

SOUTH AFRICA / JUDGMENT

Muthaphuli Royal Family and Another v Muthaki Royal Family and Another (1064/2019) [2025] ZALMPTHC 4 (10 March 2025)

[2025] ZALMPTHC 4

COURT

Limpopo High Court, Thohoyandou

BEFORE

Semanya

CASE / FILE NUMBER

1064/2019

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

LOCAL DIVISION, THOHOYANDOU

CASE

NO. 1064/2019

(1) REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED.

DATE:

10.03.2025

SIGNATURE:

In

the matter between:

MUTHAPHULI
ROYAL FAMILY
FIRST
APPLICANT
MICHAEL
MUTHAPULI
SECOND
APPLICANT
and
MUTHAKHI
ROYAL FAMILY
FIRST
RESPONDENT
MUTHAKHI
PERCY
SECOND
RESPONDENT
In
re
MUTHAKHI
ROYAL FAMILY
FIRST
APPLICANT
MUTHAKHI
MATODZI ABEL
SECOND
APPLCANT
and
MEMBERS
OF THE MUTHAKHI ROYAL
FAMILY
OR THEIR NOMINEES OR
AGENT
FIRST
RESPONDENT
MUTHAPHULI
NTSHIMISENI
SECOND
RESPONDENT
MTHAPHULI
ALUKHWATHI
THIRD
RESPONDENT
MUTHAPHULI
NDITSHENI
FOURTH
RESPONDENT
NETSHANDAMA
CHRISTOPHER
FIFTH
RESPONDENT

BALOYI
TJATJANI SOLOMON
SIXTH
REPENDENT
MUKHUMO
HERMAN
SEVENTH
RESPONDENT
MPHAPHULI
TRADITIONAL COUNCIL
EIGHTH
RESPONDENT

JUDGMENT

SEMENYA DJP

- [1] The applicants in this matter seek an order in terms of which the order of Makhafola J (as he then was), dated the 07 October 2019 under case number 1064/2019 is set aside by this court. Makhafola J granted the order that restrained the second to the eighth respondents in that application from interfering and disrupting the applicants in that case, in their day to day exercise of authority in administering the affairs of Mphireleni village. The first respondent was the first applicant in that matter.
- [2] The historical facts of this case as they appear from the founding affidavit is that one Mrs Tshavhungwe Muthaki (born Muthaphuli} who was holding the position of a regent passed on during 2014. Her son who was the second applicant when the matter came before Makhafola J, assumed the position of a headman. However, the Royal Council refused to recognise him as a headman.
- [3] In view of the contestations, the first and second respondents in this matter approached the court in 2019 purporting to be the traditional structure that holds the authority to exercise power within the village. The applicants allege that the second applicant has since been recognised by the Premier of Limpopo as the headman of Budeli village. The recognition happened in 2023. The applicants aver that despite this recognition, the second applicant and the elected members of the royal council are unable to manage the financial and traditional affairs of their village. This is so because the respondents are claiming to be the correct structure to exercise authority on the basis of the Judgment and the order of Makhafola J. It is for this reason that the applicants approached this court seeking an order in terms of which the 2019 order is set aside to enable them to have authority over the community.

[4] The order sought by the applicant will, if granted, violate the Constitution of the Republic of South Africa, 1996. Section 165(5) provides that an order or decision of the court binds all persons to whom and organs of state to which it applies. The Constitutional Court said the following in *Municipal Manager O.R Tambo District Municipality and Another v Ndabeni*[1]

"[23] Trite, but necessary it is to emphasise this Court's repeated exhortation that constitutional rights and court orders must be respected. An appeal or review - the latter being an option in the case of an order from the Magistrates' Court - would be the proper process to contest an order. A court would not compel compliance with an order if that would be "patently at odds with the rule of law" Notwithstanding, no one should be left with the impression that court orders - including flawed court orders - are not binding, or that they can be flouted with impunity.

[5] This Court in *State Capture* reaffirmed that irrespective of their validity, under section 165(5) of the Constitution, court orders are binding until set aside. Similarly, *Tasima* held that wrongly issued judicial orders are not nullities. They are not void or nothingness, but exist in fact with possible legal

consequences. If the Judges had the authority to make the decisions at the time that they made them, then those orders would be

enforceable."

[6] It follows that the order of *Makhafola J* can only be set aside by a court sitting as a review or an appeal court. It cannot be done in a motion court before a single judge as the applicant believe. The relief sought by the applicants cannot be granted on that basis.

[7] None of the respondents opposed the application. I will therefore not grant a costs order against any of them.

[8] In the result I make the following order:

1. The application is dismissed with no order as to costs

MV SEMENYA DEPUTY

JUDGE PRESIDENT

APPEARANCES

1. For the Applicants Adv G Maluleke

Instructed by Netshilema Attorneys

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3. Date of argument 22 October 2024

4. Date of Judgment 10 March 2025

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives via email and release to SAFLII. The date and time of hand-down is deemed to be the 10 March 2025 at 16:00.

[1]

[2022] ZACC 3

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