

SOUTH AFRICA / JUDGMENT

Thulare v Thulare and Others (470/2023)

[2025] ZASCA 100 (7 July 2025)

[2025] ZASCA 100

COURT

Supreme Court of Appeal

BEFORE

Zondi, Keightley, Unterhalter, Steyn, Henney

CASE / FILE NUMBER

470/2023

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FLYNOTES:

CUSTOMARY

– Traditional leadership – Acting king or queen – Identification

– Death of king without a candle wife or heir – Royal family defined as including immediate relatives and other close relatives of ruling family – High Court's conclusion that royal family extended beyond queen mother's inner circle – Determination was flawed due to a lack of expert or factual evidence on Bapedi customary law – Improperly pronounced on custom without evidence – Appeal upheld – Matter remitted to the High Court.

THE SUPREME COURT OF
APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 470/2023

In the matter between:

MANYAKU MARIA THULARE

APPELLANT

and

MORWAMOHUBE ERNEST THULARE

FIRST RESPONDENT

THOROMET JANE DEBORAH THULARE

SECOND RESPONDENT

THE PREMIER, LIMPOPO PROVINCE

THIRD RESPONDENT

THE MINISTER OF CO-OPERATIVE

GOVERNANCE & TRADITIONAL AFFAIRS

FOURTH RESPONDENT

THE PRESIDENT OF THE REPUBLIC

OF SOUTH AFRICA

FIFTH RESPONDENT

LIMPOPO HOUSE OF TRADITIONAL

LEADERS

SIXTH RESPONDENT

Neutral citation: Thulare v Thulare & Others (470/2023) ZASCA 100 (7 July 2025)

Coram: ZONDI DP and KEIGHTLEY and UNTERHALTER JJA and STEYN and HENNEY AJJA

Heard: 12 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The time and date for hand-down is deemed to be 11h00 on 7 July 2025.

Summary: Customary Law – Traditional and Khoi-San Leadership Act 3 of 2019 – Traditional Leadership and Governance Framework Act 41 of 2003 – Limpopo Traditional Leadership and Institutions Act 6 of 2005 – who constitutes royal family for purposes of identifying acting king or queen when king dies without a candle wife and heir – absence of expert evidence on applicable Bapedi custom – matter remitted to high court for hearing of oral and expert evidence.

ORDER

On appeal from: Limpopo Division of the High Court, Polokwane (Makgoba J sitting as court of first instance):

1 The appeal is upheld with no order as to costs.

2 The matter is remitted to the Limpopo Division of the High Court, Polokwane for the hearing of oral evidence before a different Judge, excluding any Judge who, at any stage considered or adjudicated on the disputes between the parties in this appeal, any of the consolidated applications, and any other related matter. If necessary or practicable, the Judge President may set the matter down before a Judge from another Division of the high court.

3 The following issues, borne out of the dispute between the parties about the identification of the acting king or queen for the Bapedi Nation in terms of the Bapedi custom, are referred to oral evidence, including:

- a. The question as to what and who, according to Bapedi custom, constitutes the royal family for purposes of deciding who should be identified as an acting king or queen in circumstances where the king dies without a candle wife or heir, and in particular:
 - i. Who are the immediate relatives of the ruling family?
 - ii. Who are 'other family members who are close relatives of the ruling family'?
 - iii. Whether the common wives of the deceased king form part of the decision-making structure of the royal family?
- b. The process under Bapedi custom in terms of which an acting king or queen is identified in the circumstances outlined in subparagraph a, above.
- c. The role played by seniority and rank in that process and:
 - i. whether seniority and rank are determined by genealogy or lineage or both, and
 - ii. whether seniority and rank are affected by illegitimacy by birth; legitimacy by marriage; and subsequent marriage and affiliation to another royal family?
4. The parties may lead expert evidence, and other factual evidence that may be identified by the high court directly related to one or more or all of the aforementioned issues.
5. The high court shall issue directives as to the process and timelines that will apply to the referral to oral evidence, which directives shall provide for the calling of witnesses, the status of all documents and evidence that form part of the papers filed in the court a quo to date, and further discovery.
6. The costs incurred in the high court proceedings to date shall be determined at the conclusion of the hearing of oral evidence.

Keightley JA (Zondi DP and Unterhalter JA and Steyn and Henney AJJA concurring):

Introduction

- [1] This appeal concerns a dispute about the identification of the acting king or queen of the Bapedi Nation (the Bapedi). On 3 April 2020 the President of the Republic of South Africa formally recognised Victor Thulare III (Thulare III) as king of the Bapedi. Thulare III died on 6 January 2021 without having married a candle wife and, consequently, without an heir to the kingship. All parties to the dispute agree that until a candle wife is identified, married by the community, and an heir born via a seed raiser, an acting king or queen must be identified to serve.
- [2] The parties represent two competing camps within the broader Bapedi royal family. The appellant is Manyaku Maria Thulare (the queen mother). She is the mother of Thulare III and was the candle wife of his father and predecessor, the late king Rhyne Sekhukhune III. She claims to have been identified as acting queen by a group of persons she contends are the core royal family. Her identification is averred to have been made at a meeting on 21 February 2021 and confirmed in a larger meeting on 9 March of that year. Those attending the 21 February 2021 meeting were confined to Thulare III's inner circle of six relatives: the queen mother; her son, who is unrelated by blood to Thulare III, and was described as a 'senior mokgomana; Thulare III's two non-candle wives; one of Thulare III's paternal uncles, described as a 'rangwane and senior mokgomana'; and the queen mother's daughter and sister of Thulare III, described as a 'senior kgadi'.
- [3] The first and second respondents represent a competing group, who claim to be the true royal family. The first respondent is Morwamuhube Ernest Thulare (ME Thulare). He is a half-brother of Thulare III, having been born of a non-candle wife of Sekhukhune III. His legitimacy and descent were disputed by the queen mother. The second respondent is Thorometjane Deborah Thulare (TD Thulare), who is a sister of Sekhukhune III, and hence aunt to Thulare III and ME Thulare. ME Thulare and TD Thulare aver that at a meeting of members of what they contend to be the royal family, ME Thulare was identified as acting king and seed raiser. This meeting took place on 28 February 2021. In attendance at that meeting was a group of 46 persons. It included uncles and aunts of Thulare III, his half-brothers, his brother and sisters. Some of the attendees were described as bakgomana of the royal family. Many were identified by their connection to, or descent from, Thulare III's father, Sekhukhune III.
- [4] The dispute over who was legitimately identified as the acting king or queen spawned no less than five applications in the Limpopo Division of the High Court, Polokwane (the high court). They were consolidated for hearing before Makgoba JP. The main applications were twofold. First, there was an application by TD and ME Thulare for an order declaring that the latter had been lawfully identified as acting king and seed raiser by a properly constituted meeting of the royal family on 28 February 2021. The second was a counter-application by the queen mother for an order declaring that the meeting of 28 February 2021

was not a properly constituted meeting of the ‘true and correct’ royal family, and that, on the contrary, the decisions taken on 21 February and 9 March 2021 to appoint her as acting queen were decisions by the properly constituted true royal family.

- [5] The high court found in favour of ME Thulare. It granted the declaratory relief he sought and dismissed the queen mother’s counter-application. The queen mother’s application for leave to appeal failed before the high court. On 26 April 2023 this Court granted leave on petition. An application by additional parties for leave to intervene was withdrawn shortly before the appeal was heard. The third to sixth respondents were cited in their official capacities. None played an active role in the appeal.
- [6] While the dispute between the parties manifests as one concerning who has been legitimately identified as the acting monarch, its core goes deeper: the more fundamental question is who is eligible to make that identification? The answer lies in both statute and custom.
- [7] Until 1 April 2021 the recognition of kings or queens was governed by the Traditional Leadership and Governance Framework Act, 41 of 2003 (the Framework Act). The Framework Act was repealed, with effect from 1 April 2021, by the Traditional and Khoi-San Leadership Act, 3 of 2019 (the TKL Act). In their applications to the high court the parties treated the dispute as being governed by the Framework Act, which was in effect when the contested meetings were held. The high court cited the TKL Act. For purposes of this appeal it makes no difference which Act applies, as the amendments effected by the TKL Act are immaterial to the issues in dispute.
- [8] In terms of the statutory framework, where a successor to a throne has not been identified, it falls to the royal family to identify a suitable person to act as king or queen,[1] after which, the Premier of the province must extend formal recognition to him or her.[2] Crucial to this appeal is the underlying question: what, and more precisely who, constitutes the royal family? ‘Royal family’ is statutorily defined as being:

‘...the core customary institution or structure consisting of immediate relatives of the ruling family within a traditional community [or Khoi-San], who have been identified in terms of custom[ary law or customs], and includes, where applicable, other family members who are close relatives of the ruling family.’[3]

- [9] Based on the statutory definition, the high court concluded that it was ‘quite clear’ the royal family was constituted by Thulare III’s immediate family as well as other close relatives of the ruling family, including, but not limited to, his paternal uncles and aunts (being from the house of Sekhukhune III), his (Thulare III’s) other siblings, and his half-brothers. It rejected the queen mother’s contention that the royal family was limited to the inner circle of the six people who had attended the 21 February meeting at which she was identified as acting queen.

- [10] The definition does not, without more, identify which relatives fall within the royal family. What it provides is that this is a question that is determined by the relevant custom or customary law. While the parties in this case made competing assertions about who, according to Bapedi custom, constitutes the royal family for purposes of identifying an acting monarch, they failed to adduce any expert, or other, factual evidence to support their assertions and to guide the court in its determination of the issue.
- [11] The high court overlooked this fundamental deficiency. Instead, and despite the clear material disputes of facts before it, the high court compounded the problem by pronouncing what custom required without any primary source of evidence, on the issue before it. Disputes of this kind require evidence-based resolution. In the absence of the requisite evidence, the high court was not properly equipped to make any determination as to who constitutes the royal family. Nor is this Court able to do so on appeal.
- [12] When this problem was raised at the hearing of the appeal, counsel for both sets of parties accepted that oral, and in all likelihood expert evidence was required to settle this dispute, and that the prudent way forward was to set aside the order of the high court and to remit the matter to that court for oral evidence on the key issues in dispute. The parties were given the opportunity to

discuss and reach agreement, insofar as they were able, on the issues to be so referred.

- [13] There is consensus that the heart of the dispute lies in who, in terms of Bapedi custom, forms part of the royal family with the decision-making power to identify an acting monarch in circumstances where the king dies without a candle wife or heir. Is the 'ruling family' referred to in the statutory definition, understood by custom to include only the immediate family of the deceased king, Thulare III, as the queen mother contends? Or does custom include other close relatives, such as Thulare III's

paternal uncles, aunts and siblings, as ME Thulare asserts? In either event, who are those family members or relatives? Are common wives of the deceased king included? Is legitimacy a factor under custom? There is also uncertainty about the process to be followed, as determined by custom, in the identification process. These are all questions in respect of which the high court will require the assistance of oral and in all likelihood expert evidence. The order below is designed to facilitate that process.

- [14] The queen mother submitted, in addition, that this Court should make an order securing her position as acting queen pending the finalisation of the matter by the high court. It appears from submissions made that prior to the hearing of the appeal she succeeded in obtaining an ex parte interim order in the high court confirming her position as acting queen. It was further submitted that the Premier of Limpopo has issued a certificate of recognition pending the final determination of this appeal. The Court has also

been informed that ME Thulare is opposing the confirmation of the interim high court order. According to the queen mother, it is

undesirable for the Bapedi to be left in a state of uncertainty as regards their traditional leadership for an extended period. Her contention is that it would be appropriate for this Court to provide that certainty by granting its own interim relief.

[15] I am of the view that it would not be appropriate to accede to the queen mother's request. The high court is already seized with the dispute as to what the interim arrangements should be. Those proceedings have not been finalised and remain contested. They ought properly to be dealt with by the high court.

[16] The parties were agreed that there should be no order as to costs in respect of the appeal. This is appropriate given that, although the appeal was successful in part, there really was no ultimate winner or loser.

[17] I make the following order:

1 The appeal is upheld with no order as to costs.

2 The matter is remitted to the Limpopo Division of the High Court, Polokwane for the hearing of oral evidence before a different Judge, excluding any Judge who, at any stage considered or adjudicated on the disputes between the parties in this appeal, any of the consolidated applications, and any other related matter. If necessary or practicable, the Judge President may set the matter down before a Judge from another Division of the high court.

3 The following issues, borne out of the dispute between the parties about the identification of the acting king or queen for the Bapedi Nation in terms of the Bapedi custom, are referred to oral evidence, including:

- i. The question as to what and who, according to Bapedi custom, constitutes the royal family for purposes of deciding who should be identified as an acting king or queen in circumstances where the king dies without a candle wife or heir, and in particular:

R M KEIGHTLEY

JUDGE OF APPEAL

Appearances

For the appellant: MPD Chabedi SC

M Mazibuko-Mudau

Instructed by:

Maluks Attorneys, Sandton

Phatshoane Henney Attorneys, Bloemfontein

For the respondent: G Scheepers SC

N Matidza

Instructed by:

Ledwaba Mazwai Attorneys, Pretoria

Fixane Attorneys, Bloemfontein.

- [1] Section 13(1) of the TKL Act, s 14 of the Framework Act.
 - [2] Section 13(4) of the TKL Act, s 14(2) read with s 15 of the Limpopo Traditional Leadership and Institutions Act, 6 of 2005.
 - [3] Section 1 of the Framework Act, with insertions in square brackets introduced by the TKL Act.
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Prepared on 9 October 2026 · Esheria