THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable/Not Reportable
Case No: 612/2016

In the matter between:

WEZIZWE FEZIWE SIGCAU	**FIRST APPELLANT**
LOMBEKISO MAKHOSATSINI MASOBHUZA SIGCAU	**SECOND APPELLANT**
and	
MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	**FIRST RESPONDENT**
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	**SECOND RESPONDENT**
THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS	**THIRD RESPONDENT**

Neutral Citation: *Sigcau v Minister of Cooperative Governance and Traditional Affairs* (612/2016) [2017] ZASCA 80 (7 June 2017).

Coram: Shongwe ADP, Navsa, Zondi, Dambuza JJA and Gorven AJA

Heard: **17 May 2017**

Delivered: **7 June 2017**

Summary: Customary law: decision of the Commission on Traditional Leadership Disputes: whether implementation of the decision in terms of s 26(2) of the Traditional Leadership and Governance Framework Act 41 of 2003 (Old Act) required prior consultation with Royal Family under s 9 of the Old Act: whether implementation of the decision required compliance with provisions of s 10(1)*(c)* of the Old Act: implementation of the decision of the Commission did not require consultation in terms of s 9 of the Old Act: deeming provision under s 28 of the Old Act and s 26 of the New Act did not bestow status of king where the Commission did not uphold claim to kingship: provisions of s 10(1)*(c)* were not applicable.

ORDER

On appeal from the Gauteng Division of the High Court, Pretoria (Murphy J sitting as court of first instance).

The appeal is dismissed.

JUDGMENT

Dambuza JA (Shongwe ADP, Navsa and Zondi JJA and Gorven AJA concurring):

[1] The main issue in this appeal is the correct procedure to be followed by the second respondent, the President of the Republic of South Africa (the President) in implementing a decision of the third respondent, the Commission on Traditional Leadership Disputes and Claims (the Commission), made in terms of s 26(2)*(a)* of the Traditional Leadership and Governance Framework Act 41 of 2003 (the Old Act)[1] on a disputed kingship. The two appellants, Wezizwe Feziwe Sigcau (Wezizwe) and Lombekiso Makhosatsini Masobhuza Sigcau (Masobhuza) contend that, before implementing the decision of the Commission on the disputed kingship of the amaMpondo aseQaukeni, the President must consult the royal family as prescribed in s 9 of the Old Act.

[2] The appeal is against the order of the Gauteng Division of the High Court, Pretoria (Murphy J) (the high court), declaring that s 26(2)*(a)* read with ss 9 and 10 of the Old Act does not 'permit, require or empower' the President to follow a process of consultation with the royal family of amaMpondo aseQaukeni before implementing the decision of the Commission. The high court also declared that the aforesaid provisions only require the President to issue a certificate of recognition to Zanozuko Telovuyo Sigcau (Zanozuko) to 'publicise' the decision of the Commission

[1] Since its extensive amendment by the Traditional Leadership and Governance Framework Act 23 of 2009 this Act has been referred to as the Old Act (eg in the proceedings before the high court. See also *Sigcau v President of the Republic of South Africa & others* 2013 (9) BCLR 1091 (CC)).

as contemplated in s 9(2) of the Old Act. The appeal is with the leave of the high court. For the sake of convenience and clarity, I will refer to the members of the royal family by their first names as they all carry the same last name. No disrespect is intended.

[3] The dispute is set against the backdrop of contestations in relation to various kingships by traditional leaders around the country, emanating from manipulation of traditional systems by colonial and apartheid governments. They exploited the institutions of traditional leadership so as to control Africans and traditional leaders and to compel dependence on the State for their authority and financial security. Those who were perceived as uncooperative were replaced with conformists. By the dawn of democracy many illegitimate leaders were entrenched as traditional leaders of state exploited communities.[2]

[4] In an attempt to resolve these distortions Parliament, in 2004, acting in terms of s 22 of the Old Act, established the Commission which comprised various experts on customs and institutions of traditional leadership.[3] It had a lifespan of five years.[4] Its tasks included investigation and resolution of traditional leadership claims and disputes within the Republic. In terms of s 28(7) of the Old Act it had to investigate the positions of paramountcies and paramount chiefs that had been established and recognised and were still in existence when that Act came into effect. It had authority to investigate and determine, amongst other things, whether the paramountcies qualified to be recognised as kingships, and to determine the identity of the legitimate kings in respect of the kingships.[5] In terms of s 26(2), the decision of the Commission had to be conveyed to the President within two weeks of it being taken,

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[2] In s 5.10 of the White Paper which preceded the establishment of the Commission this is explained as follows: '[Colonial] legislation transferred powers to identify, appoint and/or recognise and depose traditional leaders from traditional institutions to the [colonial] government. In the process the role of customary institutions in the application of customary rules and procedures… were substantially reduced. In some instances, not only [were] illegitimate traditional leaders and authority structures appointed or established. But other legitimate traditional leaders were removed and legitimate authority disestablished.' See Jeff Peires 'History v Customary law: Commission on Traditional Leadership – Disputes and Claims' (2014) 49 *South African Crime Quarterly* 1 at 14.

[3] Section 22(1) of the old Act provides that, '[t]here is hereby established a commission known as the Commission on Traditional Leadership Disputes and Claims.'
In terms of s 23(1) '[t]he President must appoint not more than 15 persons as members of the Commission who are knowledgeable regarding customs and the institution of traditional leadership.'

[4] In terms of s 25(5) of the Act, this period could be extended by the President.

[5] Section 25(2)*(a)*(i) of the Old Act.

for immediate implementation in accordance with s 9 or s 10, where the position of a king or queen was affected by such a decision.

[5] On 22 October 2009 the life of the Commission was extended, in terms of s 25(5) of the Old Act, to 31 January 2010. On 25 January 2010 the Old Act was amended extensively in terms of the Traditional Leadership and Governance Framework Amendment Act 23 of 2009 (the New Act). Of significance, under the New Act, the powers of the Commission regarding resolution of traditional leadership disputes and claims were altered so that it could only make recommendations on the resolution of the disputes, as opposed to making decisions in respect thereof.[6] The New Act provides that the recommendation of the Commission must be conveyed to the President within two weeks (of having been made) for him to make a decision thereon within 60 days.[7] A further relevant change brought about by the New Act is a deeming provision, s 28(8), in terms of which an incumbent paramount chief, at the time of coming into effect of the New Act, is deemed to be a king subject to the investigation and recommendation of the Commission in terms of s 25(2).

[6] In April 2008 the Commission affirmed the kingship of amaMpondo aseQaukeni, and, almost two years thereafter, on 21 January 2010 it decided that Zanozuko was the rightful king in respect of that kingship. On the same day the Commission communicated its decision to the President. However, only on 3 November 2010 did the President purport to recognise the amaMpondo kingship and Zanozuko as the legitimate king. The purported recognition was done in terms of s 28(8) of the New Act.

[7] The decision of the Commission followed its investigation into a claim made by Zanozuko to the kingship of amaMpondo aseQaukeni. At the time his brother Mpondombini Justice Sigcawu (Mpondombini) was the incumbent paramount chief of amaMpondo aseQaukeni. Briefly, the decision of the Commission was based on the following tenets of history and custom. The customary succession of amaMpondo

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[6] See sections 25(2) and 26(1) of the New Act. For instance, s 25(2)*(a)*(i) of the New Act provides that [t]he Commission has authority to investigate and *make recommendations* on a case where there is doubt as to whether a kingship … was established in accordance with customary law and customs.' (my emphasis) Section 26 thereof deals with the recommendations of Commission.

[7] Section 26(2) and (3).

has always been governed by the principle of male primogeniture. In its pure form, the custom was that the leader of the amaMpondo,[8] referred to as the 'ikumnkani,[9] and later as the 'paramount chief'' would marry several wives: the 'great wife' (undlunkulu), whose son would be the preferred successor, the 'right hand wife' (ikunene), being the 'first wife', whose son would not succeed the father, but could establish a semi-independent community, and the consorts (amaqadi (singular 'iqadi')) who supported the two main wives and whose eldest sons would step in as a successor if the great wife had no male issue.

[8] In this instance, Mandlonke, Botha, Nelson, and four other sons were born of the regent Marhelane Sigcau. Mandlonke succeeded Marhelane. In 1937 Mandlonke[10] died without a male issue, leaving his brothers Botha from the right hand house and Nelson from the iqadi house. The government of the day favoured Botha over Nelson, and, contrary to custom, Botha was appointed as the paramount chief of the amaMpondo aseQaukeni, in terms of the Black Administration Act 28 of 1927 and, later, in terms of ss 45 and 73 of the Transkei Constitution Act 48 of 1963. He was succeeded by his son Mpondombini, the incumbent regent at the time of establishment of the Commission. Nelson's grandson, Zanozuko,[11] lodged a claim to the throne with the Commission. The Commission found that the appointment of Botha had been irregular and not in accordance with the law and customs of amaMpondo; hence the decision that the claimant, Zanozuko, was the rightful successor to the throne of amaMpondo aseQaukeni.

[9] Mpondombini brought court proceedings, challenging the decision of the Commission and the President's recognition of Zanuzuko. He contended that the President should have consulted the royal family before implementing the decision of the Commission as prescribed in ss 9 and 10 of the Old Act. Those proceedings

[8] For a brief history of the amaMpondo lineage, see *Sigcau v President of the Republic of South Africa and others (Centre for Law and Society as amicus curiae)* [2013] ZACC 18; 2013 (9) BCLR 1091 (CC) paras 1-3.
[9] Loosely translated, an 'ikumnkani' means a 'chief'.
[10] Whose lineage is traced back to the great regent Faku.
[11] Nelson's son was Zwelidumile, Zanozuko's father.

ultimately served before the Constitutional Court.[12] Mpondombini died on 27 March 2013, before the matter was heard by the Constitutional Court.

[10] The Constitutional Court did not make any ruling on the challenge to the decision of the Commission. It only found that, because the proceedings and the decision of the Commission had been made in terms of the Old Act, the President should have appointed Zanozuko in terms of that Act. Instead the notice of recognition read:

'In terms of section 28(8) read with section 2A of the Traditional Leadership and Governance Framework Act, 2003 (Act No 41 of 2003) (the Act), I Jacob Gedleyithlekisa Zuma, President of the Republic of South Africa, hereby recognise the following Kingships and Kings.'

The Old Act contained neither s 28(8) nor s 2A. The Constitutional Court concluded that the President had purported to exercise powers not conferred on him by the provisions of the Old Act. It accordingly set aside the appointment on that basis.

[11] Mpondombini's widow, the second appellant, (Masobhuza) adopted the stance that the decision of the Constitutional Court vindicated the position of her late husband as the ikumnkani of amaMpondo aseQaukeni. She then took up position as the regent. In that capacity she nominated her daughter, the first appellant, (Wezizwe) as the queen. Following a meeting of the members of Mpondombini's extended family (the broad extended royal family) held on 13 October 2014, correspondence was exchanged between that family and the office of the President, calling upon the President to recognise Wezizwe, in terms s 9 of the Old Act, as the queen of amaMpondo.

[12] The first respondent (the Minister of Cooperative Governance and Traditional Affairs), the President, and the Commission (the respondents) instituted proceedings in the high court asserting their view that the decision of the Commission remained valid and seeking a declaratory order on its implementation. In essence, these proceedings, it was said, were aimed at seeking clarity on how the President should implement the decision of the Commission.

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[12] See *Sigcau v President of the Republic of South Africa and others (Centre for Law and Society as amicus curiae)* [2013] ZACC 18; 2013 (9) BCLR 1091 (CC).

[13] Both in the high court and before us the parties were in agreement that the decision of the Commission had to be implemented in terms of the provisions of s 26(2)*(a)* of the Old Act. The issue was the extent to which the provisions of ss 9 and 10 of that Act were applicable in the implementation process. The appellants insisted that the President was obliged to consult the royal family prior to implementing the decision of the Commission, as provided for in s 9 of the Old Act. Section 26(2) of the Old Act provided that:

'(2) A decision of the Commission must, within two weeks of the decision being taken, be conveyed to-

(a) the President for immediate implementation in accordance with section 9 or 10 where the position of a king or queen is affected by such a decision; and

(b) the relevant provincial government and any other relevant functionary which must immediately implement the decision of the Commission in accordance with applicable provincial legislation in so far as the implementation of the decision does not relate to the recognition or removal of a king or queen in terms of section 9 or 10.'

[14] In the relevant part s 9 provides:

'**Recognition of kings and queens'**

9.(1) Whenever the position of a king or queen is to be filled, the following process must be followed:

(a) The royal family must, within reasonable time after the need arises for the position of a king or a queen 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 of a king or a queen, as the case may be, after taking into account whether any of the grounds referred to in section 10(1)*(a), (b)* and *(d)* apply to that person; and

(ii) through the relevant customary structure-

(aa) inform the President, the Premier of the province concerned and the Minister, of the particulars of the person so identified to fill the position of a king or a queen;

(bb) provide the President with the reasons for identification of that person as a king or a queen; and

(cc) give written confirmation to the President that the Premier of the province concerned and the Minister have been informed accordingly; and

(b) The President must, subject to subsection (3), recognise a person so identified in terms of paragraph *(a)*(i) as a king or a queen taking into account –

(i) the need to establish uniformity in the Republic in respect of the status afforded to a king or queen;

(ii) whether a recognised kingship exists-

(aa) that comprises the areas of jurisdiction of a substantial number of senior traditional leaders that fall under the authority of such king or queen;

(bb) in terms of which the king or queen is regarded and recognised in terms of customary law and customs as a traditional leader of higher status than the senior traditional leaders referred to in subparagraph (aa); and

(cc) where the king or queen has a customary structure to represent the traditional councils and senior traditional leaders that fall under the authority of the king or queen; and

(iii) the functions that will be performed by the king or queen.

(2) The recognition of a person as a king or a queen in terms of subsection (1)*(b)* must be done by way of-

(a) a notice in the *Gazette* recognising the person identified as king or queen; and

(b) the issuing of a certificate of recognition to the identified person.'[13]

(3) Where there is evidence on 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 President-

(a) may refer the matter to the National House of Traditional Leaders for its recommendation; o

(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.'

[15] Related to the main issue was the question of non-joinder of the royal family of amaMpondo who, it was contended by the appellants, were vested, under customary law, with the power to identify and appoint a traditional leader for the community. The appellants also took issue with the respondents' locus standi to seek the declaratory orders as they were not 'interested persons' in the subject matter of the litigation.

[16] A proper interpretation of the provisions of both Old and the New Acts must take into account the background set out in paragraph 3 of this judgment, together

[13] Subsection 3 relates to instances where there is evidence or allegations that the identification of a person as a king or a queen was not done in accordance with customary law, customs or processes.

with the provisions of Chapter 12 of the Constitution, 1996. Sections 211 and 212[14] of the Constitution provide, inter alia, for recognition of the institution and role of traditional leadership and for application of customary law and customs of communities in dealing with matters of traditional leadership. In line with these ideals, in its preamble, the Old Act identified its three main purposes:

'[T]o 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.'

[17] As it became evident from the submissions made on behalf of the appellants, there may be a view that the settlement of traditional disputes through the Commission does not constitute a solution reached in terms of customary law. Dissatisfaction has been expressed with the approach adopted by the Commission, in certain instances, to 'evidence' of customs of certain communities.[15] However the intention of the legislature, that customary law and customs of the relevant communities must be central to resolution of traditional leadership disputes, is clearly and consistently expressed in the Constitution and in both the New and the Old Acts. In terms of s 25(3) of the Old Act, when considering a dispute or claim, the Commission was obliged to consider and apply customary law and the customs of the relevant traditional community, as they were when the events occurred that gave

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[14] These sections read:

'211 Recognition

(1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.

(2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.

(3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

212 Role of traditional leaders

(1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.

(2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law-

(a) national or provincial legislation may provide for the establishment of houses of traditional leaders; and

(b) national legislation may establish a council of traditional leaders.'

[15] Pereis, see above fn 2. The criticism being that members of the Commission impose their personal views of customary law and custom rather than those emanating from the communities. For example, the Commissioners were unwilling to accept that the amaMpondo could have two kingships, ie in respect of amaMpondo aseNyandeni and amaMpondo aseQaukeni.

rise to the dispute or claim. In respect of a kingship, it had to be guided, in its decision, by the criteria set out in section 9(1)*(b)* of that Act and such other customary norms and criteria relevant to the establishment of a kingship.[16] Therefore the process of consultation was expressly built into the processes of the Commission.

[18] In terms, s 25 of the Old Act provided:

'**Functions of Commission**

25. (I) The Commission operates nationally and has authority to decide on any traditional leadership dispute and claim contemplated in subsection (2) and arising in any province. accord-

(2) *(a)* The Commission has authority to investigate, either on request or of its own

(i) a case where there is doubt as to whether a kingship, senior traditional leadership or headmanship was established accordance with customary law and customs;

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

(iii) claims by communities to be recognised as traditional communities;

(iv) the legitimacy of the establishment or disestablishment of "tribes";

(v) disputes resulting from the determination of traditional authority boundaries and the merging or division of "tribes"; and

(vi) where good grounds exist, any other matters relevant to the matters listed in this paragraph, including the consideration of events that may have arisen before 1 September 1927.

(b) A dispute or claim may be lodged by any person and must be accompanied by information setting out the nature of the dispute or claim and any other relevant information.

(c) The Commission may refuse to consider a dispute or claim on the ground that-

(i) the person who lodged the dispute claim has not provided the Commission

(ii) the dispute is to be dealt with in terms of section 21(l)(a) in a case where

(3) *(a)* When considering a dispute or claim, the Commission must consider and apply customary law and the customs of the relevant traditional community as they were when the events occurred that gave rise to the dispute or claim. with relevant or sufficient information; or section 21(l*)(b)* does not apply.

(b) The Commission must-

(i) in respect of a kingship, be guided by the criteria set out in section 9(1)(b) and such other customary norms and criteria relevant to the establishment of a kingship; and

[16] Section 25(1*)(b)* of the Old Act.

(ii) in respect of a senior traditional leadership or headmanship, be guided by the customary norms and criteria relevant to the establishment of a senior traditional leadership or headmanship, as the case may be.

[19] It is for that reason that the Commission conducted extensive consultations with the communities and members of the affected families, including the appellants, prior to taking its decision. It was not in dispute that extensive consultations were held by the Commission with the members of the amaMpondo community and the royal family, including the appellants. That is why, incidentally, there can be no merit in the appellants' non-joinder argument.

[20] As with other decisions of public bodies, the decisions and processes of the Commission and its interpretation of history and customary law and practices have been challenged in certain instances.[17] I highlight, however, that the decision of the Commission is extant in this case. And although the Constitutional Court set aside the recognition of Zanozuko by the President, the decision remains. All that is required is its implementation by the President. It is within that context that the matter now proceeds. Must the President then hold further consultations with the members of the royal family as part of the process of implementing the decision of the commission?

[21] The proper approach to interpretation of documents and statutes has been repeatedly explained by this court. In *National Joint Municipal Pension Fund v Endumeni Municipality*[18] this court held, amongst other things, that, in interpreting documents, 'consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production.' And that: 'A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.'[19]

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[17] *Sandile v President of the Republic of South Africa & others* (GP) unreported case no 22654/2011 of 18 October 2016.
[18] *National Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA).
[19] Ibid para 18.

[22] The approach suggested by the appellants to interpretation of s 26(2) of the Old Act would clearly lead to absurdity. Even on a purely textual approach it makes nonsense of the dispute resolution process provided for in s 25(1) and 25(2)(i) and(ii) of the Old Act. It is inconsistent with the plain reading of the Old Act and ignores the role and authority of the Commission, and the provisions of s 26(2). The plain meaning of s 26(2)*(a)* is that once the Commission has made a decision, the President must implement it. On the appellants' interpretation the decision of the Commission would be followed by another round of consultations from which the royal family could identify, as the king, a person other than the one identified in the decision of the Commission. In terms of s 9(1)*(b)* the President would be obliged to recognise the person so identified by the royal family subject to the provisions of s 9(3).

[23] In terms of the Old Act neither the President nor members of the royal family can ignore, or act contrary to, the decision of the Commission. Such would be the case if the provisions of s 9 would be applicable as contended by the appellants. It is inconceivable that, having vested the Commission with the power to decide disputes, the legislature would, thereafter, put in place a process that would undermine the authority of the Commission. As set out above, proper adherence to s 25(3) meant that consultations were to be held prior to the decision being taken by the Commission. Nowhere else in the Old Act, other than in s 25, was the power to decide leadership disputes granted. Therefore once the Commission had taken a decision on a dispute, there was no room for consultation after the fact. That decision had to be communicated to the President for *immediate implementation*.[20] Implementation could only be done in terms of s 9(2) of the Old Act which sets out the method of recognising a king.

[24] In my view once there was a dispute as to the identity of a king, and the provisions of s 25 of the Old Act became applicable, the legislature did not envisage that the provisions of s 9(1) would be applicable. Section 9(1) would only be applicable in instances of uncontentious succession to the king's throne.

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[20] See s 26(2)*(a)* of the old Act.

[25] A further string to the appellants' bow was that the provisions of s 10(1)*(c)* of the Old Act[21] were applicable to the implementation process, because the process entailed the removal of Mpondombini who had been deemed to be a king in terms of s 28(1) of the Old Act and s 28(8) of the New Act. The submission was that the identification of Zanozuko, on 21 January 2010 as the rightful king had no external effect until the purported recognition on 3 November 2010 when the President purported to issue the notice of recognition. By that time Mpondombini had, with effect from 25 January 2010 been deemed a king, so it was argued.

[26] Section 28 of the Old Act was headed 'Transitional arrangements'. In the relevant part it provided 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.'

[27] Section 28(8) of the New Act provides that:

'(8)*(a)* Where pursuant to an investigation conducted in terms of subsection (7), the Commission has decided that a paramountcy qualifies to be recognised as a kingship or queenship, such a paramountcy is deemed to be recognised as a kingship or queenship in terms of section 3A.

(b) The incumbent paramount chiefs, in respect of the kingships and queenships contemplated in paragraph *(a),* who were recognised before the commencement of this Act, are deemed to be kings and queens subject to investigation and recommendation of the Commission in terms of section 25(2).'

[28] It is necessary to point out that, contrary to the appellants' submission, the Constitutional Court said in its judgment that Mpondombini's challenge to the decision of the Commission and the President's recognition of Zanozuko was instituted in the Gauteng High Court, Pretoria, before the President's notice of recognition was issued.[22] In any event, reliance on these provisions of the Acts does not assist the appellants. As stated, their argument is that, based on these

[21] Section 10(1)*(c)* states that a king or queen may be removed from office on the grounds of wrongful appointment or recognition.
[22] Para 14 of the judgment.

provisions, Mpondombini was deemed to be a king and he would have had to be removed from the throne in terms of s 10(1)*(c).* To demonstrate the error of the appellants' reliance on s10 the provisions thereof are cited in full. The section provides:

'10. **Removal of kings or queens**.

(1) A king or queen 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 the king or queen to function as such;

(c) wrongful appointment or recognition

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

(2) Whenever any of the grounds referred to in (1)*(a)(b)* and *(d)* comes to the attention of the royal family and the royal family decides to remove the king or queen, the royal family must, within a reasonable time and through the relevant customary structure-

(a) inform the President, the Premier of the Province concerned and the Minister, of the particulars of the king or queen to be removed from office;

(b) furnish reasons for such removal; and

(c) give written confirmation to the President that the Premier of the province concerned and the Minister have been informed accordingly.

(3) Where it has been decided to remove the king or queen in terms of subsection (2), the President must-

(a) withdraw the certificate of recognition with effect from the date of removal;

(*b*) publish a notice with particulars of the removed king or queen in the *Gazette*; and

(*c*) inform the royal family concerned, and the removed king or queen of such removal.

(4) Where a king or queen is removed from office, a successor in line with customs may assume the position, role and responsibilities, subject to section 9.'

[29] Section 10(1) sets out the reasons for which a king may be dethroned. Even if, as the appellant claimed, Mpondombini had been deemed to be a king and therefore the implementation of the Commission's decision required his removal for the reason stated in s 10(1)*(c),* no process or procedure is laid down in s 10 for such removal. The provisions of this section therefore do not support the appellants' contentions.

[30] Lastly, regarding the respondents' *locus standi* to seek the declaratory relief, it is trite that an existing dispute is not a pre-requisite for jurisdiction.[23] There must be, as there are in this case, interested parties so that the declaratory order is binding. Further, considering the nature of this matter, the exercise by the high court of its discretion in favour of making the declaratory order, was proper. All the three respondents have an interest in the proper implementation of the decisions of the commission. This is so particularly in the light of their assertion that more decisions of the Commission presently await implementation.

[31] Consequently the following order is granted:
The appeal is dismissed.

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N DAMBUZA
JUDGE OF APPEAL

[23] *Ex Parte Nell* 1963 (1) SA 754 (A).

APPEARANCES:

For the Appellants:	P M Mtshaulana SC (with P Seleka SC) Instructed by: Webber Wentzel Attorneys, Johannesburg c/o Webbers, Bloemfontein
For the Respondents:	N Arendse SC (with D Börgstrom) Instructed by: Bhadrish Daya Attorneys, Pretoria c/o Matsepes Inc, Bloemfontein