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KWAZULU-NATAL PROVINSIE
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PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS

PROVINCIAL NOTICE 177 OF 2022

PROCLAMATION


*by the**Premier of the Province of KwaZulu-Natal*

ESTABLISHMENT OF A COMMISSION OF INQUIRY INTO TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS IN KWAZULU-NATAL.

In terms of section 127(2)(e) of the Constitution of the Republic of South Africa, 1996, read with section 2(1) of the KwaZulu-Natal Commissions Act, 1999 (Act No. 30 of 1999), I hereby -

- (a) appoint a Commission to inquire into, investigate make findings, report and make proposals and recommendations related to traditional leadership claims and disputes, as well as pertinent matters as set out in this Proclamation and the terms of reference in Part A of the Schedule hereto;
- (b) appoint Mr. Thembinkosi Sithole as Chairperson of the Commission;
- (c) appoint Dr. Jabulani Sithole as a member of the Commission,
- (d) appoint Adv. Mawande Mazibuko as a member of the Commission;
- (e) define the Terms of Reference of the Commission in terms of section 2(1)(b) of the KwaZulu-Natal Commissions Act, 1999, as set out in Part A of the Schedule hereto; and
- (f) make the Regulations applicable to the Commission in terms of section 2(1)(c) of the KwaZulu-Natal Commissions Act, 1999, as set out in Part B of the Schedule hereto.

Given under my Hand at Pietermaritzburg this 12 day of January Two thousand and Twenty One. 2022

**MR S. ZIKALALA, MPL**

Premier of the Province of KwaZulu-Natal

SCHEDULE
Part A
TERMS OF REFERENCE
OF THE
COMMISSION OF INQUIRY INTO TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS
IN KWAZULU-NATAL

A Commission of Inquiry ("the Commission") is hereby appointed in terms of section 127(2) of the Constitution of the Republic of South Africa, 1996, read with section 2(1) of the KwaZulu-Natal Commissions Act, 1999 (Act No. 3 of 1999).

1. The Commission is appointed to inquire into, investigate make findings, report and make proposals and recommendations related to traditional leadership claims and disputes, including but not limited to –

- (a) a case where there is doubt as to whether a kingship, senior traditional leadership or headmanship was established in accordance with customary law and customs;
- (b) a traditional leadership position where the title or right of the incumbent is contested;
- (c) claims by communities to be recognised as traditional communities;
- (d) the legitimacy of the establishment or disestablishment of "tribes";
- (d) disputes resulting from the determination of traditional authority boundaries; and
- (e) disputes arising from the merging or subdivision of "tribes"/ traditional communities.
- (f) make proposals and recommendations that will –
 - (i) resolve these disputes and claims;
 - (ii) address the governance problems in affected communities; and
 - (iii) for the possible making of policy and legislative improvements;
- (g) for the development of a set of generic principles, procedures and processes aligned to the proposals and recommendations mentioned in sub-clause (f) above according to which –
 - (i) actual; and
 - (ii) potential future,

disputes of a similar or related nature pertaining to other claims and disputes relating to interests of individuals, communities and entities in the province of KwaZulu-Natal, can be resolved or prevented;

- (h) make findings and recommendations on matters submitted to the Commission as the Commission may deem necessary or appropriate.
2. The Commission may only entertain disputes and claims arising from the period 1927 onwards and not prior to 1927, unless, in the opinion of the Commission, with a good cause shown, there are grounds to hear and recommend on a matter that arose before 1927.
3. The Commission must compile a written report containing –
- (a) the findings of the Commission pertaining to the investigations on matters submitted;
 - (b) recommendations to resolve the disputes and claims;
 - (c) recommendations and proposals for the handling of future similar matters with a possibility of influencing existing or the drafting of new policies, legislation and implementation frameworks;
 - (d) recommendations and proposals for the development of a set of generic principles, procedures and processes aligned to the recommendations and proposals mentioned in sub-clauses (b) and (c) above, according to which actual and potential future disputes of a similar or related nature in the province of KwaZulu-Natal, can be resolved or prevented; and
 - (d) other recommendations pertaining to the investigations conducted;
 - (e) recommendations and proposals on any related matters deemed necessarily or appropriate by the Commission.
4. The Chairperson of the Commission must submit –
- (a) a report with findings and recommendations per concluded matter for a decision by the Premier.
 - (b) an interim overall report to the Premier by not later 12 months after the establishment of the Commission; and
 - (c) the final overall report to the Premier by not later than 30 days after the Premier has provided feedback on the interim report.
- 5.(1) The Commission is appointed for a period of five years from the date of publication of this Proclamation which period may be extended on request in writing to the Premier.

(2) In the event of such a request, the Chairperson of the Commission must present the Premier with the estimated financial implications for such extension.

(3) The Premier may grant an extension if deemed reasonable and an extension appropriate.

6. The Commission –

(a) may exercise the powers and functions of a Commission as referred to in the KwaZulu-Natal Commissions Act, 1999; and

(b) must perform the inquiry –

(i) within these terms of reference and

(ii) in accordance with the regulations in Part B of this Schedule.

7. The Regulations in Part B of this Schedule enable the Commission to conduct its work meaningfully and effectively and to facilitate the gathering of information and evidence by conferring on the Commission powers as necessary, including the power to enter and search premises, secure the attendance of witnesses and compel the production of documentation.

8. The Department of Cooperative Governance and Traditional Affairs, KwaZulu-Natal, is responsible for the provision of financial, human and other resource support to the Commission, including, but not limited to –

(a) the remuneration of the Chairperson, other commissioners, the Secretariat and other personnel, including, but not limited to, researchers and other knowledgeable persons involved in the Commission;

(b) support, including, but not limited to, infrastructure, financial resources, IT resources, support to the secretarial and administrative staff, logistical and security staff and other forms of support, transport and other support as may be identified by the Chairperson or the Secretary, as he may reasonably require: Provided that the KZN Department of Cooperative Governance and Traditional Affairs must also provide such aforementioned support to the Secretary as s/he may reasonably require;

(c) all related expenses, disbursements and costs;

(d) the costs associated with the hiring of venues for the hearings.

9. Members of the public who are in possession of information which may be relevant to the matters to be inquired into by the Commission and who wish to give evidence before the Commission are invited to contact the Secretary of the Commission in the following contact details: edward.mthiya@kzncogta.gov.za, o Nontobeko.ntshembeni@kzncogta.gov.za to arrange a venue and time where they may testify before the Commission. The Secretary may be contacted at 033 897 5646

10. The venues and times for the sittings of the Commission will be announced in due course by means of, amongst others, official letters, telephone or cellular phone calls or emails.

11. The Commission may, where appropriate, refer any matter regarding the conduct of any person for prosecution or further investigation to the appropriate agency, department, body or entity.

12. These Terms of Reference may be augmented, varied or amended from time to time by the Premier.

13. The Regulations in Part B of this Schedule may be augmented, varied or amended from time to time by the Premier.

Part B**REGULATIONS APPLICABLE TO THE COMMISSION OF INQUIRY INTO TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS IN TERMS OF SECTION 127(2)(e) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996, READ WITH SECTION 2(1) OF THE KWAZULU-NATAL COMMISSIONS ACT, 1999**

1. In these Regulations, unless the context otherwise indicates –

“Chairperson” means the Chairperson of the Commission of into Traditional Leadership Disputes and Claims, and Related Matters;

“Commission” means the Commission of Inquiry into Traditional Leadership Disputes and Claims, and Related Matters;

“document” includes –

- (a) any paper or other object on which there is writing or images;
- (b) any object form which writing, sounds or images can be reproduced or retrieved; or
- (c) any electronically stored information that is transmittable;

“inquiry” means the inquiry conducted by the Commission;

“member” means a member of the Commission;

“officer” means a person in the full-time service of the Provincial Government or State who has been appointed or designated to assist the Commission in the execution of its functions;

“premises” includes any land, building, structure, part of a building or structure, vehicle, conveyance, vessel or aircraft; and

“the Act” means the KwaZulu-Natal Commissions Act, 1999 (Act 3 of 1998).

2. The proceedings of the Commission must be recorded in the manner determined by the Chairperson.

3.(1) Any person appointed or designated to record the proceedings of the Commission or to transcribe the proceedings which have been so taken down or recorded must, at the outset, take an oath or make an affirmation in the following form:

"I, AB, declare under oath / affirm and declare –

(a) that I shall faithfully and to the best of my ability take down notes of, or record, the proceedings of the Commission of Inquiry into Traditional Leadership Disputes and Claims, and Related Matters, in the manner ordered by the Chairperson of the Commission; and

(b) that I shall transcribe the notes taken down, or the record made, by me or by any other person, of the proceedings of the said Commission, fully and to the best of my ability."

(2) No person may transcribe any notes or record of the proceedings of the Commission except by order of the Chairperson.

4. The Commission is empowered to avail itself of the services of any person, body or entity whose assistance, advice or expertise the Commission deems to be necessary or expedient for the purposes of the performance of any of its functions, including, but not limited to, the conducting of its investigation.

5.(1) Every person employed in the execution of the functions of the Commission, including any person –

(a) appointed or designated to take notes of, or record, the proceedings of the Commission in writing or by mechanical means, or

(b) employed to transcribe the notes so taken down, or the record,

must assist to preserve the confidentiality of any matter or information that may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as the publication of such matter or information is necessary or incidental to the report of the Commission.

(2) Every person contemplated in subitem (1), except the Chairperson or any officer, must, before performing any duty in connection with the Commission, take an oath or make an affirmation before the Chairperson in the following form:

"I, AB, declare under oath / affirm and declare that except insofar as it is necessary in the performance of my duties in connection with the functions of the Commission of Inquiry into Traditional Leadership Disputes and Claims and Related Matters, or by

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order of a competent court, I shall not communicate to any person any matter of information which may come to my knowledge in connection with the inquiry of the said Commission, or allow or permit any person to have access to any records of the Commission, including any note, record or transcription of the proceedings of the said Commission in my possession or custody or in the possession or custody of the said Commission or any officer."

6. No person may –

- (a) communicate to any other person any matter or information which may have come to his or her knowledge in connection with the inquiry of the Commission; or
- (b) allow or permit any other person to have access to any records of the Commission, except insofar as it is necessary in the performance of his or her duties in connection with the functions of the Commission, or by order of a competent court.

7. The Commission must, for purposes of section 4(1) of the Act, issue a subpoena in the format prescribed in the Annexure hereto.

8. The Chairperson or an officer generally or specially authorised thereto by the Chairperson must administer an oath to, or accept an affirmation from, any witness appearing before the Commission.

9. Where, at the time of any person giving evidence before the Commission, members of the general public are, or have been, excluded from attendance at the proceedings of the Commission, the Chairperson may, at the request of such a person, direct that no person may disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.

10. A witness appearing before the Commission may be cross-examined by a person only if the Chairperson permits such cross-examination by such person because the Chairperson deems it necessary in the interest of the functioning of the Commission.

11. A witness appearing before the Commission may, in the discretion of the Chairperson and in such manner as may be determined by the Chairperson, be assisted by an advocate or an attorney.

12. No evidence regarding any fact or information that comes to light during the proceedings of the Commission is admissible in any civil or criminal proceedings, except in criminal proceedings where the person concerned has been charged with an offence in terms of section 4 of the Act.

13. An officer, attorney or advocate designated thereto by the Chairperson may be present at the hearing of evidence at the inquiry and may adduce evidence and arguments relating to the inquiry.

14. Whenever the Commission is satisfied upon evidence or information presented to it that the Commission's inquiry may adversely affect any existing, instituted or pending legal proceedings or any investigation instituted in terms of any law, evidence which is relevant to such legal proceedings or investigation must be dealt with by the Commission in such a manner as not to adversely affect such legal proceedings or investigation.

15. No person may, without the written permission of the Chairperson –

- (a) disseminate, distribute, circulate or publicise any document, the contents of any document or any portion of the contents of such a document submitted to the Commission by any person in connection with the inquiry; or
- (b) peruse, examine or scrutinize any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.

16. No person may, except as envisaged in the Act read with the Terms of Reference of the Commission, publish or furnish any other person with –

- (a) a copy or a part thereof or the report of the Commission;
 - (b) a copy or a part thereof or any interim report of the Commission; or
 - (c) information regarding the consideration of evidence by the Commission,
- for publication before the Premier has approved the publication of the Commission's report.

17. The Chairperson or any officer may, with a warrant, for the purposes of the inquiry, at all reasonable times enter and inspect any premises and demand and seize any document which is on such premises.

18. No person may insult, disparage or belittle the Chairperson or any member of the Commission or prejudice the proceedings or findings of the Commission.

19. Any person who –

(a) wilfully hinders, resists or obstructs the Chairperson, any member or any officer in the exercise of any power contemplated in these regulation; or

(b) contravenes a provision of regulation 3(2), 6, 15, 16 or 18,

is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding 12 months.

ANNEXURE**THE REGULATIONS APPLICABLE TO THE COMMISSION OF INQUIRY INTO
GOVERNANCE, LAND OWNERSHIP AND BOUNDARIES DISPUTES IN BABANANGO
AND SURROUNDING AREAS, AND RELATED MATTERS****SUBPOENA TO APPEAR BEFORE COMMISSION OF INQUIRY**

To: _____

(Name and address of person subpoenaed)

You are hereby subpoenaed in terms of section 4(1) of the KwaZulu-Natal Commissions Act, 1988 (Act No. 3 of 1999) to appear at _____ on the _____ day of _____ 20____, at _____ before the Commission of Inquiry appointed to conduct an investigation into Traditional Leadership Disputes and Claims, and Related Matters, and specifically to –

(a) give evidence in respect of: _____

_____ ; and

(b) produce the following at the hearing: _____

Given under my hand at _____ on this _____ day of _____ 20____

SECRETARY TO THE COMMISSION

PROVINCIAL NOTICE 178 OF 2022
SECRET

ANNEXURE A

DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

THE RECOGNITION OF NHLOSO MZILIKAZI JUNIOR THUTHUKA KHUMALO AS *INKOSI* FOR THE ABANTUNGWA KHOLWA TRADITIONAL COMMUNITY AS CONTEMPLATED IN SECTIONS 19 (2) (a) OF THE KWAZULU-NATAL TRADITIONAL LEADERSHIP AND GOVERNANCE ACT, 2005

I, S. Zikalala, acting in my capacity as Premier of KwaZulu-Natal, and in terms of the powers vested in me by section 19 (2) (a) of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005 (Act No. 5 of 2005), hereby recognise Nhloso Mzilikazi Junior Thuthuka Khumalo as *iNkosi* for Abantungwa Kholwa Traditional Community in the District of Uthukela, with effect from the date of signature hereof.

Given under my hand at Pietermaritzburg on this 19 day of November Two Thousand and Twenty One.



MR S. ZIKALALA
PREMIER OF KWAZULU-NATAL

PROVINCIAL NOTICE 179 OF 2022

SECRET**ANNEXURE A****DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS****THE RECOGNITION OF NJABULO MKHIZE AS *INKOSI* FOR THE MBUZANE TRADITIONAL COMMUNITY AS CONTEMPLATED IN SECTIONS 19 (2)(a) OF THE KWAZULU-NATAL TRADITIONAL LEADERSHIP AND GOVERNANCE ACT, 2005**

I, S. Zikalala, acting in my capacity as Premier of KwaZulu-Natal, and in terms of the powers vested in me by section 19 (2) (a) of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005 (Act No. 5 of 2005), hereby recognise Njabulo Mkhize as *iNkosi* for Mbuzane Traditional Community in the District of Umgungundlovu, with effect from the date of signature hereof.

Given under my hand at Pietermaritzburg on this 19... day of November... Two Thousand and Twenty One.



MR S. ZIKALALA
PREMIER OF KWAZULU-NATAL

PROVINCIAL NOTICE 180 OF 2022

DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

NOTICE IN TERMS OF SECTION 16(3)(c) OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998 (ACT NO. 117 OF 1998): UMZIMKHULU MUNICIPALITY

1. The Member of the KwaZulu-Natal Executive Council responsible for Co-operative Governance and Traditional Affairs, in her capacity as the Member of the Executive Council responsible for local government, under the powers vested in him by section 16(1)(d) of the Local Government Municipal Structures Act, 1998 (Act No. 117 of 1998), to amend notices issued in terms of section 12 of the said Act, and in order to give effect to a decision by the Municipal Council of the Umzimkhulu Municipality to designate three (3) Members of Executive Committee, Whip of Council and Chairperson of Municipal Public Accounts Committee as full-time Councillors, proposes to publish the following notice:

"I, Sipho Hlomuka, Member of the KwaZulu-Natal Executive Council responsible for local government, under powers vested in me by section 16(1)(d) read with section 18(4) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), hereby determine that the Umzimkhulu Municipality may, in addition to the Speaker, Mayor and Deputy Mayor, designate three (3) Members of the Executive Committee, the Whip of Council and the Chairperson of Municipal Public Accounts Committee as full-time Councillors."

2. The public and interested parties are invited to submit comments in writing on the proposed amendment by no later than seven days after the date of publication hereof, by–

(a) post to the Head of Department, Co-operative Governance and Traditional Affairs, Pietermaritzburg, Private Bag X 9123, 3200;

(b) hand to the 3rd Floor, Southern Life Plaza, 271 Church Street, Pietermaritzburg, 3201,

Attention: Mr. N. Mbedu;

(c) facsimile to 033 – 355 6146; or

(d) e-mail to nkosinathi.mbedu@kzncogta.gov.za

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