



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 19891/2022

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 25 JANUARY 2024
SIGNATURE

In the matter between:

PRINCE MBONISI BEKITHEMBA KA BHEKUZULU	First Applicant
PRINCE VULINDLELA KA BHEKUZULU	Second Applicant
PRINCE MATHUBA KA BHEKUZULU	Third Applicant
PRINCE GAYLORD MXOLISI KA BHEKUZULU	Fourth Applicant
PRINCESS LINDIWE KA BHEKUZULU	Fifth Applicant
PRINCE ZWELIYAZUZA KA NINGI KA SOLOMON	Sixth Applicant
PRINCE BUKHOSIKABUPHELI KA NKUNZIYEZAMBANE KA SOLOMON	Seventh Applicant
PRINCE BHEKINKOSI ERNEST KA NKUNZIYEZAMBANE KA SOLOMON	Eighth Applicant
PRINCESS THEMBOKUHLE KA NGQINDA KA SOLOMON	Ninth Applicant

PRINCESS SILUNGILE KA BHEKUZULU	Tenth Applicant
PRINCESS GUGULETHU KA NGQINDA KA SOLOMON	Eleventh Applicant
PRINCESS ZANELE KA NKUNZIYEZAMBANE KA SOLOMON	Twelfth Applicant
PRINCESS THEMBELIHLE CYNTHIA KA NINGI KA SOLOMON	Thirteenth Applicant
PRINCESS LINDIWE KA BHEKUZULU	Fourteenth Applicant
PRINCE NOKWETHWMBA BHEKINKOSI KA NKUNZIYEZAMBANE KA SOLOMON	Fifteenth Applicant
PRINCESS SIHLOBOSENKOSI LINDUZALO KA ZWELITHINI ZULU	Sixteenth Applicant
PRINCESS PHUMUZUZULU MZOMUHLE KA ZWELITHINI ZULU	Seventeenth Applicant
PRINCESS THANDEKA KA ZWELITHINI ZULU	Eighteenth Applicant
PRINCESS KHONZINKOSI SBAMBISILE KA ZWELITHINI ZULU	Nineteenth Applicant
PRINCE NHLANGANISO KA ZWELITHINI ZULU	Twentieth Applicant
PRINCE BAZABAZI MBUZELI ZWELITHINI ZULU	Twenty-first Applicant
PRINCESS SIBUSILE KA ZWELITHINI ZULU	Twenty-second Applicant
PRINCESS KHETHOKUHLE ZULU	Twenty-third Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
PRINCE MISUZULU KA ZWELITHINI ZULU	Second Respondent
PRINCE MANGOZUTHU BUTHELEZI	Third Respondent
MINISTER OF COOPERATIVE GOVERNMENT AND TRADITIONAL AFFAIRS N.O	Fourth Respondent
PREMIER OF KWAZULU-NATAL PROVINCE	Fifth Respondent
PRINCESS THEMBI NDLOVU	Sixth Respondent
PRINCE THULANI ZULU	Seventh Respondent
QUEEN BUHLE MATHE	Eighth Respondent
QUEEN THANKDEKILE JANE NDLOVU	Ninth Respondent
QUEEN NOMPUMELELO MCHIZA	Tenth Respondent
QUEEN ZOLA ZELUSIWE MAFU	Eleventh Respondent
QUEEN SIBONGILE WINNIFRED ZULU	Twelfth Respondent
MEMBERS OF THE ROYAL FAMILY AS LISTED IN ANNEXURE “A”	Thirteen Respondent
PRINCESS THANDEKA KA ZWELITHINI ZULU	Fourteenth Respondent
PRINCESS NOMBUSO KA ZWELITHINI ZULU	Fifteenth Respondent
PRINCE SIHLANGU KWENZAKWENKOSI KA ZWELITHINI ZULU	Sixteenth Respondent
PRINCESS NTANDOYENKOSI KA ZWELITHINI ZULU	Seventeenth Respondent
PRINCESS SINETHEMBA KA	

ZWELITHINI ZULU	Eighteenth Respondent
PRINCESS NQOBANGOTHANDO KA ZWELITHINI ZULU	Nineteenth Respondent
<u>PRINCE KHETHOKUHLE KA LETHU ZULU</u>	<u>Twentieth Respondent</u>

CASE NO: 38670/2022

PRINCE SIMAKADE KA-ZWELITHINI ZULU Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
PRINCE MISUZULU KA-ZWELITHINI ZULU	Second Respondent
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Third Respondent
PREMIER KWAZULU-NATAL PROVINCE	Fourth Respondent
NATIONAL HOUSE OF TRADITIONAL LEADERS	Sixth Respondent
MEMBERS OF THE ZULU ROYAL FAMILY IDENTIFIED IN ANNEXURE “A”	Seventh Respondent
PRINCE MANGOSUTHU BUTHELEZI	Eighth Respondent

ORDER

1. Leave to appeal and leave to cross-appeal as applied for by the respective parties, against the orders of this court of 11 December 2023, are granted to the Supreme Court of Appeal.
2. Costs in the various applications for leave to appeal and to cross-appeal, shall be costs in the appeal.

J U D G M E N T
(Leave to appeal and to cross-appeal)

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

DAVIS, J

Introduction

[1] On 11 December 2023 this court set aside the recognition by the President of Prince (then) Misuzulu Ka Zwelithini Zulu as the king of the AmaZulu (the recognition decision). The court also ordered the President to appoint an Investigation Committee as contemplated in sections 8(4) and 8(5) of the Traditional and Khoi-San Leadership Act 3 of 2019 (the Leadership Act) to conduct an investigation and to provide a report in respect of allegations that the identification of a new king had not been done in accordance with Zulu customary laws and customs.

[2] The court also declined to set aside the identification of the new king purportedly done by the Zulu Royal Family on 14 May 2021 (the identification decision). The reason why the court declined to set aside the identification

decision was because it found that the issue had already finally been determined by Madondo AJP in prior high court litigation in the KwaZulu-Natal Division, Pietermaitzburg.

[3] Initially, only the President indicated an intention to seek leave to appeal the orders referred to in paragraph [1] above but, after his application had been delivered, all the other parties to the jointly heard applications respectively launched by Prince Mbonisi Bekithemba Ka Bhekuzulu and others and Prince Simakade Ka Zwelithini Zulu, also applied for leave to either appeal or to cross-appeal this court's judgment and orders.

[4] In dealing with these applications hereunder, I shall refer to the parties as in the main judgment.

Summary of the various applications for leave to appeal and/or to cross-appeal

[5] The President and the Minister of Cooperative Governance and Traditional Affairs seek leave to appeal against the review and setting aside of the recognition decision, principally on the ground that it should have been found that Madondo AJP had found that there were no grounds satisfying the jurisdictional requirements of section 8(4) of the Leadership Act, which would have precluded the President from taking that decision without the benefit of a report from an Investigation Committee contemplated in that Act.

[6] The King in similar fashion argues that the court should have adopted the same conclusion it reached in relation to the identification decision, in respect of the recognition decision. In addition, and on a slightly different footing, the King argues that the President, in appreciating the application of section 8(4), correctly concluded that he was bound by the pronouncements of Madondo AJP in relation to the disputes raised as to his kingship. In effect the argument is

that this court should have found that Madondo AJP had already finally determined the dispute relating to the President's recognition decision.

[7] It is difficult to see how it could successfully be argued that Madondo AJP could have finally decided something which up to that time had not yet taken place. The recognition decision of the President was, at the time the other applications came before Madondo AJP, something which was yet to take place in the future. The outcome of the President's decision could therefore not yet validly have been predetermined. It is also clear, when one has regard to the contents of par [102] of Madondo AJP's judgment, that he was alive to the fact that a review of the recognition decision, once taken, could still be pursued.¹

[8] However, despite this court's view of the lack of prospects of success on appeal on this point, Adv Puckrin SC who appeared for the King, assisted by other counsel, argued that, should leave to appeal be granted to Prince Mbonisi to challenge the applicability of the res judicata principle in respect of the identification decision without leave to appeal being granted to the King, the King would be prejudiced in his opposition thereto and in his argument that the principle should have been found to apply to both the identification decision and the recognition decision.

[9] In prince Mbonisi's application, apart from opposing the applications for leave to appeal launched by the President and the King, it is argued that, having found that the recognition decision of the President was unlawful and invalid, the court failed "... *to fashion an appropriate order*" reflecting "... *the nature of the Constitutional rights of the applicants who are the core and key members of the AmaZulu Royal family ... and play an indispensable customary and legal role in the identification of a successor to the AmaZulu throne ...*". Based on

¹ Par [102] of Madondo AJP's judgment reads as follows: "The Premier or the President as organ of state has not yet acted which could justify an approach to the court for a review, if it were to be sought".

these assertions it is argued that the court should have set aside the identification decision and have remitted it back to the AmaZulu Royal Family. Both the validity of the identification process and the constitution of the Royal family remained in dispute and had not finally been disposed of, so Prince Mbonisi and his co-applicants argued. In addition, it was argued that the lack of consultation with the Premier in any event invalidated the President's decision.

[10] In addition to the above, Prince Simakade also applied for leave to appeal, alternatively to cross-appeal the orders of this court. Such leave was sought on the basis that the conditions which Prince Simakade had sought to be imposed on the remittal of the matters to the Investigation Committee should have been ordered and that the Investigation Committee should expressly have been ordered to consider the identification issue "afresh". As an aside leave was also sought to appeal against the finding that the decision by Madondo AJP regarding the identification decision was *res judicata*.

[11] Having regard to the relative novelty of the issues which came before the court, distinguishing the matter from other succession matters as well as the enormity of importance of finality regarding the issue of succession to the AmaZulu throne, which may result in a reign of many years as history has shown, and which may impact on the Zulu nation as a whole and the Ingonyama Trust, I find that compelling reasons exist that leave to appeal should be granted as contemplated in Section 17(1)(a) (ii) of the Superior Courts Act, 10 of 2013.

[12] Having reached the above conclusion, I find it unnecessary to further dissect the various applications, irrespective of my view of a lack of prospects of success on appeal or not of some of them.

[13] All parties were in agreement that, should leave to appeal be granted, it should be to the Supreme Court of Appeal and that the customary order as to costs should be made.

Order

[48] Accordingly, the orders are as follows:

1. Leave to appeal and leave to cross-appeal as applied for by the respective parties, against the orders of this court of 11 December 2023, are granted to the Supreme Court of Appeal.
2. Costs in the various application for leave to appeal and to cross-appeal, shall be costs in the appeal.

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 16 January 2024

Judgment delivered: 25 January 2024

APPEARANCES:

In case no: 19891/2022

For the Applicant: Adv T Masuku SC together with
Adv M Simelane and Adv N M Nyathi
Attorney for the Applicant: JG & Xulu Inc., Johannesburg
c/o NP Mkhavele Inc, Pretoria

For the 1st & 4th Respondent: Adv M Moerane SC together with
Adv N Muvangaua and
Adv N Chesi-Buthelezi
Attorney for the 1st & 4th Respondent: The State Attorneys, Pretoria

For the Second Respondent: Adv C E Puckrin SC together with
Adv M A Badenhorst SC and
Adv J A Klopper
Attorney for the Second Respondent: Cavanagh & Richards Attorneys,
Centurion

In case no: 38670/2022

For the Applicant: Adv A Dodson SC together with
Adv S Pudifin-Jones and Adv N Seme
Attorney for the Applicant: Hammann Moosa Incorporated,
LouisTrichards
c/o Hannes Smith Attorneys, Pretoria

For the 1st & 3rd Respondent: Adv M Moerane SC together with
Adv N Muvangaua and
Adv N Chesi-Buthelezi

Attorney for the 1st & 3rd Respondent: The State Attorneys, Pretoria

For the Second Respondent: Adv C E Puckrin SC together with
Adv M A Badenhorst SC and
Adv J A Klopper

Attorney for the Second Respondent: Cavanagh & Richards Attorneys,
Centurion

For the intervening Applicant: Adv T Masuka SC together with
Adv M Simelane and Adv N M Nyathi

Attorney for the intervening Applicant: JG & Xulu Inc., Johannesburg
c/o NP Mkhavele Inc, Pretoria