



**QUARTERLY (OCTOBER TO DECEMBER 2012) REPORT OF THE COMMISSION
ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS**

1. Background

This report is submitted in terms of section 24B (2) of the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003) (The Act). The report covers the period from 01 October to 31 December 2012.

The Commission on Traditional Leadership Disputes and Claims was established in terms of section 22 of the Act to resolve all disputes and claims of all levels of traditional leadership within the period of five years starting from 01 January 2011 to 31 December 2015.

The Commission operates nationally in plenary and provincially in committees. The provincial committees deal with disputes and claims delegated to them by the Commission in terms of section 25(6) of the Act.

2. Mandate

The mandate of the Commission is derived from sections 25 and 28(10) and (11) of the Framework Act read with the relevant sections of the Commissions Act, 1947, (Act No. 8 of 1947).

3. Performance of the Commission

3.1 Meetings of the Commission

The Commission held two meetings during the quarter under review. The aim of those meetings was amongst others to:

- consider the previous quarterly report;
- discuss progress of the provincial committees of the Commission;
- prepare for the public hearings and interview sessions with all kingship claimants; and
- prepare for the MINEXCO meetings.

3.2 Public Hearings and interviews

3.3 Provincial Committees

3.3.1 Mpumalanga

The Committee has researched 17 claims of Senior Traditional Leadership. However, of the seventeen claims researched, the Committee conducted seven public hearings and the reports are about to be finalized and processed to the Premier. The outstanding ten (10) claims will be finalized during the next quarter.



3.3.2 North West

The Committee arranged briefing sessions with all claimants. The briefing sessions were aimed at informing the claimants about the requirements for a claim.

3.4 Eastern Cape

The Eastern Cape Provincial Committee has completed Eleven (11) cases during the quarter under review. They have furthermore researched ten (10) cases. The researched cases will be finalized during the next quarter.

3.5 North West Provincial Committee

The Provincial Committee of North West has been conducting briefing sessions with all claimants and disputants during the quarter under review. The Committee is furthermore conducting research on the claims and disputes for senior traditional leadership.

3.6 Limpopo

The Limpopo Provincial Committee conducted thirty four (34) interviews and seventeen (17) public hearings. The reports of the cases listened during public hearings and interviews will be finalized in the next quarter and forwarded to the Premier of the Limpopo Province for a decision.


3.7 KwaZulu-Natal


The Provincial Committee of KwaZulu-Natal conducted public hearings and interviews for twenty six (29) claimants. The Committee completed the reports of three claimants namely Mr. FD Zodi, Mr. BP Zondi and Mr. BE Mngomezulu. To this extent, the Premier has accepted all three recommendations of the Committee. The remaining claims and disputes reports will be finalized by the Committee and forwarded to the Premier of the province for decision in terms of the provisions of the law.


4. Progress on Kingships referred to court for review

The CTLDC is defending all review cases emanating from the decision of the President of the Republic of South Africa.

The following is the status quo report:

CASE CITATION / REF NO.	BRIEF FACTS	STATUS/PROGRESS
<p>1. Case No: 696/2010</p> <p>Nephawe Netshidziwelele</p> <p style="text-align: center;">V</p> <p>The President of SA and Others:</p> <p>Ref No: 1/4/69</p>	<p>Mr Nephawe brought an application in the Venda High Court interdicting the President of the Republic of South Africa from issuing a certificate of recognition as a King to Mr Toni Mphephu Ramabula pending the finalization of the review of the decision of the Commission.</p> <div style="text-align: center;">  </div>	<p>The matter was heard on the 13-16 August 2012 at Thohoyandou High Court.</p> <p>Judgment was handed down on the 6 September 2012. The application was dismissed with costs.</p> <p>Applicants have on the 21 September 2012 filed a notice of intention to appeal to the Supreme Court of Appeal.</p>

CASE CITATION / REF NO.	BRIEF FACTS	STATUS/PROGRESS
<p>2. Case No.: 40404/2008</p> <p>Bapedi Marota Mamone</p> <p>V</p> <p>The President of SA and Others</p> <p>Ref No.: 1/4/39</p>	<p>Kgosi Mampuru brought an application in the High Court seeking the review and setting aside of the decision of Commission. The Commission found that the lineage of Kingship of Bapedi rests under Sekhukhune house).</p> 	<p>The matter was heard on the 12 September 2012.</p> <p>Judgment was handed down on the 21 September 2012. Application was dismissed with costs.</p> <p>On the 22 November 2012 the application for leave to appeal was dismissed with costs.</p> <p>Applicants have advised that they intend appealing to the Supreme Court of Appeal.</p>
<p>3. Case No.: 68501/10</p> <p>Justice Mpondombini Sigcau</p> <p>V</p> <p>The President of SA and Others</p>	<p>Mr Justice Mpondombini Sigcau brought an application in the High Court seeking the review and setting aside the decision of the Commission of recognising Tyelovuyo Sigcau as King.</p>	<p>The matter was set down for hearing on 22-23 February 2012.</p> <p>The matter was heard on both days and on 12 April 2012 judgment was handed down where Applicant's application was dismissed with costs.</p> <p>On 21 May 2012 an application for leave to Appeal was heard and</p>

CASE CITATION / REF NO.	BRIEF FACTS	STATUS/PROGRESS
Ref No.: 1/4/72		<p>dismissed.</p> <p>Applicant petitioned the Supreme Court of Appeal (SCA) in Bloemfontein.</p> <p>On 16 August 2012 the Supreme Court of Appeal dismissed the Applicant's application with costs.</p> <p>The Applicant further filed an intention to appeal to the Constitutional Court.</p> <p>We instructed our Counsels to oppose the said application and to prepare the opposing affidavit.</p> <p>The matter has been set down for hearing at the Constitutional Court on the 21 February 2013.</p>
<p>4. Case No.: 23829/11</p> <p>Mpisane Eric Nxumalo</p> <p>V</p> <p>The President of SA and</p>	<p>The applicant brought an application in the North Gauteng High Court seeking the review and setting aside of the decision of the Commission not to recognise Shangaan as a Kingship.</p>	<p>Record of proceedings was filed. Applicant's supplementary affidavit was filed. The Respondent has also filed his answering affidavit.</p> <p>The matter has been set down for hearing in the special motion court on the</p>

CASE CITATION / REF NO.	BRIEF FACTS	STATUS/PROGRESS
<p>Others</p> <p>Ref No.: 1/4/78</p>		<p>5th to 6th November 2012 in the Pretoria High Court.</p> <p>Judgment was handed down on 12 November 2012 and the application was dismissed with no order as to costs.</p> <p>The applicant filed papers for appeal on 11 December 2012, date is still awaited</p>
<p>5. Case No.: 22654/11</p> <p>King Maxhobayakhawuleza Bangilizwe Sandile</p> <p>V</p> <p>The President of SA and Others</p> <p>Ref No.: 1/4/82</p>	<p>The applicant brought an application in the North Gauteng High Court seeking the review of the decision of the Commission not to recognize amaRharhabe as paramountcy in terms of the Framework Act be reviewed and set aside.</p>	<p>Record of proceedings was filed. Applicant's supplementary affidavit was filed. Respondents have also filed their answering affidavit.</p>
<p>6. Case No.: 23541/11</p>	<p>The applicant brought an application in the North Gauteng High Court seeking</p>	<p>Record of proceedings was filed. Applicant's</p>

CASE CITATION / REF NO.	BRIEF FACTS	STATUS/PROGRESS
<p style="text-align: center;">Sebatshelwa Mahlangu (King Litho V) V The President of SA and Others</p> <p style="text-align: center;">Ref No.: 1/4/83</p>	<p>the review and setting aside of the findings of the Commission that recognise Mr Mbusi Mabhoko III as Amandebele King.</p>	<p>supplementary affidavit was filed. Respondents have also filed their answering affidavit.</p>
<p>7. Case No.: 2062/2011</p> <p style="text-align: center;">Luzuko Matiwane V The President of SA and Others</p> <p style="text-align: center;">Ref No.: 1/4/86</p>	<p>The applicant brought an application in the North Gauteng High Court seeking the review and setting aside of the findings of the Commission not to recognize AmaMpondomise as a kingship in terms of the Framework Act.</p>	<p>Record of proceedings was filed. Applicant's supplementary affidavit was filed. Answering affidavit has also been filed.</p> <p>The matter has been set down for hearing on the 26th October 2012 in the Eastern Cape High Court, Mthatha.</p> <p>On the 26 October 2012 the matter was postponed to the 14 February 2013 for hearing. Cost in the cause.</p>

CASE CITATION / REF NO.	BRIEF FACTS	STATUS/PROGRESS
<p>8. Case No.: 37875/2011</p> <p>Inkosi Muziwenkosi</p> <p>Johannes kadebe</p> <p>V</p> <p>Commission on Traditional Leadership disputes and Claims and 6 others</p> <p>Ref No.: 1/4/89</p>	<p>The applicant brought an application in the North Gauteng High Court seeking for, amongst others, the following order:-</p> <ul style="list-style-type: none"> • varying and extending the time period of 180 days referred to in section 7(1) of PAJA; • review and setting aside of the findings of the Commission not to recognize Amahlubi as a kingship. 	<p>Record of proceedings was filed. Answering affidavit has been filed.</p>
<p>9. Case No.: 629/2011</p> <p>Mudau Muvhango Siaga</p> <p>Mundzhedzi & 2 others</p> <p>V</p> <p>Ndivheni Abson</p>	<p>This is a headmanship application brought by applicant in the Limpopo High Court, Thohoyandou where he seeks an order in the following terms:</p> <ul style="list-style-type: none"> • That the 1st Defendant be relieved of his royal duties as headman of Luheni (Rambuda) on the basis that he was wrongfully identified, recognised and appointed; and / 	<p>The State Attorney, Thohoyandou filed a notice to abide as instructed.</p>

CASE CITATION / REF NO.	BRIEF FACTS	STATUS/PROGRESS
<p>Siaga & 4 others Ref No.: 1/4/90</p>	<p>or</p> <ul style="list-style-type: none"> • That the 5th Defendant (the Commission) be ordered to investigate the Plaintiff's claim and make a recommendation within a reasonable period of time on or before the expiry of the term of the 5th Defendant. 	
<p>10. Case No.: 45462/08 Nyandeni Regional Authority and another v Commission of Traditional Leadership Disputes & Claims Ref No.: 1/4/65</p>	<p>The applicant brought an application in the High Court (Transvaal Provincial Division) in 2008. Amongst others he seeks an order on the following:</p> <p>Reviewing and setting aside the decision of the Commission conveyed to the applicant on 30 April 2008 that Nyandeni is not a paramountcy;</p>	<p>X.M. Petse Inc. filed a notice to oppose. Papers were filed. Applicant filed an application for joinder of the President of RSA and the King-elect (Zanozuko Sigcau).</p> <p>Bhadrish Daya Attorneys have been instructed to take over the matter and to brief Senior Counsel.</p>

CASE CITATION / REF NO.	BRIEF FACTS	STATUS/PROGRESS
<p>11. Case No.: 41002/12</p> <p>Siyambonga Dalimvula Matanzima</p> <p>v</p> <p>President of RSA & others</p> <p>Ref No.: 10/3/2/7</p>	<p>The applicant intends bringing an application in the North Gauteng High Court, Pretoria where he seeks, among others, an order to review and set aside the decision of the:-</p> <ul style="list-style-type: none"> • President in failing to recognise the Western Tembuland paramountcy; and • The Chairperson of the Commission in rejecting Applicant's claim and that of the people of Western Tembuland 	<p>The application is opposed. Papers are being prepared for filing.</p>
<p>12. Case No.: 1472/2012</p> <p>ie Barolong Boo-Rapulana Traditional Council</p> <p>v</p> <p>Commission & 2 others</p> <p>Ref No.: 10/3/2/9</p>		<p>Notice to abide filed by State Attorney, Mafikeng on behalf of the Respondents</p>
<p>13. Case No.: 55035/12</p> <p>Kgoshigolo Sekhukhune</p> <p>KK</p>	<p>The applicant intends bringing an application in the North Gauteng High Court, Pretoria where he seeks, among others,:-</p> <ul style="list-style-type: none"> • Reviewing and setting aside the 	<p>The application is opposed. Papers are being prepared for filing</p>

CASE CITATION / REF NO.	BRIEF FACTS	STATUS/PROGRESS
<p>and another</p> <p>v</p> <p>The Commission & 3 others</p> <p>Ref No.: 10/3/2/10</p>	<p>First Respondent's finding that the appointment of the First Applicant as acting <i>kgoshigolo</i> of Bapedi was irregular and not in line with the customs and customary laws of the Bapedi;</p> <ul style="list-style-type: none"> • Reviewing and setting aside the First Respondent's finding that the Fourth Respondent is the rightful heir to the kingship of Bapedi; • An order declaring that the Fourth Respondent's claim in terms of section 25(2)(a) of the Traditional Leadership and Governance Framework Act, 41 of 2003 is invalid and that the investigation by the First Respondent of the claim is invalid in law; • An order directing the Second and Third Respondents to refrain from recognising and appointing the Fourth Respondent <i>kgoshigolo</i> of the Bapedi tribe pending the determination of this review application; and <p>An order declaring that the First Applicant is the acting <i>kgoshigolo</i> of the Bapedi tribe.</p>	

CASE CITATION / REF NO.	BRIEF FACTS	STATUS/PROGRESS
<p>14. Case No.: 68630/12</p> <p>Mavis Elizabeth Mmamokete Kekana</p> <p>v</p> <p>Cornelius Kgomotso Kekana and 7 others</p> <p>Ref No.: 10/3/2/11</p>	<p>The Applicant intends bringing an urgent application on the 29 November 2012 in the North Gauteng High Court for, amongst others, an order in the following terms:-</p> <ul style="list-style-type: none"> • That the forms and services provided for in the Rules be dispensed with and that this matter be heard as one of urgency as per Rule 16 (12 (a) and that service of this application by fax be authorised; • That a rule nisi be issued calling upon Respondents or any interested party to show cause why an order in the following terms should not be confirmed: • That the 3^{rs} Respondent, alternatively the 5th or any of the Respondents are restrained pending an application for review and setting aside of decision of the 3rd Respondent from inaugurating and/or confirm as the Senior Traditional the 1st Respondent; • The Applicant is ordered to serve her review application for review and setting aside the decision of 	<p>Bhadrish Daya attorney was instructed to appear in court and make sure that the order of court stipulates the time frame that we proposed for filing of review application (on or before 15 January 2013).</p> <p>On 29 November 2012, the the court held that the applicants had not followed the proper procedures as stated in the Practice directive of the North Gauteng High court and had not proved urgency.</p> <p>The application was dismissed with cost and struck off the roll.</p> <p>The applicants informed Bhadrish that they will now bring a review application.</p>

CASE CITATION / REF NO.	BRIEF FACTS	STATUS/PROGRESS
	the 3 rd Respondent within 90 days from date of this order failing which the order will lapse.	

5. Challenges

5.1 Legislative Challenges

Some claimants have indicated that they are aware that in terms of their custom and culture, they are not kings but they are higher than the senior traditional leaders. The only position that provides for such is the Principal traditional leadership. The challenge in this regard is that the Framework Act provides that the Commission must investigate all claims including those of Principal Traditional Leadership, however, the appointment or recognition of a principal traditional leadership rests with the Premier of the Province. The current provincial legislation does not provide the Premier with any capacity to recognize the Principal Traditional Leadership. This is the challenge facing the Commission.

5.2 Inadequate Office space for the CTLDC

In response to the continuous concerns of the lack of capacity to the Commission regarding research, the Department has seconded Mr. Mazibuko (Chief Director) to conduct research for the Commission.

Some committees do have adequate office space.

Mr. BJ Tolo

Chairperson: Commission on Traditional Leadership Disputes and Claims

Date:

