section 26(4) the decision is assailable.

[88] With specific reference to provincial committees, such as the Kgatla Commission, Section 26(6) set out the following -

'A provincial committee may make final recommendations on all matters delegated to it in terms of 25 (6): Provided that where a committee is of the view that exceptional circumstances exist it may refer the matter to the Commission for advice.'

[89] The Kgatla Commission was empowered by section 25(6) to make a final recommendation on the dispute at hand, which it was charged with a

responsibility to investigate. This recommendation was on 6 September 2017 made and handed over to the Premier.

[90] The Premier was within 60 days of receipt of the recommendation in terms of section 26(3) required to make a decision. I must hasten to mention that despite my studious endeavour to find the decision of the Premier or the approval of the recommendations of the Kgatla Commission, none could be found in what was filed as the record of proceedings. At best I found at page 10 of 10 pages of the Kgatla Commission report, a signature and crossing out of not approved, leaving only approved dated 3 October 2017.

[91] The most noticeable is the blank lines between the signature of the Chairperson of the Limpopo Provincial Committee on Traditional Disputes and Claims, to the Premier's signature. There is nothing inscripted to indicate the Premier's reasons for not adhering to paragraph 10.2 of the Recommendations. This is despite being specifically obligated by section 26(4) to provide written reasons if decision differs from recommendation.

[92] For these reasons, it is clear that the decision was not rational and did not comply with set procedure of the very Framework Act, 2003 the Premier purported to have acted in terms thereof. This makes the decision assailable and susceptible to be reviewed and set aside in terms of PAJA.

[102.5] Further, I have considered the recommendation and pondered over whether the decision to dissolve the senior traditional leadership from the lineage of the house of Risimati Mulamula, is in line with the recommendation to can invoke section 30. Furthermore, I asked if I am in as good a position to assess if the criteria and the obligatory requirements of section 30 have been met to warrant its invocation?

[103] Counsel for the First Respondent's contention before the court was that I must remit the matter back to the Premier, for the Premier to comply with all the peremptory requirements of section 30. It is important to point out that remittal to comply with section 30, must be looked at with section 59 of the Khoisan Act, 2019. This is the case, since the provisions of section 30 of the Limpopo Act, is premised on the fact that there is a decision by the commission and the Premier is called upon to implement the decision.

[104] As indicated herein above that section 59(1) contemplated that disputes that have already been dealt with by the Commission, may not be dealt with in terms of section 59. This section simply ousts, the appointment of an investigative committee in terms of section 59(2), where the Commission has considered and investigated the same dispute.

[105] The provisions of section 59(1) would bar the Premier for appointing an investigative committee and only allow a referral to Provincial House within

the Mulamula Traditional Community's customary laws and practices within 90 days of this order.

[e] On the question of costs of the 22 September 2025, the 1st Respondent is ordered to pay the wasted costs occasioned by the postponement in respect of the Applicants and the 3rd Respondent respectively.

[f] The 1st Respondent is ordered to pay the Applicants' costs of this application on scale B.

M.H.M. MASILO

ACTING JUDGE OF THE HIGH COURT LIMPOPO DIVISION

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Date reserved	:	**18 November 2025**
Date delivered	:	**30 January 2026**

[93] The Applicants in their heads of argument pointed to the fact that if the court finds that the decision is indeed reviewable, I must then remit the matter back to the Premier, to reconsider his decision. This submission was also propped by the First Respondent, to remit the decision back to the Premier.

[94] The idea of a remittal to the Premier, is not as simple as a stroke of a pen, I am confronted by the fact that in this review it is not only the Premier's decision, but also the Kgatla Commission's finding and recommendation, hence the two decisions are assailable. The recommendations of the Kgatla Commission as I have already founded, are assailable. The decision of the Premier is also unavoidably reviewable.

[95] The exercise of remitting the decision of the Premier back, so as to can have a second bite at the cherry and cause to follow the correct procedure in terms of section 30 of the Limpopo Traditional Leadership & Institutions Act, 2005, is not as simple as it may look. This is complicated by the fact that the decision of the Premier is not a standalone decision. This decision by the Premier, approved the finding and recommendation of the Kgatla Commission, meaning that it may not be sustained if the very reason it exists has been assailed.

[96] The law regarding reviews in terms of PAJA, remittal and substitution of decision of the court for that of the administrator is settled. This is governed by section 8, which provides that –

> ***"8. Remedies in proceedings for judicial review***
>
> *(1) The court or tribunal, in proceedings for judicial review in terms of section 6 (1), may grant any order that is just and equitable, including orders-*
>
> *(a) directing the administrator-*
> *(i) to give reasons; or*
> *(ii) to act in the manner the court or tribunal requires;*
> *(b) prohibiting the administrator from acting in a particular manner;*
> *(c) setting aside the administrative action and-*
> *(i) remitting the matter for reconsideration by the administrator, with or without directions; or*
> *(ii) in exceptional cases-*
> *(aa) substituting or varying the administrative action or correcting a defect resulting from the administrative action; or*
> *(bb) directing the administrator or any other party to the proceedings to pay compensation;*
> *(d) declaring the rights of the parties in respect of any matter to which the administrative action relates;*
> *(e) granting a temporary interdict or other temporary relief; or*
> *(f) as to costs."*

[97] In **Erf One Six Seven Orchards CC v Greater Johannesburg Municipal Council** 1999 (1) SA 104 (SCA), the Court held that[1] ~

> *"When setting aside such a decision, a Court of law will be governed by certain principles in deciding whether to refer the matter back or substitute its own decision for that of the administrative organ …*
>
> *The general principle is therefore that the matter will be sent back unless there are special circumstances giving reason for not doing so. Thus, for example, a matter would not be referred back where the tribunal or functionary has exhibited bias or gross incompetence or when the outcome appears to be forgone."*

[98] Raisa Cachalia, in the article, Clarifying the Exceptional Circumstances Test in Trencon: An Opportunity Missed, posited as follows-

> *"Deciding when to substitute has persistently vexed the courts. This power has, however, been recognised in circumstances where: (i) the end result is a foregone conclusion such that remittal would be a 'mere formality' or 'waste of time' given the inevitability of the outcome;[2] (ii) there is a delay causing unjustifiable prejudice to the affected party;[3] (iii) bias or incompetence on the part of the administrator is established*

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[1] At 109C-G
[2] Johannesburg City Council v Administrator, Transvaal and Another 1969 (2) SA 72 (T)('JCC') at 76E–G; Baxter (note 11 above) at 682.
[3] M v Minister of Home Affairs and Others [2014] ZAGPPHC 649 at paras 166 and 175–176.

such that 'it would be unfair to require the applicant to submit to the same jurisdiction again'; or (iv) where the court finds itself in 'as good a position' as the administrator to take the decision itself.[4] *What has not been clear or consistent is how factors (i)–(iv) interact: is any factor sufficient on its own to justify substitution or are the factors sufficient only in combination with other factors? Are certain factors necessary preconditions for substitution? Or are they all simply weighed together in deciding whether there is an 'exceptional case' justifying substitution?*

[99] In order to assess whether the court a quo erred in not remitting back to the Premier, this court must investigate the four elements of the settled criterion in this matter as follows-

[100] Is the end result is a foregone conclusion such that remittal would be a 'mere formality' or 'waste of time' given the inevitability of the outcome;[5]

[100.1] The question in this matter is whether it is a foregone conclusion that remittal to the Premier of the dissolution of the senior traditional leadership from the house of Risimati Mulamula would be a formality or not? It is common cause between the parties that the Maluleke never applied for dissolution of the senior traditional leadership from

[4] Gauteng Gambling Board v Silverstar Development Ltd and Others [2005] ZASCA 19, 2005 (4) SA 67 (SCA)('Silverstar') at paras 28 and 39; Baxter (note 11 above) at 681–684.
[5] Johannesburg City Council v Administrator, Transvaal and Another 1969 (2) SA 72 (T)('JCC') at 76E–G; Baxter (note 11 above) at 682.

the lineage of Risimati Mulamula. What makes matters worse is that the Premier is not empowered in terms of section 13 or any other provision in the Limpopo Traditional Leadership & Institutions Act, 2005, to dissolve a senior traditional leadership from a lineage.

[100.2] On the same breath, there is no dispute referral to the Kgatla Commission regarding dissolution of the senior traditional leadership from the lineage of the house of Risimati Mulamula. This is aggravated by the fact that there was no investigation, no finding and no recommendation or decision to dissolve the senior traditional leadership from the lineage of the house of Risimati Mulamula by the Kgatla Commission.

[100.3] Therefore, there is no decision or recommendation by the Kgatla Commission to remit back to the Premier to decide on whether there was full compliance with the peremptory criteria of section 30.

[100.4] Was the remittal of the decision to dissolve the senior traditional leadership from the lineage of the house of Risimati Mulamula a mere formality? The answer is a resounding YES. Given the factual disposition that there is no application for the dissolution of the senior traditional leadership from the lineage of the house of Risimati Mulamula. Alternatively, an investigation and recommendation by the

Kgatla Commission to implement and for the dissolution of the senior traditional leadership from the lineage of the house of Risimati Mulamula.

[100.5] Was the remittal a waste of time? The answer is in the affirmative since there is no application for dissolution of the senior traditional leadership from the lineage of the house of Risimati Mulamula. Alternatively, an investigation and recommendation by the Kgatla Commission to implement the dissolution of the senior traditional leadership from the lineage of the house of Risimati Mulamula.

[100.6] Was the outcome inevitable? The answer is an incontrovertible YES, because in the absence of the necessary jurisdictional factors (being the application for dissolution of the senior traditional leadership from the lineage of the house of Risimati Mulamula. Alternatively, a recommendation for the dissolution of the senior traditional leadership from the lineage of the house of Risimati Mulamula, the power to be exercised in terms of section 13 or section 30 could not be exercised. Even if it was to be argued that the power was exercised in terms of the 12 of the Framework Act, 2003. Section 12 of the Framework Act, 2003 is mimicked by section 13 of the Limpopo Act, 2005. It does not empower or avail to

Khoisan matters. The rest of any traditional leadership disputes is regulated by section 59. This subsection 1 contains a bar to disputes that were dealt with by the CTLDC, by necessary extension in this province by the Kgatla Commission.

[101] ***there is a delay causing unjustifiable prejudice to the affected party;***[6]

[101.1] The decision to dissolve the senior traditional leadership from the lineage of the house of Risimati Mulamula, is prejudicial to the Mulamula Royal Family, as it tramples over their custom and statutory ordained authority. The Premier's action of dissolving the senior traditional leadership from the lineage of the house of Risimati Mulamula, is an administrative decision that was procedurally prejudicial as the Mulamula Royal Family was not afforded an opportunity to comment or to give their input on the decision. It is also prejudicial to the incumbent Hosi Hasani Thomas Mulamula and his lineage.

[101.2] The remittal to the Premier for decision when there is no application, and there is no recommendation by the Kgatla Commission has an effect on section 25, 30, 31 and 33 of the Constitution. It also has the effect of contravening the provisions of section 3(2), (3) and section 5

[6] M v Minister of Home Affairs and Others [2014] ZAGPPHC 649 at paras 166 and 175–176.

of PAJA, which enjoined the Premier give the affected party an opportunity to make representation and for the Premier to provide reasons for the decision to dissolve the senior traditional leadership from the lineage of the house of Risimati Mulamula.

[101.3] For the remittal to the Premier, which would then require that an investigation be conducted, before a decision can be taken when stark in the face with the fact that there is no application to dissolve the senior traditional leadership from the lineage of the house of Risimati Mulamula. When there is no recommendation by the Kgatla Commission to dissolve the senior traditional leadership from the lineage of the house of Risimati Mulamula. Further, that there was no compliance with requirements of section 13 of the Limpopo Act, 2005 and section 12 of the Framework Act, 2003 would merely cause a 3 to 6months delay after having waited since 4 October 2018 seriously prejudice the Applicants and the Mulamula traditional community.

[102] ***<u>Or</u> where the court finds itself in 'as good a position' as the administrator to take the decision itself.***

[102.1] As a starting point, this requirement is not to be read as meaning all four requirements must be met. On the contrary, this requirement is postulated in the alternative.

[102.2] I have considered whether am I in as good a position as the Premier to decide whether to remit or substitute the decision to dissolve the senior traditional leadership from the lineage of the house of Risimati Mulamula. It is undeniable that there is no application to dissolve the senior traditional leadership from the lineage of the house of Risimati Mulamula. Equally, there is no recommendation to dissolve the senior traditional leadership from the lineage of the house of Risimati Mulamula.

[102.3] Finally, it is incontrovertible that the Framework Act, 2003 or its successor being the Khoisan Act, 2019 as well as the Limpopo Traditional Leadership and Institutions Act, 2005 have no provision which empower the Premier to dissolve the senior traditional leadership from the lineage of the house of Risimati Mulamula.

[102.4] The nearest that could be found is in section 12 of the Framework Act,2003 or section 13 of the Limpopo Traditional Leadership and Institutions Act, 2005 which deal with removal or withdrawal of recognition or relief of royal duties.

Kgatla Commission to implement and for the dissolution of the senior traditional leadership from the lineage of the house of Risimati Mulamula.

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the Premier, the power to dissolve the senior traditional leadership from the lineage of the house of Risimati Mulamula.

[100.7] Given that the parties in their judicial case management, correctly agreed that relevant regulatory framework, is the Khoisan Act, 2019. The question is whether the Khoisan Act, 2019 or the Limpopo Traditional Institutions Act, 2005 empowered the Premier to can deal with the issue of dissolution of the senior traditional leadership from the lineage of the house of Risimati Mulamula, if remitted back?

[100.8] This is where section 59 of the Khoisan Act,2019 comes in, after it repealed the Framework Act, 2003. Recognizing the need to deal with transitioning from the Framework Act, and more specifically disputes of traditional leadership, Parliament promulgated section 59. This section makes provision for two instances wherein the dispute relating to traditional leadership may be dealt with under the Khoisan Act dispensation.

[100.9] This arrangement comes against the backdrop that the legislature, appreciating that the window of opportunity for dealing with old or historical traditional leadership dispute has closed. Parliament in chapter 4 made provision only for the appointment of Commission on

Khoisan matters. The rest of any traditional leadership disputes is regulated by section 59. This subsection 1 contains a bar to disputes that were dealt with by the CTLDC, by necessary extension in this province by the Kgatla Commission.

[101] ***there is a delay causing unjustifiable prejudice to the affected party;***[6]

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[103] Counsel for the First Respondent's contention before the court was that I must remit the matter back to the Premier, for the Premier to comply with all the peremptory requirements of section 30. It is important to point out that remittal to comply with section 30, must be looked at with section 59 of the Khoisan Act, 2019. This is the case, since the provisions of section 30 of the Limpopo Act, is premised on the fact that there is a decision by the commission and the Premier is called upon to implement the decision.

[104] As indicated herein above that section 59(1) contemplated that disputes that have already been dealt with by the Commission, may not be dealt with in terms of section 59. This section simply ousts, the appointment of an investigative committee in terms of section 59(2), where the Commission has considered and investigated the same dispute.

[105] The provisions of section 59(1) would bar the Premier for appointing an investigative committee and only allow a referral to Provincial House within

seven days to provide advice within fourteen days. This process remittal and referral would as a starting point require that there must be a finding and a recommendation by the Kgatla Commission to refer for advice. This finding and recommendation on the dissolution of the senior traditional leadership in the house of Risimati Mulamula forlornly does not exist. This, is a dearth knell to the decision to dissolve the senior traditional leadership in the house of Risimati Mulamula, in terms of the Framework Act, 2003.

[106] In the circumstances, I find that in this matter exceptional circumstances exist to warrant this court to substitute its decision for that of the Premier. This is so from a procedural perspective, that the Premier purportedly exercised powers in terms of the Framework Act, 2003 to dissolve the senior traditional leadership in the house of Risimati Mulamula, when there was no such empowering provision.

[107] Further, when the Premier had not afforded the incumbent senior traditional leader and the royal family a hearing as contemplated in section 3(2) and (3) of PAJA. Furthermore, the Premier in taking a decision which was different from the recommendation of the Kgatla Commission, without providing reasons as contemplated in section 26, read with section 5 of PAJA violated the rights to a procedurally fair procedure guaranteed in section 33 of the Constitution.

[108] Also from a substantive perspective, in that there was no application lodged and investigated, neither was also a recommendation from the Kgatla Commission for the Premier to dissolve the senior traditional leadership in the house of Risimati Mulamula, in terms of the Framework Act, 2003.

[109] It is only proper for the status quo that existed before the Premier took the unlawful decision to dissolve the senior traditional leadership in the house of Risimati Mulamula, purportedly in terms of the Framework Act, 2003, to be restored. The Mulamula royal family has not taken a decision to remove Hasani Thomas Mulamula as required by section 12 of the Framework Act, 2003.

[110] Further, it is only proper, that the decision to recognize Desmond Maluleke be set aside, as there was also no decision and recommendation of the royal family communicated to the Premier to appoint Desmond Maluleke as acting senior traditional leader of the Mulamula traditional community, as required and contemplated in section 13 of the Framework Act 2003.

[111] Since Desmond Maluleke was substituted by agreement as a party to the proceedings before me, I am satisfied that the decision not to remit back to the Premier his appointment will not affect his right to a fair hearing and adversely prejudice him. Therefore, the Premier's decision of 16 November 2022 to appoint Desmond Maluleke is set aside and the Premier is directed

to withdraw his certificate of appointment and to inform the Provincial House of the relief of royal duties as contemplated in section 13 of the Limpopo Traditional leadership & Institutions Act, 2005.

[112] The law regarding costs is trite. This is so especially in matters in which the decision of the state was brought under review in order to assert the rights of litigants. The decision at issue in this matter is the decision of the Kgatla Commission of 6 September 2017 and that of the Premier of 3 October 2017.

[113] The Applicants in their Supplementary Heads of argument sought that I grant costs on a punitive scale as between attorney and client. I must say that although the conduct of the state in this matter has not been exemplary, I am unable to find that the conduct was such that it was in anyway fraudulent, dishonest, vexatious conduct and conduct that amounts to an abuse of court process.

[114] As to the third Respondent, I am of the considered view that their conduct in this litigation was nothing more than to defend a decision they erroneously believed was correct. This was the first and second respondent's decision. Unfortunately, the third Respondent was not in any manner successful to can warrant that they be awarded costs against the first and second respondent.

ORDER

[115] In the circumstances, the following order is granted -

[a] The findings and recommendations of the Kgatla Commission, dated 6 September 2017 is reviewed and set aside.

[b] The decision of the Premier of the Limpopo Province dated 3 October 2017 to approve the report of the Kgatla Commission is reviewed and set aside.

[c] The Senior Traditional Leadership of the Mulamula Traditional Community is restored to Hasani Thomas Mulamula, as if the decision of the Premier dated 11 June 2018 never existed.

[d] The decision of the Premier of 16 November 2022 to appoint Desmond Maluleke, son of Mdungazi Maluleke as acting Senior Traditional Leader of the Mulamula traditional community is set aside. The Premier is directed to withdraw such recognition and comply with the procedure in terms of section 13 of the Limpopo Traditional Leadership & Institutions Act, 2005 within 14days of this order.

[e] The Royal Family is in terms of section 8 of the Khoisan Act, 2019 read with section 12 of the Limpopo Traditional Leadership & Institutions Act, 2007 directed to identify a suitable person in terms of

the Mulamula Traditional Community's customary laws and practices within 90 days of this order.

[e] On the question of costs of the 22 September 2025, the 1st Respondent is ordered to pay the wasted costs occasioned by the postponement in respect of the Applicants and the 3rd Respondent respectively.

[f] The 1st Respondent is ordered to pay the Applicants' costs of this application on scale B.

M.H.M. MASILO

ACTING JUDGE OF THE HIGH COURT LIMPOPO DIVISION

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Date reserved	:	**18 November 2025**
Date delivered	:	**30 January 2026**

MABOKU MANGENA ATTORNEYS

30-01-2026

RECEIVED WITHOUT PREJUDICE

SIGNATURE:.....