

**DETERMINATION ON MATANZIMA AND DALINDYEBO
PARAMOUNTCIES**

I N D E X

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INTRODUCTION

1.1 CONSTITUTIONAL PROVISIONS

- (a) Chapter 12 (sections 211 and 212) of the Constitution of the Republic of South Africa (“the Constitution”) provides for the recognition of the institution of traditional leadership, its status and role according to customary law, subject to democratic principles. It is common cause, however, that over the years the institution of traditional leadership has been undermined, distorted and eroded.

- (b) Some of the main causes of this distortion were imperialism and colonization; repressive laws, in particular, the Black Administration Act 38 of 1927 (“the Black Administration Act”) and Apartheid laws which provided for the creation of territorial authorities, self-governing states and pseudo independent enclaves.

1.2 **ESTABLISHMENT OF THE COMMISSION**

- (a) In order to restore the dignity of this institution, the State President of the Republic of South Africa appointed a Commission on Traditional Leadership Disputes and Claims.
- (b) The Commission is established in terms of section 22(1) of the Traditional Leadership and Governance Framework Act, 41 of 2003 (“the Framework Act”).

1.3 **FUNCTIONS OF THE COMMISSION**

- (a) In terms of 25(1) the Commission operates nationally and has authority to decide on any traditional leadership disputes and claims contemplated in subsection (2) and arising from any province. Accordingly, in terms of section 25(2)(a) of the Framework Act, the Commission has authority to investigate either on request or of its own accord the following:-
 - (i) 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;

- (ii) a traditional leadership position where the title or right of the incumbent is contested;
- (iii) claims by communities to be recognised as traditional communities;
- (iv) the legitimacy of the establishment or disestablishment of "tribes";
- (v) disputes resulting from the determination of traditional authority boundaries and the merging or division of "tribes".
- (vi) where good grounds exist, any other matters relevant to the matters listed in this paragraph, including the consideration of events that may have arisen before 1 September 1927.

- (b) In terms of section 28(7) of the Framework Act, the Commission must in terms of section 25(2), investigate the position of paramountcies and paramount chiefs that had been established and recognised, and which were still in existence and recognized, before the commencement of the Act, before the Commission commences with any other investigation in terms of section 25(2).
- (c) Furthermore, when considering a dispute or claim, the Commission is obliged in terms of section 25(3)(b)(i) to be guided by the criteria set out in section 9(1)(b) and such other customary norms and criteria relevant to the establishment of a kingship.
- (d) In order to satisfy itself whether a kingship exists, the Commission has to take into cognisance the following considerations:-
- (i) the need to establish uniformity in the Republic in respect of the status afforded to a king or queen;
 - (ii) whether a recognised kingship exists:-

- (aa) that comprises the areas of jurisdiction of a substantial number of senior traditional leaders that fall under the authority of such a king or queen;
 - (bb) in terms of which the king or queen is regarded and recognised in terms of customary law and customs as a traditional leader of higher status than the senior traditional leaders referred to in subparagraph (aa); and
 - (cc) where the king or queen has a customary structure to represent the traditional councils and senior traditional leaders that fall under the authority of the king or queen; and
- (iii) the functions that will be performed by the king or queen.

2.

FOCUS

- 2.1 Having defined the functions of the Commission in general under paragraph 1.3 herein above, this investigation is limited to section 25(2) (a) (i).
- 2.2 Section 28(7) of the Framework Act enjoins the Commission to investigate, in terms of section 25(2), the position of paramountcies and paramount chiefs that had been established and recognised, and which were still in existence and recognised, before the commencement of this Act, before the Commission commences with any other investigation in terms of section 25(2).
- 2.3 The focus of this investigation is on the paramountcy of Matanzima and the paramountcy of Dalindyebo.
- 2.4 The investigation is to determine whether the paramountcies of Matanzima and Dalindyebo were established in accordance with customary law and customs. This investigation is conducted by the Commission of its own accord.

3.

METHODOLOGY

3.1 The determination focuses on the paramountcy of Matanzima and Dalindyebo as their history and existence is substantially intertwined. They are collectively known as abaThembu.

3.2 In the process of its investigation, the Commission conducted public hearings in two stages.

3.2.1 The first stage was used to gather evidence and information. The Commission conducted separate hearings for the paramountcies of Matanzima and Dalindyebo.

3.2.2 The second stage was held after the Commission had conducted its own research. The purpose of this second stage was to canvas information gathered during the research of the Commission.

3.2.3 The parties had been furnished with a set of questions arising from the research of the Commission. They were expected to respond specifically to the said questions at

the hearing. During this stage the hearing was held jointly.

3.3 During both stages the procedure adopted at the hearings was as follows:-

3.3.1 Public hearings in which selected members of the Matanzima and Dalindyebo royal houses and others appointed by them testified under oath and referred the Commission to supplementary research material.

3.3.2 This was followed by an opportunity for commissioners to raise questions and seek clarity from the presenters.

3.3.3 Interested parties were afforded an opportunity to challenge the versions of the two royal houses and state their case.

3.3.4 Members of the public were permitted to pose questions to the presenters and make comments. (This was only applicable to the first stage).

4.

4.1 **HISTORICAL BACKGROUND**

4.1.1 AbaThembu are of Nguni origin like amaXhosa, amaZulu, amaSwazi, and amaNdebele who trace their origin to the Great Lakes in Central Africa.

4.1.2 AbaThembu are said to have migrated from the Great Lakes to present-day KwaZulu–Natal through Dedesi and eventually settled at Msana, in the present day Eastern Cape.

4.1.3 Zwide is the earliest known leader of abaThembu who ruled round about 1080. One of the most notable descendants of Zwide was Mbulali the father of Njanye, who fathered Thembu, who in turn fathered Mvelase and Ndilo.

4.1.4 Thembu led his people out of KwaZulu–Natal to Dedesi in the present day Eastern Cape. Mvelase remained with his followers in the present day KwaZulu-Natal.

Following the rise of Shaka to power, Mvelase and his followers became part of the greater amaZulu nation.

4.1.5 The line of succession after Thembu is as follows: Ndilo, Ntongakazi (Dumakazi), Bhomoyi, Cedume, Mnguti, Ntoyi, Ntande and Nxeko.

4.1.6 During the 16th century Nxeko led the migration of abaThembu from Dedesi to Msana, a tributary of the Mbashe river in the district of Mthatha.

4.1.7 At Msana his Great Place, Nxeko accommodated, merged and assimilated various fragments from communities such as amaBomvana, amaVundle, amaMpondomise and amaMfengu to build his kingship.

4.1.8 Although some of the communities had their own recognised traditional leaders, they acknowledged Nxeko as their principal traditional leader and shared abaThembu custom and culture.

4.1.9 Nxeko can thus be regarded as the first king of abaThembu.

- 4.1.10 Nxeko fathered amongst others, two sons, Hlanga from the Great House and Dlomo from the right hand house.
- 4.1.11 Nxeko died and was buried at Msana, in the district of Mthatha.
- 4.1.12 After the death of Nxeko a succession struggle ensued between Hlanga and Dlomo which led to a battle at Msana. Hlanga the heir apparent was defeated by Dlomo and the traditional leadership shifted to the lineage of Dlomo.
- 4.1.13 Hlanga left to establish his own separate community which was subordinate to the community led by Dlomo of the abaThembu kingship.
- 4.1.14 Dlomo was succeeded by Hala, Madiba, Tato, Zondwa, and Ndaba respectively. Ndaba was succeeded by Ngubengcuka also known as Vusani.

4. 1.15 Ngubengcuka ruled from 1800 to 1830. He fathered Mtirara. At his death, Mtirara, his successor, was still a minor and Joyi became regent.
- 4.1.16 Ngubengcuka consolidated abaThembu kingship. He merged with abaThembu fugitives from the wars of turmoil such as amaHlubi, amaTshangase, imiZizi and amaBhele. He successfully defended the kingship against amaQwathi, amaNgwane and amaVundle.
- 4.1.17 Ngubengcuka established a unified Thembuland which stretched from Mthatha to the present day Queenstown.
- 4.1.18 In 1827, during the reign of Ngubengcuka, Matiwane, a Ngwane chief, invaded abaThembu. This was to have a profound impact on the unity of Abathembu, as it forced minor communities like amaTshatshu and others to trek to Queenstown.
- 4.1.19 Matiwane and his followers were defeated by abaThembu with the assistance of the British and amaGcaleka.

- 4.1.20 When Mtirara came of age he took his rightful place as king of abaThembu. Mtirara fathered three sons: Ngangelizwe, from the Great House, Matanzima from the right hand house and Mfanta from a minor house. Ngangelizwe was succeeded by Dalindyebo, Jongilizwe (Sampu), Jonguhlanga Sabata, and Buyelekhaya Dalindyebo respectively.
- 4.1.21 Sabata was appointed paramount chief of abaThembu as a whole, including Emigrant Thembuland and Bomvanaland with effect from 1 July 1954.
- 4.1.22 AbaThembu emerged as a fairly closely knit community from the reign of Nxeko¹.

5.

¹see annexure "ABK 1" depicting the abaThembu genealogy

THE CUSTOMARY LAW OF SUCCESSION

5.1 Succession to the Kingship² of abaThembu

5.1.1 As it is with most African communities, customary succession among abaThembu is governed by the principle of male primogeniture;

5.1.2 A king normally has five to seven wives, matching the structure of the houses in a royal isiThembu household. The *lobola* of the great wife is derived from contributions made by the community

5.1.3 Upon marriage, each wife is assigned status by being allocated a house.

5.1.4 The status of a wife within a polygamous marriage determines succession to kingship.

(a) The structure of the “houses” is as follows:-

- (i) The Great House (*indlunkulu*)
- (ii) The right hand house (*indlu yasekunene*)

²As presented during the hearing and is mostly common cause between the parties

- (iii) *Iqadi* of the Great House (*iqadi lendlunkulu*)
- (iv) *Iqadi* of the right hand house (*iqadi lekunene*)
- (v) The seed - bearer house (*ixhiba*)
- (vi) *Umsengi* of the Great House (*umsengi wendlunkulu*)
- (vii) *Umtshayelo* of the Great House (*umtshayelo*)

5.1.4 The most important of these houses, are the great house and the right hand house. Additional wives (each belonging to *iqadi*) are regarded as support for these two houses. The seed-bearer house is independent of the main houses. The last two houses (*umsengi* and *umtshayelo*) are minor and provide “domestic services” to the Great House.

5.1.5 The first born son of the great house succeeds his father, whereas the first born son of the right hand house may establish a separate community. Such community would be semi-independent of the great house, but not of equal status to the great house.

5.1.6 The son of a seed - bearer (*ixhiba*) succeeds his father if there is no son of the great wife, and ranks before the sons of the *qadi* houses. If, however, there are sons of the great wife, whether born before or after the seed - bearer was introduced into the house, the seed - bearers sons, are regarded as brothers of lower rank.

5.1.7 A successor is only eligible to ascend the throne after he has been initiated.

6.

6.1 **THE DISPERSAL**

6.1.1 AbaThembu were first affected by the Mfecane wars when they were invaded by amaBhaca and amaNgwane in the 1820s. Some of the minor houses, notably amaTshatshu, were pushed westward towards Queenstown.

6.1.2 In 1830 the Great House under Ngubengcuka continued to experience political instability. This resulted in the abrupt departure of Nonesi, the widowed great wife of Ngubengcuka, and her sons Mtirara and Matanzima from the Mgwali Great Place; which then fell under the chieftainship of Joyi. About 1838 they settled around Rhodana in the present district of Lady Frere.

6.1.3 Around 1840 Mtirara, the eldest son of Ngubengcuka, was installed as the king of abaThembu. His Great Place was at Rhodana. He died in 1855, leaving his minor son Ngangelizwe. After the death of Mtirara, Nonesi again became regent of abaThembu. Around 1860, Ngangelizwe returned to Mgwali and was installed as king of abaThembu at Mgwali. Nonesi remained at Gqebanya with Raxoti Matanzima, even after Ngangelizwe had returned to Mgwali.

6.1.4 Shortly thereafter, the land around St Marks (the present-day Cofimvaba) was vacated by amaGcaleka due to the Nongqawuse cattle-killing

episode³. In 1865, the Colonial government offered this land to the residents of Lady Frere (formerly known as “Tambookie Location”). This offer was accepted by four of the chiefs, namely Matanzima of amaHala, Ndarala of amaNdungwana, Gecelo of amaGcina and Stokwe of amaVundle. Nonesi, however, refused to move from Lady Frere and was consequently banished to Libode by the Colonial Government.

6.1.5 Matanzima soon became recognised as the leader of the four chiefs who had settled in the former Gcaleka territory, which then became known as Emigrant Thembuland. Emigrant Thembuland consisted of the two present districts of Cofimvaba and Xhalanga. Lady Frere remained part of the Cape Colony and, when the homeland system was introduced, it became part of the Ciskei independent state in 1976 and it was then included in the Regional Authority of Western Thembuland in the 1980s.

³A powerful prophet of the time. She was persuaded by the Whites to make a false prophesy-that if amaXhosa killed their cattle, all white people will die.

- 6.1.6 Matanzima was succeeded by Mhlobo and Mvuzo respectively. Mvuzo died and was succeeded by his son Kaizer Daliwonga Matanzima, as chief of amaHala.
- 6.1.7 With the introduction of the Black Authorities Act, 68 of 1951 Emigrant Thembuland became a regional authority.
- 6.1.8 Kaizer Daliwonga Matanzima was appointed chairman of the said regional authority.
- 6.1.9 The Republic of Transkei Constitution Act 15 of 1976 constituted the Republic of Transkei.
- 6.1.10 Emigrant Thembuland came to be called Western Thembuland, and Kaizer Daliwonga Matanzima was officially recognised as paramount chief in 1966. He died June in 2003 and was succeeded by his grandson, Zwelenkosi Matanzima, the son of Mtheto Matanzima who had predeceased his father.

6.2 The history as narrated above is mostly common cause. However, there are conflicting versions with regard to the status of Matanzima and his successors following the Mfecane Wars.

6.2.1 The version presented to the Commission by Herbert Sindile Toni on behalf of the Matanzima royal house is as follows:-

(a) The Western Thembuland Paramountcy contends that a separate kingship was established by Nonesi and Mtirara when they arrived at Rhodana in the 1840s. They further contend that it remained as such even after the installation of Ngangelizwe at Mgwali about 1860.

(b) Emigrant Thembuland was established in 1865. Since its establishment abaThembu baseRhoda regarded themselves as an autonomous community and belonging to a territory separate from Thembuland. Matanzima

was regarded as their king in all matters relating to their governance. He had the sole control over this section of abaThembu and was the final arbiter in disputes of his subjects. Ngangelizwe never interfered in the affairs of abaThembu baseRhoda.

(c) The following examples illustrate the independence of abaThembu base Rhoda;

(i) Matanzima fined one Mali Mbutho a herd of cattle for a transgression. A dispute arose between Ngangelizwe and Matanzima as to who should receive the fine. Ngangelizwe insisted that the fine be paid to him. He sent his messengers to collect the cattle from Matanzima. Matanzima refused, contending that Ngangelizwe could not enjoy

favours within the domain of the Matanzima family. A commission of enquiry instituted in 1882 subsequently ruled that Ngangelizwe had no jurisdiction over Western Thembuland.

- (ii) Western Thembuland was not part of the Thembuland surrendered by Ngangelizwe to the British for protection on 30 November 1872 and 10 October 1875 respectively.
- (iii) During the Ngcayichibi War, Ngangelizwe supported the colonial forces whilst Matanzima and one Dalasile (who sympathized with amaGcaleka) refused to join the colonial forces and remained neutral.
- (iv) Dalasile was subsequently fined 100 cattle for refusing to carry out

an order of a senior magistrate and his chief Raxoti Matanzima, on the other hand, was left unpunished as he fell outside the area of jurisdiction of Ngangelizwe.

6.2.2 The additional submissions of the Matanzima royal house on the second visit were as follows:-

- (a) There is only one Thembu kingship, which temporarily settled in Rhodana during the reign of Nonesi. They returned to Mgwali with the installation of Ngangelizwe.
- (b) The old adage “kings are born and not made” is a myth. In support of this argument he gave examples of the rise to kingship of other African kings such as Shaka Zulu, Moshoeshoe I and Mswati I.

(b) The two Commissions, one established in 1883 and the other in 1958 (The Young Commission) had in their investigations found that:-

(i) Emigrant Thembuland was always independent of Thembuland Proper, and

(ii) Both Raxoti and Kaizer Daliwonga Matanzima were kings of Emigrant Thembuland.

6.2.3 In response to the two additional submissions by the Matanzima royal house, Mr Dowa Vene Mgudlwa on behalf of the Dalindyebo royal house argued that:-

(a) the analogy between the afore-mentioned African kings and the Matanzima “kingship” is ill-conceived in that the said kings did not seek foreign intervention;

(b) if Raxoti Matanzima had found unclaimed land, he should have proclaimed himself king,

instead of seeking the status of kingship from the White man;

- (c) Raxoti Matanzima did not have jurisdiction over the whole area of Emigrant Thembuland, as the land belonged to the Mgudlwa family. The area of jurisdiction of Kaizer Daliwonga Matanzima was later extended to enable him to be elevated to the status of a paramount chief.

6.2.4 On the other hand, the version of Prof. Wandile France Kuse on behalf of the Dalindyebo Royal family is as follows:-

- (a) There has always been one abaThembu nation under one paramountcy from time immemorial until the creation and recognition of Western Thembuland by the colonialists.
- (b) After the war of Mlanjeni between 1850 and 1852, the area dispossessed from Sarhili, leader of amaGcaleka, was allocated to

Nonesi, widow of Ngubengcuka as a gesture for her neutral position during the war between Sarhili and the colonial government.

(c) Nonesi also reigned as regent at Rhoda for the heir Ngangelizwe who was still a minor at the time and who ascended the throne as a paramount leader of Thembuland during 1863.

(d) Thembuland comprised the areas and communities between Mthatha and Mhashe rivers extending to the upper reaches of the Kei river at the foothills of the Drakensberg mountains.

6.2.5 Mr Mda Mda, on behalf of the Dalindyebo royal house, confirmed the version presented by Prof. Kuse. He further stated that the split between abaThembu can be traced from the time Kaizer Daliwonga Matanzima ascended the throne as leader of amaHala clan in Western Thembuland in 1939. His version is as follows:-

- (a) K.D Matanzima qualified with a B.A. degree from Fort Hare University in 1939 and returned home to assume his position as traditional leader of amaHala clan. He expressed his discontent with the stipend he received as it was not in keeping with his qualifications. The government retorted that it was the status of a chief in the “tribal” hierarchy and the size of the tribe that determined the stipend, and not educational qualifications.

- (b) He then took leave off the chieftainship and enrolled as an articled clerk in order to practice as an attorney.

- (c) Having qualified as an attorney, he requested the Government for permission to hear and try civil and criminal cases within his area of jurisdiction. The Government refused, stating that only the paramount chief had such jurisdiction.

- (d) He then continued with his position as one of the traditional leaders of abaThembu.

- (e) Sabata Dalindyebo, who was the officially recognised paramount chief of abaThembu under the Black Authorities Act of 1951, vehemently opposed the introduction of the Black Authorities Act within his area of jurisdiction, as it was the blue print for the establishment of homelands.

- (f) In 1954 he called an “all Transkei” meeting which included K.D. Matanzima to discuss the Black Authorities Act and other apartheid legislation. The meeting unanimously rejected the repressive laws, and declared that Transkei would not participate in the implementation of those laws.

- (g) The government embarked on a massive propaganda campaign to sell its repressive laws. Information officers were appointed to disseminate the new government policy.

- (h) The Under Secretary for Bantu Administration and Development, Mr. Bruce Young, visited Transkei and called K.D. Matanzima to the office of the Chief Magistrate in Mthatha.
- (i) After the meeting Mr. C.B. Young announced in the media that K.D. Matanzima had accepted the Bantu Authorities Act and a Tribal Authority was to be established at Qamata, Western Thembuland.
- (j) Sabata Dalindyebo summoned K.D. Matanzima to appear at his court.
- (k) K.D. Matanzima appealed to the local Magistrate for protection. The Magistrate in turn contacted the Chief Magistrate in Mthatha, who advised K.D. Matanzima to ignore the summons.
- (l) The chief Magistrate summoned Jonguhlanga Sabata Dalindyebo to his office. He warned

him to leave Matanzima alone and to stop interfering with or obstructing government administration. He further pointed out to Sabata Dalindyebo that those who accepted the Black Authorities Act did not need the permission of the paramount chief.

- (m) K.D. Matanzima was thus launched on a course of disobedience to his paramount chief.
- (n) A tribal authority was established at Qamata with K.D. Matanzima as its chairperson. He imposed himself as a superior chief and claimed authority over the whole district of St. Marks.
- (o) Some of the traditional leaders dismissed his claim to superiority as they regarded him as their equal and recognised only Sabata Dalindyebo as their superior.

- (p) They complained to the Magistrate who refused to give them a hearing. They then appealed to Sabata Dalindyebo who summoned all traditional leaders under his authority (including K.D. Matanzima) for a meeting at his court. The Magistrate stepped in again and ruled that the summons of Sabata Dalindyebo were irregular as he (Sabata Dalindyebo) had not accepted the Black Authorities Act he could not arbitrate on matters concerning Black Authorities.
- (q) K.D. Matanzima encountered opposition to his endeavours to bring St. Marks district under his control as overall chief. Traditional leaders in the district continued to call for the intervention of Sabata. The attempts of Sabata were thwarted by the Magistrate who accused him of intrusion.
- (r) K.D. Matanzima complained that Sabata was undermining his authority. He claimed that as a descendant of the right-hand house of

Ngubengcuka, he was entitled to establish his own independent traditional community, as he compared his position to that of amaRharhabe and amaMpondo of Nyandeni.

(s) It was in this context that in 1958 the Minister of Bantu Administration and Development, De Wet Nel, announced the appointment of a one man commission, the Bruce Young Commission. Its stated purpose was to investigate the discord and rumblings in Tembuland, and the claim made by K.D. Matanzima to supremacy in “Emigrant Thembuland”.

(t) The appointment of Bruce Young, who was instrumental with the acceptance of the Bantu Authorities by K.D. Matanzima, was greeted with scepticism by abaThembu. It was clear that the Commission was designed to achieve a predetermined goal.

- (u) One of the effects of the Commission was the banishing to the then Northern Transvaal of the four main spokesmen for abaThembu. These spokesmen opposed the claim to independence from abaThembu paramountcy that was made by Matanzima.

- (v) The Commission found that the claim of K.D. Matanzima to supremacy in Western Thembuland was valid, and recommended that he be granted the status of paramount chief of Western Thembuland comprising St. Marks and Xhalanga districts.

- (w) Paramount chief Sabata Dalindyebo was instructed to install K.D. Matanzima as chief of the whole Western Thembuland on the 11 June 1958. On 1 April 1966 he was officially appointed as paramount chief of Western Thembuland.

- (x) Sabata Dalindyebo died in exile in 1986 and was succeeded by his son Buyelekhaya Dalindyebo.

7.

IMPACT OF LEGISLATION

7.1 Colonial era

7.1.1 Before the advent of colonization the basic political unit of the abaThembu was the traditional community. The institution of traditional leadership was regulated mainly by the customary law and practice of the traditional community. The king ruled by popular mandate. He took decisions with his councillors who were usually members of the extended royal family.

7.1.2 Colonial rule in the former Transkei passed through various phases. Between 1830 and 1850 the colonial administration entered into treaties with some traditional leaders to gain control and to establish boundaries. The treaties were abandoned since 1850

and substituted by a system of magisterial or direct rule.

7.1.3 The Transkei area was progressively annexed from 1879 to 1894. The area was divided and the traditional leaders were reduced to stipendiaries. They did not have real authority, but were expected to maintain law and order and were granted jurisdiction to hear civil cases under customary law. Appeals lay to the magistrates' courts.

7.1.4 While the traditional leaders had nominal control, their areas were in fact administered by magistrates under the supervision of the chief magistrate in Mthatha. There was a policy of undermining the powers of traditional leaders.

7.1.5 The first step of granting traditional leaders a say in local government was taken with the passing of the Glen Grey Act, 25 of 1894 (Cape of Good Hope). It provided, inter alia, for the establishment of a system of a local district councils. This system, called Bunga, (after the Xhosa word meaning 'to discuss') was

extended to four districts and eventually adopted in other district councils which were federated in the Transkei General Council (TGC) by Proclamation 279 of 1931.

7.1.6 The district councils were chaired by the magistrates. African nominees served on the general council. The local councils and the general council could discuss matters affecting the local population and later could propose legislation affecting Africans. They had no real responsibilities.

7.1.7 The position of traditional leaders remained unchanged until 1927 when the Black Administration Act, 38 of 1927 was passed. In terms of this Act, the Governor-General became the Supreme Chief of all Africans in the Union and was empowered to, inter alia, recognise or appoint any person as a chief of a black tribe and could make regulations prescribing the duties, powers, privileges and conditions of service of chiefs and acting headmen. The Governor-General could depose any chief so recognised or appointed.

7.1.8 During both the colonial and apartheid eras the Black Administration Act, 38 of 1927 did not recognise the institution of ubukumkani (kingship) as such. However, the traditional leadership institution was recognised. All African traditional leaders were referred to as chiefs. But the definition of a “chief” in section 35 of the Act, implied that the Governor-General could appoint paramount chiefs. Sabata Dalindyabo was accordingly appointed in terms of section 2(7) of the Act as a paramount chief of the Thembu community of Africans resident in the districts comprising the area known as Thembuland, including Emigrant Thembuland and Bomvanaland [own emphasis] with effect from 1st July 1954.

7.2 **Apartheid and Homeland Era**

7.2.1 The next phase was the adoption of the Black Authorities Act, 68 of 1951, that was to be the blueprint for the establishment of homelands. The building bricks of the system were the tribal authorities, consisting of a group of administrative areas (formerly called locations) owing allegiance to a senior traditional leader (chief). Where there was no coherent traditional leadership, contiguous

administrative areas were grouped together into community authorities. Authorities belonging to the same district were grouped together in regional authorities including Thembuland and Western Thembuland. They in turn were grouped together as the Transkeian Territorial Authority, established by Proclamation 180 of 1956. The sequence of events was as follows:-

(a) Adoption of Black Authorities Act, 68 of 1951.

(b) Adoption in 1955 of a report by the Transkei General Council recommending the establishment of a slightly modified form of African Authorities in Transkei, mainly to provide for the retention of the old district councils. The report was accepted.

(c) In 1956 by the Transkei "Bantu" Authorities Proclamation 180 the provisions of the Black Authorities Act were applied to Transkei and a Territorial Authority replaced the old Transkei General Council (Bunga).

- (d) The Promotion of African Self-government Act, 46 of 1959 provided for the development of self-governing Black national units, the so-called homelands, and for the appointment of Commissioners-General for each unit to form a link between the homelands and the central government.

- (e) In 1963 self-government was conferred on Transkei in terms of the Transkei Constitution Act, 48 of 1963. The Transkei consisted of nine regional authorities, for present purposes including the Dalinyebo Regional Authority area comprising the African areas in the districts of Engcobo, Mqanduli and Umtata and the Emigrant Thembuland Regional Authority area comprising the African areas in the district of St. Marks and Xalanga.

- (f) At the time, Kaizer Daliwonga Matanzima was chairman of the Emigrant Thembuland

Regional Authority. That was before he was elevated to the status of a paramount chief. Sabata Dalindyebo was chairman of the Dalindyebo Regional Authority and Paramount chief of the whole of Tembuland.

- (g) The Transkeian Authorities Act, 4 of 1965 repealed the Transkei “Bantu” Authorities Proclamation, 180 of 1956 and the Transkei Authorities Act, 6 of 1964. It was the Transkeian version of the Black Authorities Act, 68 of 1951 in that it provided for the powers of traditional authorities and ancillary matters. It also abolished the old district authorities.

- (h) The South African Parliament adopted the Status of the Transkei Act, 100 of 1976 to provide, inter alia, for the transfer of sovereignty from the RSA to the government of Transkei as a fully sovereign and independent state.

- (i) The Republic of Transkei Constitution Act, 15 of 1976 constituted the Republic of Transkei. It consisted inter alia, of the districts of Engcobo, Mqanduli and Emthatha, comprising the territory of Thembuland, and the districts of Confimvaba (St.Marks) Cacadu (Lady Frere) and Xalanga, comprising the territory of Western Thembuland.
- (j) The Constitution Act of 1976 moreover provided for the designation of appointment of chiefs (section 66) by the Regional Authority, subject to confirmation by the President. It, moreover created or (rather enacted) five paramouncies, to wit-
- Eastern Pondoland
 - Western Pondoland
 - Gcalekaland
 - Western Thembuland
 - Thembuland

(See the definition of paramount chiefs in section 73 read with Schedule 10).

7.3 **Post-Apartheid Era**

7.3.1 The Constitution of the Republic of South Africa provides for the status, role and recognition of the institution of traditional leadership according to customary law and subject to the Constitution.

“the institution status and role of traditional leadership according to customary law are recognised, subject to the Constitution.”

7.3.2 To this end national legislation may provide for the status and role of traditional leadership as an institution at local level on matters affecting local communities. This culminated in the promulgation of the Traditional Leadership and Governance Framework Act 41 of 2003 (The Framework Act).

7.3.3 The objective of the Framework Act is:

“To provide for the recognition of traditional communities; to provide for the establishment and recognition of traditional councils; to provide a statutory framework for leadership positions within the institution of traditional leadership, the recognition of traditional leaders and the removal from office of traditional leaders; to provide for houses of traditional leaders; to provide for the functions and roles of traditional leaders; to provide for dispute resolution and the establishment of the Commission on Traditional Leadership, Disputes and Claims; to provide for a code of conduct; to provide for amendments to the Remuneration of Public Office Bearers Act, 1998; and to provide for matters connected therewith.”

7.3.4 The Commission on Traditional Leadership Disputes and Claims in a nutshell, is mandated to regularise and restore the dignity of the institution of traditional leadership.

7.3.5 The Framework Act enjoins the governments of the provinces including the Eastern Cape to enact legislation to provide for matters peculiar to the provinces. The Legislature of the Eastern Cape has accordingly enacted the Traditional Leadership and Governance Act, 2005 (Eastern Cape) (Act No. 4 of 2005).

8.

CURRENT STATUS

8.1 In terms of section 28(1) any traditional leader who was appointed as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before the commencement of this Act, is deemed to have been recognised as such in terms of section 9 or 11, subject to a decision of the Commission in terms of section 26.

8.2 AbaThembu have two officially recognised paramount chiefs namely, Buyelekhaya Zwelibanzi Dalindyebo who was appointed on 1 July 1992 as the paramount chief of Thembuland Proper.

8.3 The paramount chief of Western Thembuland is Lwandile Zwelenkosi Matanzima who was appointed during 2004 after the death of his grandfather in 2003.

8.4 The Dalindyebo Regional Authority consists of:-

8.4.1 Twenty four senior traditional leaders;

8.4.2 Three areas of jurisdiction are Mthatha, Engcobo and Mqanduli;

8.5 Western Thembuland Regional Authority consists of:-

8.5.1 Twenty senior traditional leaders;

8.5.2 Three areas of jurisdiction Cofimvaba (St. Marks); Cala (Xalanga) and Lady Frere (Cacadu).

9.

DETERMINATION

9.1 **Issues to be Determined**

9.1.1 The issues to be determined are:-

- (a) Whether in the course of the history of abaThembu, a kingship was established;
- (b) if it was established by whom, how and when;
- (c) whether the kingship has since been passed on from one generation to another according to the custom of abaThembu; and
- (d) whether subsequently the creation of Thembuland, abaThembu baseRhoda, established a kingship independent of Thembuland Proper.
- (e) whether the positions of the two paramount chiefs were established in terms of customary law and customs.

9.1.2 If it is found that the two kingships exist independently, whether they should continue to exist as such.

9.2 **Analysis of Issues**

9.2.1 In pursuit of uniformity in the Republic in terms of the Framework Act the Commission takes cognisance of the following principles:-

- (a) The establishment of an independent traditional community under one leader.
- (b) Welding together diverse cultural and linguistic elements or communities each with its own recognisable traditional leader under one principal traditional leader.
- (c) The traditional community should not have lost its independence through indigenous political processes which resolved themselves during the centuries before colonial intrusion.
- (d) The principal traditional leader should rule over the entire traditional community with linguistic and cultural affinities rather than a section thereof.

9.3 **Analysis of Evidence**

- 9.3.1 Thembu had two sons, Ndilo and Mvelase. Mvelase broke away and established his own community at Qhudeni, KwaZulu-Natal and Ndilo moved southwards with the rest of the community and settled on the land between Umzimkhulu river and the then Cape Colony. Ndilo was succeeded by Ntongakazi, Bhomoyi, Cedume, Mnquti, Ntoyi, Ntande, and Nxeko who was succeeded by Dlomo after the defeat of Hlanga at Msana.
- 9.3.2 AbaThembu kingship was established by Nxeko through accommodating, merging and assimilating fugitive clans which migrated into the abaThembu territory and accepted his sovereignty. Some of these communities such as amaNdungwana, amaXesibe and amaMpondomise assisted Dlomo against his brother Hlanga in the Battle of Msana which resulted in the defeat of Hlanga.
- 9.3.3 In the process of integration, the formerly independent traditional communities adopted the language and

culture of abaThembu. Dlomo was succeeded by Hala, Madiba, Tato, Zondwa and Ndaba who reigned from 1756 to 1800.

9.3.4 Having thus consolidated abaThembu and expanded his sphere of influence, Nxeko can be said to have created the abaThembu kingship, hence all his successors assumed the status of kings. The kingship has been passed on from one generation to the next according to abaThembu customary law of male primogeniture.

9.3.5 It was during the reign of Ngubengcuka, the heir of Ndaba, from 1800 to 1832, that many formerly independent communities such as amaNqabe, amaGcina, amaHegebe, amaQwathi, amaNqandama amaTshezi, amaTshomane, amaMfengu and other small communities sought refuge among abaThembu as a result of war in Natal and the Mfecane invasions.

9.3.6 It is evident from the presentations, both oral and written, that it was customary for the Great House to bear an heir to the throne. It was also not unusual for

a right hand house to create a new traditional community independent of, but subordinate to the Great House in terms of family and ceremonial matters and those affecting abaThembu community as a whole.

9.3.7 The Matanzima Royal house, the right hand house of Ngubengcuka, does not dispute that it is genealogically junior to that of Dalindyebo, which is the Great House.

9.3.8 Ngangelizwe was the first to be officially recognised by the Colonial government as a paramount chief of abaThembu in 1876⁴. On the contrary, Raxoti Matanzima and his successors were regarded as “petty chiefs” (a term in vogue under colonial government).

9.3.9 There is no evidence that the successors of Raxoti Matanzima, Mvuzo and Mhlobo ever claimed to be paramount chiefs or kings. It was only Kaizer Daliwonga Matanzima who aspired to be paramount

⁴WD Hammond –Tooke THE TRIBE OF UMTATA DISTRICT (1956-1957)

chief after his appointment as a chief of amaHala in 1939.

9.3.10 The adoption of the Black Authorities Act 68 of 1951 in the Transkeian territories, where African areas were divided into a number of projected “homelands”, in which the inhabitants were to enjoy a measure of self-government, gave rise to tribal, regional and territorial authorities.

9.3.11 It would appear that the Matanzima royal house base their claim to kingship on the creation of Emigrant Thembuland which never constituted part of Thembuland Proper, for the following reasons:-

(a) It is their contention that Emigrant Thembuland came into existence only in 1865 when abaThembu baseRhoda, under the leadership of Raxoti Matanzima, were resettled by the colonialists on a land left vacant by Sarhili of amaGcaleka.

- (b) They maintain that they were independent of the Great House in all respects in that the Great House did not interfere in their affairs.
- (c) They argued that Raxoti Matanzima like king Shaka Zulu, king Mashoeshoe I and king Mswati I was not born a king but was a self made king.
- (d) The two commissions referred to herein above had found that Matanzima had a kingship and Dalindyebo and his forebears had no authority and control over Emigrant Tembuland.

9.3.12 On the other hand, the Dalindyebo royal house contends that there has always been one Thembuland, one abaThembu nation, and one head of abaThembu people throughout Thembuland, and that Western Thembuland is a recent creation of the apartheid government.

9.4 The Commission finds that:-

9.4.1 Even though the Matanzima royal house claims independence, its head Matanzima, as chief of amaHala, was on the same level with the other Thembu chiefs in Western Thembuland, for example Ndarala and Stokwe.

9.4.2 It was only after the interference of the apartheid government, that K.D. Matanzima was elevated above his fellow chiefs.

9.4.3 The Matanzima royal house is incorrect to equate independence with kingship.

(a) There is no evidence of the emergence of the kingship of Emigrant Thembuland, according to customary norms and criteria relevant for the establishment of a kingship.

(b) In any event, in terms of history and genealogy the Matanzima royal house is inextricably bound to the lineage of

Ngubengcuka. They share similar cultural and linguistic affinities.

9.4.5 The Commission accepts that kingship may be attained by might as was the case with Shaka Zulu and the others. However, this is not the case with Matanzima. There is clear evidence of foreign intervention in his elevation to the status of paramountcy.

9.4.6 The finding of the two Commissions cannot support the claim to kingship as aforementioned. That notwithstanding, the Matanzima royal house would still have to satisfy the Commission that they are indeed a kingship in terms of the custom of abaThembu.

9.4.7 The Commission accepts the version of the Dalindyebo royal house in that it is supported by the following:-

- (a) On the annexation of Thembuland in 1876 Ngangelizwe was the first

officially recognised paramount chief of abaThembu as a whole, whilst Raxoti Matanzima remained a mere traditional leader (petty chief) of amaHala.

(b) Ngangelizwe exercised authority over abaThembu as a whole. However, his authority was undermined by the White magistrates.

(c) Further interference is evidenced by the introduction of C.B. Young in the affairs of abaThembu:-

(i) C.B. Young as the Under Secretary for Bantu Administration and Development had been instrumental in the creation of two paramountcies for amaMpondo and amaXhosa respectively.

- (ii) In order to achieve the policy of the apartheid regime of divide and rule abaThembu were to be divided in the same manner.

- (iii) The appointment of C.B. Young to investigate the dispute between Dalindyebo and Matanzima was irregular in that it was C.B. Young who had caused the dispute by influencing Matanzima to accept the traditional authorities against the wishes of his paramount chief Sabata Dalindyebo.

- (d) In a letter written to the Department of Bantu Administration and Development dated 28 April 1962, the Western Thembuland Regional Authority applied

for the recognition of K.D. Matanzima as paramount chief of Emigrant Thembuland, and the reasons advanced amongst others were as follows:-

- (i) The separation between sons of Mtirara, Ngangelizwe and Matanzima, was in accordance with custom;
- (ii) Matanzima became independent of Ngangelizwe by occupying Emigrant Thembuland;
- (iii) The areas falling under the jurisdiction of K.D. Matanzima warranted a paramountcy;
- (iv) K.D. Matanzima, who was senior in status was on the

same level as other traditional leaders under his jurisdiction;

- (v) Sabata Dalindyebo, the paramount chief of abaThembu as a whole was opposed to the Bantu Authorities of the government.

9.5 The aforementioned reasons were not in line with customary law of succession of abaThembu. The creation of an independent traditional community by the son of a right hand house was not unusual however, such traditional community could not claim to be of equal status to the Great House.

10.

CONCLUSION

10.1 Whilst official recognition of the institution of *ubukumkani* was laudable and in line with the historical and customary evidence

presented, the creation of dual kingship was irregular. This was because it was not in line with the customary law and customs of the traditional community of abaThembu in that:-

10.1.1 The status of a traditional leader should be determined by the rank that he occupies within the traditional community as a whole.

10.1.2 The rank is determined by well established customary laws common to most of the indigenous people of South Africa, being the status of the mother, primogeniture and the performance of specific rituals.

10.1.3 In this case, the areas of jurisdiction will be those populated by the abaThembu traditional communities and headed by senior traditional leaders who owe allegiance to *ubukumkani*.

10.2 In terms of the customary law of abaThembu and the Framework Act the Commission finds that:-

- 10.2.1 The kingship of abaThembu exists. It was established by Nxeko through assimilating, accommodating and merging various communities.
- 10.2.2 Since Nxeko, the kingship has been passed on from one generation to the next according to the custom of abaThembu.
- 10.2.3 In the circumstances, abaThembu kingship exists under the lineage of the Dalindyebo royal house.
- 10.2.4 In terms of customary law of abaThembu and the Framework Act, the Matanzima paramountcy is not a kingship.