



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Themba Yende and Another v Felani Yende and Another (Case no 1128/19) [2020] ZASCA 179 (18 December 2020)

From: The Registrar, Supreme Court of Appeal

Date: 18 December 2020

Status: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Today, the Supreme Court of Appeal (SCA) dismissed with costs an appeal against a judgment of the Full Court of the Gauteng Division of the High Court, Pretoria (the full court).

This appeal concerned the application of customary norms and criteria of the traditional community known as the amaYende asoGenyaneni (amaYende), following the official recognition of amaYende as a traditional community by the Premier of Mpumalanga (the Premier) and further recognition of the fourth appellant, Mr Themba Yende (Themba) as the senior traditional leader of that community.

Mr Felani Yende (Felani) and his two siblings (together referred to as the respondents) brought an application for review to the Gauteng Division of the High Court, Pretoria, challenging the Premier's decision to recognise Themba as the senior traditional leader. Asserting that the Premier's decision to recognise Themba was not in compliance with customary laws and practices of amaZulu, the respondents sought an order reviewing and setting aside the decision on the basis that it was unlawful. The review was grounded on s 6 of the Promotion of Administrative Justice Act 3 of 2000. The matter came before Manamela AJ, who dismissed the application with costs on the basis that respondents had been aware of the process underway at the Commission for determining the rightful senior traditional leader, but had not lodged any claim nor made any representations in that regard. Instead, they had belatedly taken steps after the publication of the Government Gazette recognising Themba as the senior leader of the amaYende.

Aggrieved by that decision, the respondents obtained leave of this court to appeal to the Full Court of the Gauteng Division of the High Court, Pretoria (full court). On appeal, the court reversed the

decision of Manamela AJ on the basis that the respondents had not been afforded an opportunity to make representations, thus tainting the procedures followed by the Commission.

The crisp issues for determination before this court were: (i) whether the relevant Royal Family had been afforded the right to make representations to the Commission; (ii) whether the provisions of the Framework Act were complied with; and (iii) whether the living amaYende customary law was proven to the Commission.

This court held that the respondents were important members of the Royal Family, who should have played a pivotal role in the identification, recognition and ultimate appointment of the senior traditional leader. It also held that the respondents were not given an opportunity to make any further representations after they had registered their discontent with Themba's nomination, thus excluding them from participation in a matter that materially affected the Royal Family of the amaYende. To that extent, the purported nomination of Themba as the senior traditional leader in the absence of other members of the Royal Family excluded the respondents from meaningful participation in the processes of the commission, violated the provisions of s 22(2) of the Framework Act and thus constituted an irregularity.

Furthermore, the court held that the failure to call for and consider evidence of the customary practices of the amaYende applicable at the time of the determination of the dispute violated the provision of s 25(3) of the Framework Act.

This court accordingly held that the full court was correct in referring the matter back to the Royal Family for purposes of nominating the senior traditional leader of the Amayende.

As a result, the appeal was dismissed with costs.

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