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# GENDERED RUPTURES AND CONTINUITIES IN THE VENDA TRADITIONAL LEADERSHIP FROM C. 1990 TO 2020

## ABSTRACT

*This article approaches traditional leadership disputes amongst and within Venda royal houses over the past three decades (from the end of grand apartheid to the presidency of Mr Cyril Ramaphosa) while investigating the reasons for the importance of such traditional leadership positions in modern South Africa. In the light of the most recent disputes around the right of women to ascend to the highest Venda authority, historical precedents around practices of female leadership amongst the Vhavenda are considered. Amongst the continuities observed, are the inevitable limitations to traditional authority: a need to be legitimated from “within” and sanctioned from “above”, by whoever controls the greater nation-state. The discontinuities can be observed in the nature of the arguments on both sides. The historical account pays attention to popular protests, government-appointed commissions, court cases and appeals to the principles of equality in the South African constitution.*

**Keywords:** Venda *vhuhosivhuhulu* (kingship), *Mphephu*, *Ramabulana*, traditional leadership, Peter Toni *Mphephu*, *Masindi Mphephu*, *makhadzi*

## 1. INTRODUCTION

The history of the Venda<sup>1</sup> *vhuhosivhuhulu*, commonly translated into English as kingship, has taken an unprecedented turn in the past decade

<sup>1</sup> For the purposes of this article, Venda is used both as adjective and to refer to a geographical area; VhaVenda (plural) is used to identify the people associated with that area.

when, for the first time, a woman contender asserted her right to the highest position of Venda traditional leadership by appealing to the Constitution of the Republic of South Africa. This is the latest saga in a history of rulership controversies within and between the Vhavenda royal houses, amongst whom the Ramabulana, the Vhangona, the Tshivhase and the Mphaphuli are the most prominent. In this article, we look at historical precedents around practices of female leadership amongst the Vhavenda. We also investigate the reasons for the importance of traditional leadership among the Vhavenda by drawing on the broader scholarship on this topic in the context of modern South Africa. Against this background, we then trace the intricacies of the latest dispute within Venda circles as reported in the media. The historical trajectory is picked up in the late 1980s in the Venda Homeland and concluded in the third decade of post-apartheid South Africa. We conclude that hot debates around succession politics in the media and on legal platforms, continue to mask the deeper question about the legitimacy, the form and the extent of traditional authority and customary law within a democracy.

## 2. TRADITIONAL LEADERSHIP IN MODERN SOUTH AFRICA

Barbara Oomen is one of the scholars who present us with some of the facts assumed to be the causes for post-colonial Africa, including South Africa, still accommodating traditional authorities.<sup>2</sup> Oomen viewed the return of chieftaincy, customs, and culture as one of the most surprising features of post-apartheid South Africa. It appears from her account that, as democracy dawned, support for traditional leaders rose not only in national politics but also in the villages of rural South Africa. This implies that chiefs were no longer seen as relics of the past or puppets of the apartheid regime. Oomen used the Sekhukhune chieftaincy<sup>3</sup> in Limpopo as a case study to demonstrate

2 B Oomen, *Chiefs in South Africa. Law, power and culture in the post-apartheid era* (Oxford: James Currey and Pietermaritzburg: University KwaZulu-Natal Press, 2005). Oomen's specialisation is in law, and her study dealt first with the laws governing traditional authorities both in apartheid South Africa and the post-1994 era. In her study, she tried to address the question of the interrelation between laws, politics, and culture.

3 *Chieftaincy* is a concept that is believed to have been invented by colonialists to demonstrate some degree of traditional leadership authorities. Oomen's study is concerned with the contemporary, post-colonial situation, and therefore, in discussing her work, we follow her use of the concepts as commonly in use today: chieftaincy and chiefs. These concepts are the legacy of the colonial system through which successive Boer and British authorities had adapted local African systems to be harnessed into forms of indirect rule. The common use of the vocabulary for the system invented by European rulers was inevitable because Africans had "to function within the colonial framework" see, J Iliffe, *A modern history of Tanganyika* (Cambridge: Cambridge University Press, 1979), p. 324. However, when referring to our case study, the Vhavenda, we give preference to the concepts as used in the Venda language, because these make provision for the historically specific shaping of notions to explain hierarchy, authority, rulership, and succession within this community's social and

the resurgence of traditional authorities in post-apartheid South Africa and to consider, amongst others, the question why the liberal ANC (African National Congress) allowed the chiefs to retain power over land, local government, and custom in many parts of South Africa.<sup>4</sup>

Oomen reminds us that, in 1964, the late ANC stalwart, Govan Mbeki, was quoted asking about the relevance of traditional authorities; "If Africans have had chiefs; it was because all human societies have had them at one stage or another. But when people have developed to a stage which discards chieftainship ... then to force it on them is not liberation but enslavement".<sup>5</sup> Govan Mbeki made the statement thirty years before there was any dream of a free South Africa. There was a strong assertion that Africans were capable and desirous of embracing modern democracy.

The statement in 1964 might have been based on Govan Mbeki's personal observation of the ways in which the apartheid regime managed to use chiefs to oppress the masses of the country and cement their subjugation of black South Africans. Oomen therefore asked; "... if the whole fight had been about attaining a nation in which all citizens would be equal, with 'one man, one vote', why were chiefs, customs and cultural diversity once again so important, once democracy had dawned?"<sup>6</sup>

Oomen demonstrated that the resentment of the traditional authorities by some of the ANC leaders did not die even after 1994. She cited the incident involving Pallo Jordan, a former Minister of Arts and Culture, and the late Peter Mokaba, himself a former Deputy Minister and a fiery ANC Youth League President. At the 15th ANC National Conference in 1997, they suggested that the time had come for the "swift dismantling of apartheid structures such as the so-called traditional authorities"<sup>7</sup>. Their position on traditional authorities was totally rejected and they were sternly and publicly rebuked by President Nelson Mandela and the then Deputy President, Thabo Mbeki. The two leaders called for continued respect for traditional leaders.<sup>8</sup> The position of Mandela and Mbeki on traditional authorities might have been influenced by their strong ideals for nation building as African renewal and Mandela's relationship with the Thembu royal family. There seems to have been an assumption that African identity was a "whole" constituted of various "traditional" ("ethnic", "chiefly" or "tribal"?) parts.

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political life. Without denying that these concepts were also affected by colonial interference, we try to be sensitive to forms and means of Venda expression amongst themselves and not only to representations in English on the national stage.

4 Oomen, *Chiefs in South Africa*, Introduction.

5 Oomen, *Chiefs in South Africa*, p. 3.

6 Oomen, *Chiefs in South Africa*, p. 3.

7 Oomen, *Chiefs in South Africa*, p. 91.

8 Oomen, *Chiefs in South Africa*, p. 92.

From Oomen's study one can deduce that the sentiments of Govan Mbeki, Jordan and Mokaba were not the general views of the broad ANC.<sup>9</sup> Dineo Skosana confirms this by illustrating how, from early in the organisation's history, ANC leaders had realised that they needed the backing of traditional rulers to win support in the rural parts of South Africa. The decisive action taken in 1997 by Nelson Mandela and Thabo Mbeki against the distaste for traditional leaders within their own ranks, indicates that the ANC wanted the traditional authorities to be respected and be sustained in the new South Africa. The ANC could not dismiss the role of chiefs as peripheral in the new South Africa, because traditional houses still commanded respect in their communities and chiefs were still influential over their subjects, hence the ANC stance to uphold the status of traditional authorities.

On the contrary, with reference to his study on the Xhalanga in the Eastern Cape, Lungisile Ntsebeza has argued that the authority of traditional rulers is not so much derived from their popularity amongst their subjects as from their control over the land allocation processes in their territories.<sup>10</sup> This continued power vested in traditional authorities in post-apartheid South Africa, Ntsebeza asserts, explains why chiefly positions remain so sought-after. It should thus not come as a surprise that, amongst the VhaVenda, headmen (*magota*) and chiefs (*vhothovhele*) like those of the Tshivhase, Mphaphuli, Ravhura and Tshidzuwelele, used the opportunity presented by the new South Africa to challenge the house of Mphephu-Ramabulana to claim the kingship status amongst the Venda people. In the second half of the twentieth century, in their process of harnessing the Vhavenda into their scheme of grand apartheid and a Venda "homeland", 27 *mahosi*, or chiefs, and one *khosikhulu*,<sup>11</sup> or king, or "paramount chief" were identified and institutionalised for the Venda polity under the National Party Government of South Africa.

9 See D Skosana, "Traditional leadership and the African National Congress in South Africa. Reflections on a symbiotic relationship". In: M Buthelezi *et al.* (eds.), *Traditional leaders in a democracy. Resources, respect and resistance* (Johannesburg: MISTRA, 2019), pp. 68-69.

10 L Ntsebeza, *Democracy compromised: Chiefs and the politics of land in South Africa* (Leiden: Brill, 2006), p. 22. While Ntsebeza credited Oomen for her contribution of adding a global perspective to South African case studies, he also placed strong emphasis on Mamdani's argument that the transition from colonialism to democracy requires all subjects (also those of traditional rulers) to become citizens of a democratic state. Ntsebeza's work was highly critical of the "co-existence" thesis, of traditional authorities continuing to exert power within democratic dispensations, as opted for by the ANC after 1994.

11 The question of whether or not the term *khosikhulu* was an apartheid invention is the subject of contestation. When taking into consideration that the political authority in the area during the precolonial and colonial period was far more fluid than in twentieth-century South Africa, one has to consider that it might also have been far less centralised, and that the idea of the Vhavenda as a united political entity might also be an invented tradition.

### 3. CHIEFTAINCY AS A “GATEWAY TO THE STATE”

Fraser McNeill, in his study of traditional rulers in Venda as a prelude to his book on AIDS and music in the Venda region,<sup>12</sup> critically analysed the co-existence of the traditional authorities in this part of the country and the democratic state in the new South Africa. He also touched on how Venda chiefs were useful to the apartheid government during Patrick Ramaano Mphephu’s time as a king and President of the Venda homeland. McNeill also addressed the way the Venda kingship was contested in post-1994 South Africa.<sup>13</sup> He has noted that in the apartheid period, as well as post-1994, “a legally sanctioned politics of tradition has coexisted in South Africa with a bureaucratic state and planning apparatus”.<sup>14</sup> Quoting from Mahmood Mamdani,<sup>15</sup> he has shown that the

political and legal construction of tradition, in the guise of rural traditional leadership, resulted from its moulding by colonial forces into a form of “decentralised despotism” in a “bifurcated state” in which African people could be citizens outside of the homelands but remained subjects within them.

According to McNeill, “this presented an attempt to reinforce the legitimacy of the chieftaincy as one of the most reliable gateways to the state”. McNeill explained that “apartheid policy was designed to cement ethnic identity and justify a programme of segregation”. He argued that in the democratic South Africa, the “politics of ethnicity has taken a different turn”. According to him, “culture, tradition, and ethnicity are no longer propagated as barriers to engaging with the outside world”. In his opinion they have become “platforms upon which traditional leaders seek legitimacy in a democratic setting”.<sup>16</sup> The sentiments expressed by McNeill cannot be dismissed. However, one is tempted to say that traditional leaders’ legitimacy in the new democratic setting surpassed what they had expected at the dawn of the new South Africa for the reasons Oomen, Ntsebeza and Skosana had provided: The ruling party needed their backing to consolidate its power at a national level.

12 FG McNeill, “The battle for Venda kingship”. In: FG McNeill, *AIDS, politics and music in South Africa* (Cambridge: Cambridge University Press, 2011), pp. 26-73.

13 However, it is important to note that McNeill’s version of the Venda historiography was based only on his meeting with Chief Kennedy Midiyavathu Tshivhase and his people in Mukumbani, and therefore it cannot be regarded as giving a detailed Venda historiography.

14 McNeill, “The battle for Venda kingship”, p. 29.

15 M Mamdani, *Citizen and subject: Contemporary Africa and the legacy of late colonialism* (Princeton: Princeton University Press, 1996).

16 Mamdani, *Citizen and subject*, p. 29.

But then, how does one explain the grassroots support for traditional leadership amongst ordinary South Africans in a democratic dispensation? John and Jean Comaroff, in their book *Ethnicity, Inc.*, address “the rise of ethnic awareness, ethnic assertion, ethnic sentiment, ethno-talk; ... despite the fact that it was supposed to wither away with the rise of modernity”.<sup>17</sup> The Comaroffs support their claims of ethnicity becoming more corporate and commodified by listing several examples. One of those was the Bafokeng in Phokeng, Northwest Province, who reinvented themselves under the Royal Bafokeng brand name in the new South Africa as they became involved in corporate enterprises.<sup>18</sup> They also highlighted an attempt by the KwaZulu-Natal Provincial Government in rebranding the province with the billboard of a “Zulu maiden, wreathed in a mass of colourful beads. Her sparkling-white teeth shine against the sunlight, mouth wide open in a seductively, knowing smile”.<sup>19</sup> They continue:

In the background are the hills of her native land; as far as one could tell, they are the heights above eMakhosini, the Valley of the Kings, birthplace of Shaka, site of the death of a number of his successors, and sometime capital of Southern Africa’s most celebrated indigenous monarchy.<sup>20</sup>

A Venda ethnic identity is being reconstructed by young people on social networks like Twitter, Facebook and others. However, it is still ignored by the Limpopo Provincial Government politicians and the Vhembe District Municipality. This observation is supported by the fact that there is no sign or billboard on the N1 to Musina after Botlokwa in Polokwane that you are about to enter the Venda Kingdom like it is the case with Kwazulu-Natal and Phokeng, which have been advertised respectively as The Zulu Kingdom and The Royal Bafokeng Tribe.

There are many reasons why Venda remains “behind” in commodifying its ethnicity. The first factor is the continuous kingship disputes since 1994 and the second factor is the minimal role that “King” Toni Mphephu had initially played in the politics of the new South Africa. It is also important to state that things have been changing since (now former) President Jacob Zuma announced Toni Mphephu as the king of the Venda polity. He was then getting involved in corporate business and in overseeing major mining deals in Venda. However, the status of Toni Mphephu both as king of the Venda people and in the South African political landscape has been hanging in the

17 JL Comaroff and J Comaroff, *Ethnicity, Inc.* (Chicago: University of Chicago Press, 2009), p. 1.

18 Comaroff and Comaroff, *Ethnicity, Inc.*, p. 122.

19 Comaroff and Comaroff, *Ethnicity, Inc.*, p. 12.

20 Comaroff and Comaroff, *Ethnicity, Inc.*, p. 12.

balance since his alleged involvement in the VBS (Venda Building Society) Bank looting scandal and the Supreme Court of Appeal ruling declaring his kingship status invalid in 2019. This matter will be dealt with in detail further on in the article.

Thus, it seems that modernity has become the puppeteer of traditional beliefs, and that ethnicity, malleable and rich resource that it is, has now become a bargaining chip of the traditional authorities and they are willing to sell the ethnicity product to the highest bidder. Traditional authorities are no longer regarded as puppets of the apartheid government, but they consider themselves as equal business partners of the current government.

#### 4. THE ROLE OF WOMEN IN VENDA LEADERSHIP

Having now established the reasons why the recognition of the “traditional leadership” of an ethnic community is so lucrative within the South African democracy, it will also be helpful to consider the cultural-historical potential for women to contend for such positions.

In her contribution on the social organisation of African polities for Isaac Schapera’s *The Bantu-speaking tribes of South Africa*, Winifred Hoernlé<sup>21</sup> described the importance of women in Venda social and political structure, with the sister – *makhadzi* – being closely linked to her brother throughout life. In the case of the king, the father’s sister<sup>22</sup> (*makhadzi muhulu*) was also meant to play a part in the administrative and religious life of the people. Among the Vhavenda, sister of the king’s father, or failing her, the senior sister, was described as having a somewhat analogous position.<sup>23</sup> She had to be consulted on all important communal affairs, was described as having exercised a great influence over the king’s personal and political conduct and deserving of being treated with almost the same respect and formality afforded the king himself. According to Schapera, the sisters and daughters of the king, as leaders of the female age-regiments, commanded special authority over the women of the community, apart from the general respect they enjoyed by right of birth. The VhaVenda, and their northern Sotho neighbours, were considered exceptional in that, among them, a chief could appoint one (or several) of his sisters as “headmen” over some villages or even districts, the succession to this office then tending in some cases to be confined to females.<sup>24</sup>

21 W Hoernlé, “Social organisation”. In: I Schapera (ed.), *The Bantu-speaking tribes of South Africa* (London: Routledge and Kegan Paul, 1962), p. 67.

22 Hoernlé, “Social organisation”, p. 94.

23 I Schapera (ed.), *The Bantu-speaking tribes of South Africa* (London: Routledge & Kegan Paul, 1962), p. 181.

24 Schapera, *The Bantu-speaking*, pp. 173-181.

In her doctoral thesis, Pfarelo Eva Matshidze<sup>25</sup>, focusing on *makhadzi* as the title given to a ruler's sister, or sisters, considered the place of *makhadzi* in post-apartheid South Africa against the backdrop of the legislation enacted to give effect to traditional leadership, which did not recognise them explicitly. In her research Matshidze asserted that in the case of the Venda polity, *makhadzi* is the most highly regarded woman with more power than men, playing critical roles in, amongst other things, the politics of succession, resolution of disputes, regency, initiation of girls and spiritual guidance. Matshidze's thesis, while emphasising the powers *makhadzi* continues to have in her society, also highlighted the fact that it is not well recognised by the South African constitution. She emphasised, however, that *makhadzi* has a place and a role to play in the new democratic society.

Matshidze's approach to the role of *makhadzi* in Venda affirms that the male-dominated discourse on traditional leadership, and its stake in the politics of post-apartheid South Africa, downplays the cultural history of women's established role in rulership since precolonial days. The new South African Constitution adopted in 1996 provided the opportunity, on the one hand, to bring "custom in line with the Constitution"<sup>26</sup> (which would be considered a breach with the past for those who asserted that male domination was a historical principal), but on the other hand, also to resuscitate the respect afforded women in earlier times (for those, like Matshidze, who affirmed that this was in fact an established Venda tradition). The case of Tinyiko Shilubana of the Valoyi royal family illustrated that the Constitution could be called upon even to address gender discrimination that had occurred before its conception.<sup>27</sup> When Shilubana's father Fofeza died without a male heir in 1968, he was succeeded by his younger brother Richard, but with Richard's passing in 2001, the community came to the resolution that:

... though in the past it was not permissible by the Valoyis that a female child be heir, in terms of democracy and the new Republic of South Africa Constitution it is now permissible that a female child be heir since she is also equal to a male child.<sup>28</sup>

In the ensuing legal disputes between Shilubana and her uncle's male heir, the Constitutional Court eventually decided in her favour in 2009. The

25 PE Matshidze, *The role of makhadzi in traditional leadership among the Venda* (PhD, University of Zululand, 2013).

26 A Claassens, "Contested power and apartheid tribal boundaries: The implications of 'living customary law' for indigenous accountability mechanisms", *Acta Juridica* 1, 2011, p. 197.

27 SF Khunou, "Traditional leadership and independent Bantustans of South Africa: Some milestones of transformative constitutionalism beyond apartheid", *Potchefstroom Electronic Law Journal* 12 (4), 2009, p. 110.

28 Shilubana *et al.* vs Nwamitwa 2009 (2) SA 66 (CC), n 7, paragraph 4, as quoted in Claassens, "Contested power", p. 198.

finding did not so much emphasise Shilubana's right to the rulership on basis of her being a female, but on basis of the community's right to develop customary law according to their changing interpretation of the needs, practices, and expectations of said community<sup>29</sup> (in as far as these needs and practices were aligned with the national constitution, which did, of course, promote gender equality).

With this gendered dimension highlighted in the political context, it is important to discuss the construction of a historical trajectory explaining the events that built up to the current leadership disputes amongst the Vhavenda.

## 5. THE LAST DAYS OF THE VENDA HOMELAND AND THE END OF THE VENDA KINGSHIP

The narrative needs to be rolled back to the apartheid days in the Venda homeland, which became the Republic of Venda on 13 September 1979. The first Head of State of the Republic of Venda, President Patrick Ramaano Mphephu, was also considered the hereditary ruler of the Venda people. While his royal house of Ramabulana has a longer history of pre-eminence amongst the Venda rulers, in this new dispensation he now embodied both the modern and the traditional notions of rulership and power. Government structures in the homeland state resembled a modern democracy complete with political parties and elections, but simultaneously, the head of state was both president and king. As such he did not tolerate his political opponents.<sup>30</sup> The democratic status of the Venda Republic was as disputable as its independence. Mphephu's reliance on the patronage of the Republic of South Africa was again illustrated when, shortly before his death, he signed an agreement with the South African government to provide 25 million rand in development aid to his state.<sup>31</sup>

The political landscape was to change in Venda on Sunday, 17 April 1988, when the man who was loved by few but hated by many Venda people, President Mphephu, aged 63, died mysteriously of undisclosed illness at the Little Company of Mary Hospital in Pretoria.<sup>32</sup> The causes of Mphephu's death are not known even today. Mphephu's death shocked many in Venda,

29 Claassens, "Contested power", p. 199.

30 As reported by the *Sowetan*, 3 March 1988, a decision to release or prosecute 19 detainees held by the Venda government since May 1987, was not expected any time soon.

31 *Business Day*, 27 January 1988.

32 *Sowetan*, 19 April 1988. The death of Mphephu brought the entire Venda public service to a halt on the Monday the news of his unexpected passing started spreading in the homeland. Schools and government departments closed from 12 noon on Monday, 18 April 1988 to give people a chance to mourn a man most would love to hate.

including his enemies. Condolences for the death of President Mphephu were sent from all over South Africa. The most notable tribute came from the South African Minister of Foreign Affairs, Pik Botha. In his tribute to the late king and president of Venda, he said from Cape Town on Monday, 18 April 1988:

The President of Venda, Mr *Khosikhulu* PR Mphephu, would be remembered as a loyal friend of South Africa who believed in co-operation rather than confrontation and who took a firm stand against terrorism.<sup>33</sup>

Botha's statement confirms that Mphephu was a real puppet of the apartheid government in South Africa, and it justified the point that Venda was just an extension of the apartheid state. It was used to fight enemies of apartheid like the African National Congress (ANC), Azanian People's Organisation (AZAPO) and the Pan Africanist Congress (PAC) as it was strategically placed, sandwiched between the borders of Botswana in the west, Zimbabwe in the north and Mozambique in the east.

Botha's tribute had a bit of irony in it because to the people in Venda, Mphephu was not co-operative, but confrontational. His opponents in Venda, more so the Venda Independent Party (VIP) leaders and the Lutheran Church priests<sup>34</sup> would have disagreed with the sentiments of Botha about Mphephu. However, it is important to note that in the eyes of the apartheid government of South Africa, Mphephu was marvellously co-operative. It is our view that Botha was trying to live up to the Venda saying that, "*a u ambi zwivhi nga vhotuwaho*" – you don't speak ill of the dead. Still on Monday, 18 April 1988, the Venda cabinet appointed Minister of Finance, Headman Frank Nndwakhulu Ravele, as Acting-President of the Venda Republic.<sup>35</sup>

Mphephu was buried on Friday, 22 April 1988 at Songozwi near Louis Trichardt in what was then South African soil. Acting Venda President Ravele addressed the 15 000 mourners with a message in the words of the late President: "Let there be unity among the people of Venda". Ravele appealed to the Venda people not to ignore the words of the deceased and he also appealed to the traditional leaders, the police, and the army to cooperate to sustain the peace and stability which existed when President Mphephu was

33 *The Star*, 19 April 1988.

34 See, T Kgatla, "The Lutheran and Reformed clergy's resistance to the independence of the Venda homeland in the 1970s and 1980s". In: H Lessing *et al* (eds.), *Contested relations: Protestantism between Southern Africa and Germany from the 1930s to the apartheid era* (Pietermaritzburg: Cluster Publications, 2015), pp. 438-443.

35 The State President of South Africa, Mr PW Botha, also sent his condolences to the Venda government on Monday 18 April 1988. President Lennox Sebe of the homeland, Ciskei also paid his tribute to his friend PR Mphephu on the same day. He said President Mphephu was a great friend of the Ciskei and a lover of his own Venda people. *Daily Dispatch*, 19 April 1988.

still alive.<sup>36</sup> However, to say there was peace and cooperation during the period of Mphephu's rule would be an exaggeration.

Songozwi, where Mphephu was buried, was a traditional burial place for kings of the Singo community, specifically the Mphephu-Ramabulana. Historically the place belonged to the Singo people, and that was where their first royal palace (*pfamo*) was established after they had migrated to the south from Matongoni. The place was taken and had been part of "white South Africa" ever since Mphephu I (son of Makhado) was defeated by the Transvaal Boers in 1898, and it was not returned to the Venda royal house until after 1994. The burial of President Mphephu cleared the way for his successor to be appointed within thirty days of his death by the 92-member Venda National Assembly. King Mphephu did not groom an obvious successor, but Acting President Ravele, who also happened to be a cousin of the late Mphephu, was the favourite contender.<sup>37</sup>

Many Venda people saw the death of Mphephu as a solution to many problems in the homeland. It was the view of many that his death would solve traditional leadership disputes which were caused by Mphephu dethroning legitimate headmen and chiefs and replacing them with his supporters. Hopes were high after Mphephu's death that two young chiefs deprived of their birth right to the thrones would be reinstated. It was believed that Chief Kennedy Tshivhase and Chief Peter Kutama would ascend to their thrones after Mphephu had denied them their birth right for political reasons. The new Presidential designate, Frank Ndwakhulu Ravele, was described in royal circles as a good man, and it was expected that he would be sympathetic to these young men's cause.<sup>38</sup>

The hopes of the Venda people were finally raised on Tuesday, 10 May 1988 when the Venda National Assembly voted unanimously that 62-year-old Zion Christian Church (ZCC) member, Headman Ravele, be the new President.<sup>39</sup> Ravele would be the second and the last State President of the Republic of Venda. President Ravele called an early general election on 14 and 15 September 1988. Observers felt that it was Ravele's attempt to consolidate his position as the head of state in Venda. The election was just a formality, as the former opposition party, the VIP, had disappeared from

36 *Sowetan*, 26 April 1988.

37 *The Star*, 22 April 1988.

38 *City Press*, 8 May 1988.

39 Headman FN Ravele was one of the few cabinet members who were educated. He was a Bachelor of Arts student at Unisa, and he was a former treasurer of the Mphephu Tribal Authority and his election to the Presidency was unopposed according to the information provided by the Director-General of Information and Broadcasting, Mr MD Nethononda. *The Star*, 11 May 1988.

the Venda political landscape.<sup>40</sup> The amended Venda Electoral Act stated that a candidate could only be nominated if, amongst other things, he was a member of the VNP (Venda National Party).<sup>41</sup> The VNP won a landslide victory, competing alone. President Headman FN Revele was sworn in, and in his crowning moment, he showed that he was not going to depart from the VNP policies and those of his predecessor. It was clear from his speech that torturing of people perceived to be enemies of the state would not stop. Quoting from his speech to support this view:

Venda considered itself part of Africa and the free world, whether it received international recognition or not. Venda would not allow any communist-inspired actions to disrupt its stability.

These were tough words and a stern warning to people who thought that, with Mphephu's passing, things would normalise in Venda. Political prisoners remained detained. There was also a clamp down on journalists<sup>42</sup> and other people who were critics of the Ravele government.<sup>43</sup>

Venda did not stabilise after the death of President Mphephu and the Ravele government was unable to suppress the power of the youth. Venda youths became increasingly militant after the death of the feared Mphephu. The youths were the main reason for the downfall of the Ravele government during a military coup early in 1990. From 1988 to 1990, Ravele and his cabinet were confronted with the serious challenge of controlling youths who were protesting almost every day. Early in 1990 the Venda armed forces, led by Brigadier-General Gabriel Mutheiwana Ramushwana, took over the government. This signalled the end of homeland and traditional authority. It is imperative to indicate that the early 1990s was a period of turmoil in South Africa with the release of political prisoners – most prominently, Nelson Mandela – and negotiations for the termination of apartheid. The sign of homelands crumbling was there for everyone to see. During a military coup

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40 *Sowetan*, 28 June 1988.

41 The 21 VIP candidates who tried to stand for election by joining the VNP, were prevented from doing so. The aggrieved members tried to take court action on Friday, 22 July 1988, but their attempts were futile. *Sowetan*, 22 July 1988.

42 The *Sowetan* reporter, Mathata Tsedu, was detained with pupils from Tshakhuma in Venda. The arrest of Tsedu was associated with the Tshakhuma youth protesting against ritual killings in Venda, and Tsedu as a reporter was covering a story. The protests spread all over Thohoyandou in solidarity to the call by the youths of Tshakhuma. The University of Venda Students' Representative Council (SRC) also got involved in the protests. See, *Sowetan*, 16 August 1988; *Sowetan*, 17 August 1988.

43 The well-known South African pop star, William Mthethwa, was one of the victims of Ravele's regime when he was *sjambokked* (beaten) with other musicians and revelers by Venda police at the Thohoyandou Stadium on Saturday, 6 August 1988. Mthethwa was performing in a 15 hour non-stop Radio Thohoyandou music festival. *Sowetan*, 8 August 1988.

in the Ciskei, President Lennox Sebe was toppled by Brigadier-General Oupa Qozo and in the Transkei, George Mantanzima was toppled by General Bantu Holomisa. In Bophuthatshwana, attempts by Rocky Malebane-Metsing to topple President Lucas Mangope was thwarted by the Bophuthatshwana Defence Force (of course with the aid of South African Defence Force). It is highly probable that there had been a coup in Venda as well. Ravele might not have “given up” the control of government voluntarily as it was alleged.

The military government of Ramushwana abolished the status of the Venda king immediately after taking over in 1990. The step was justified through the findings of the Mushasha Commission of Inquiry, which had been appointed by Ramushwana. The Ramushwana military junta did not want two centres of power in Venda.

Thus, the person who was the successor (*mulaiifa*) to the Ramabulana throne was not going to be king of Venda, but merely ruler, or chief (*thovhela*) of Vhailafuri. Mphephu was succeeded by *Makhadzi* Phophi Mphephu as regent (*thovhela-pfareli*) for seven years until Tshimangadzo Mphephu Ramabulana could succeed his father. The installation of Tshimangadzo as Chief Dimbanyika Thohoyandou Ramabulana II coincidentally came in 1994, at the time when Venda was integrated into South Africa at the end of 46 years of rule by the National Party in South Africa.<sup>44</sup> Chief Dimbanyika was not well-known in Venda like his father, and he was not a favourite within the royal family of the Ramabulana. There were some allegations coming from some people within the Ramabulana royal family that Chief Dimbanyika was a reckless ruler who showed scant regard for tradition and protocol and had no respect for his subjects, not even elders.<sup>45</sup>

Those who were not impressed with Dimbanyika alleged that he did not heed any advice from the Royal Council. However, these claims were dismissed by his royal supporters who countered by saying Dimbanyika did not have a royal council and he was advised by only two people, his *ndumi* (younger brother assistant-ruler), Toni Mphephu, and *khadzi* [ruler's sister], Mavis Mphephu. His opponents claimed that the absence of a royal council led to the chief taking wrong decisions. Dimbanyika Thohoyandou Ramabulana II did not live long. Three years after his installation he died tragically in a car accident at Tshipise in December 1997, leaving only a baby girl, Masindi, as heir to his throne.<sup>46</sup>

44 Luonde, “Vhavenda history”, <<https://luonde.co.za>>, accessed 28 August 2020. The source was used since it is one of those that Venda people are using today to give a narration of their history. It might not be detailed or academic, and cannot be cited uncritically, but it is a useful source to comprehend the present-day shaping of a popular history of the Venda people.

45 Luonde, “Vhavenda history”.

46 *Limpopo Mirror*, December 1997.

It did not take long for the Vhailafuri to crown a new chief after the death of Dimbanyika. His younger half-brother and his *ndumi*, Peter Toni Mphephu, was installed as the new chief of Vhailafuri on 28 November 1998 at a ceremony addressed by South Africa's first black head of state, Nelson Mandela.<sup>47</sup> One thing that was unusual about the crowning of Toni Mphephu was that the Rambulana had thrown tradition and customs out of the window by allowing a *ndumi* to be chief – and at that, a son of Matamela Mphephu, the second wife of PR Mphephu, but not a “cattle” (*dzekiso*) wife.<sup>48</sup> Dimbanyika was the son of Mphephu's first “cattle” wife Masindi Mphephu, whose name was taken by Masindi, the daughter of Dimbanyika. Mbulaheni Charles Mphephu, the son of the second “cattle” wife, Doris Mphephu, was surprisingly not considered for the throne by *Makhadzi* Mavis Mphephu. One other aspect of the crowning of Toni Mphephu that one must take cognisance of is the continuation by the Ramabulana to invite politicians to crown chiefs, which was not the case before the time of Chief Mbulaheni George Ramabulana.

## 6. THE ROLE OF COMMISSIONS IN RESOLVING THE VENDA KINGSHIP DISPUTES

Over the last 25 years, several commissions investigated the issues of kingship disputes in Venda. As already mentioned, the Mushasha Commission was appointed by the late Venda Military ruler, Brigadier General Gabriel Muthewana Ramushwana. Advocate Jackson Maela Mushasha was the Chair of the Commission. The other members were the University of Venda Deputy Vice-Chancellor and Professor of Anthropology, Victor Nkhumeleni Ralushai and Professor of Anthropology at the University of the Witwatersrand, Johannesburg, David Hammond-Tooke. Ramushwana's Venda government of National Unity also co-opted into the Commission Mr MP Nengovhela, a Magistrate in the District of Mutale. The commission convened for the first time on 25 June 1990 and its findings were published

47 South African Government Information, Extract from President Nelson Mandela's speech at Toni Peter Mphephu's coronation, South African Government Information Website, 28 November 1998.

48 *Dzekiso* refers to the cattle paid for the marriage of a *mutanuni* (royal wife) – hence sometimes also the notion “cattle” wife or “house of *dzekiso*” to denote the line of succession. As recorded by Stayt, the mother of the future king (*khosikhulu*) had to have been given to the reigning king by his father and *lobola* (dowry) must have been paid with *dzekiso* (cattle); the reigning king in turn was supposed to have been the eldest son of a royal wife given to his father by his grandfather. See, HA Stayt, *The Bavenda* (London: Frank Cass, 1968), p. 208.

before the end of that year.<sup>49</sup> The Mushasha Commission had to assist the Brigadier General with the problem that, according to the Constitution of the “Republic of Venda”, the traditional ruler of the VhaVenda was also the Head of State of the ‘Republic’.<sup>50</sup> This put the military junta in the most precarious predicament because it implied that they had to be accountable to the king. This was, of course, the last thing Ramushwana wanted.

There were enough irregularities in the rule of Headman Ravele (and his predecessor) to have justified the appointment of the Mushasha Commission. However, Brigadier Ramushwana needed the “symbolic ritual” of an official commission to mark the Venda kingship as an apartheid intervention and to enable him to loosen himself from the requirement in the Venda Republic’s legislation that the head of state had to subject himself to the king of the Venda people.<sup>51</sup> Any credibility that the investigations of the Mushasha Commission may have had was tarnished by the fact that its ruling provided the military ruler with the answer he had been hoping for. The findings of the Mushasha Commission also paved the way for the disputes among Venda royal families in the post-apartheid South Africa. The Commission stated that the Vhavenda had no such thing as a king, and that the Ramabulana should not be recognised as the most senior of the Venda royal houses. This was for the second time in less than a century that the Ramabulana was demoted to the same status of the other 27 Venda chiefs.

In 1996 the first post-apartheid premier of the newly established Limpopo (Northern) Province of South Africa, Advocate Ngwaugo Ramathlodi, appointed another commission, led by the (by then) retired former University of Venda Vice-Rector, Professor Victor Ralushai. The Commission’s mandate was to investigate, amongst other things, claims that certain traditional leaders were irregularly deposed or unduly recognised by the apartheid and homeland governments.<sup>52</sup> It is important to note that the Ralushai Commission’s findings were reported to be very controversial. It has been alleged that the Commission went beyond its mandate of investigating the kingship/rulership disputes. The details of the findings remain unrevealed to the general public

49 Government of South Africa, *Commission of Inquiry into Venda Vhuhozi Affairs I* (Pretoria: Government Printing Works, 1990).

50 Luonde, “Vhavenda history”.

51 M Buthelezi and D Skosana, “The salience of chiefs in post-apartheid South Africa. Reflections on the Nhlapo Commission”. In: JL Comaroff and J Comaroff (eds.), *The politics of custom. Chieftainship, capital and the state in contemporary South Africa* (Chicago: Chicago University Press, 2019), p. 115.

52 Luonde, “Vhavenda history”.

even today.<sup>53</sup> A thorough discussion of the commission's report justifies an article of its own. The findings can be summarised as follows:

The Ralushai Commission of Inquiry<sup>54</sup> declared the status of the Ramabulana, Tshivhase and Mphaphuli as the three senior houses of Venda traditional rulers. The Commission also acknowledged the fact that the Mphaphuli did not claim to be senior to the Ramabulana and Tshivhase, hence their claim for chiefship but not kingship. The Commission considered whether it would be feasible to have three kings for the Venda nation – in this case, the Ramabulana, Tshivhase and Davhana.<sup>55</sup> In the end the Commission realised that the option was neither feasible nor practical. There was another problem confronting the Commission: none of the senior chiefs who put up claims for kingship, wanted Toni Mphephu to be their king. Finally, the Ralushai Commission of Inquiry reiterated the fact that Ramabulana was the most senior house among the Venda traditional leaders and that the other two senior traditional houses, Tshivhase and Mphaphuli, ought to regain their previous status of chiefs.

There is a paradox in the finding of the Ralushai Commission of Inquiry. Both Professor Victor Ralushai and Advocate Jackson Mushasha were part of the Mushasha Commission into Venda rulership, which was responsible for the erosion of the Venda kingship. It is hard to explain why the findings of the Ralushai Commission could so strongly contradict the work both men had done with the Mushasha Commission. The lack of consistency in the findings of the Mushasha and Ralushai Commissions raises a lot of questions about the reliability and credibility of both Commissions on the Venda kingship discourse. It was perhaps never for the Ralushai Commission of Inquiry to decide who, historically, had the most convincing claim to kingship. The Commission had to determine how peace could best be observed amongst the Venda people within the Republic of South Africa.

53 It took the efforts of traditional leaders from Sekhukhune in Limpopo to have the final report made public. This happened after the traditional leaders had taken the then Minister of Provincial and Local Government, Dr Sydney Mufamadi, to court to force him to give them access to the final report of the Ralushai Commission of Inquiry. It is also important to emphasise that the final report of the Ralushai Commission remains elusive to scholars for research even though the courts declared that it had to be made public. Even Buthelezi and Skosana did not seem aware of this as they concluded the matter with the words, "but its report was never made public." See Buthelezi and Skosana, "The salience of chiefs", p. 115.

54 Government of South Africa, Ralushai Commission of Inquiry III (Pretoria: Government Printing Works, 1998), pp. 776-777.

55 Historically, Davhana was king after succeeding his father Ravele Ramabulana, before he was toppled by his younger brother Makhado in the late nineteenth century. It is surprising that the Ralushai Commission failed to accord Davhana the status of king of the Ramabulana as he was the eldest in that house. It might be because, since Davhana was a fugitive from Tshiruluni, he never had a chance to reclaim his kingship after he was dethroned by Makhado.

Both the Mushasha and Ralushai<sup>56</sup> Commissions, though controversial, helped to make the work of the Nhlapo Commission a lot easier. On 16 October 2004, the Minister for Provincial and Local Government, Sydney Mufamadi, announced that President Thabo Mbeki had appointed a Commission on Traditional Leadership Disputes and Claims in terms of section 23 of the Traditional Leadership and Governance Framework Act, No. 41 of 2003. The President appointed Professor Thandabantu Nhlapo to chair the Commission. To assist the Commission, the Ministry for Provincial and Local Government handed over all relevant research materials, including reports of various Commissions of Inquiry appointed in provinces such as the Eastern Cape, Free State, North West and Limpopo Province. Amongst the reports handed to the Nhlapo Commission was the Ralushai Commission of Inquiry's report.<sup>57</sup> The findings of the Nhlapo Commission are helpful to reach conclusions on the matter of chiefship and kingship disputes amongst the Venda people.

The final decision of the Nhlapo Commission was that the kingship of the Vhavenda as a whole was to be restored under the lineage of Ramabulana.<sup>58</sup> Soon after their ruling, the other Venda senior traditional leaders, Vhangona, Tshivhase and Mphaphuli challenged the recommendations of the Nhlapo Commission in the High Court of South Africa. The court challenge started immediately after the announcement of the Nhlapo Commission findings by President Jacob Zuma in July 2010. He stated that the Ramabulana house was the rightful custodian to the Venda throne.<sup>59</sup> The court challenge of the Vhangona, Tshivhase and Mphaphuli was dismissed by Judge Francis Legodi and they were ordered to pay the costs for the lawsuit. Judge Legodi gave his judgement on 13 September 2012 in the Northern Gauteng High Court in Pretoria. He ruled that Toni Mphephu was the rightful heir to the Venda kingship.<sup>60</sup> His ruling was merely affirming the findings of the Nhlapo Commission. The case remained in court until the house of Mphaphuli decided first to accept the authority of the Ramabulana and thereupon withdrew from the court case. The Tshivhase followed later when they decided to give up their court challenge on Friday, 15 August 2014.

56 The author of this article, Lufuno Mulaudzi, obtained access to the Ralushai Commission of Inquiry from COGTA (Department of Co-operative Governance and Traditional Affairs) for the purposes of his doctoral studies. For an in-depth discussion, see chapter 9 of the thesis: L Mulaudzi, *Historicising the politics of vuhosivuhulu: the Venda polity and state formation in South Africa, c.1800s-2020* (PhD, University of Pretoria, 2019), pp. 199-215.

57 Luonde, "Vhavenda history".

58 Government of South Africa, *Commission on traditional leadership disputes and claims, government gazette* (Pretoria: Government Printing Works, 2008), p. 664.

59 *Capricorn Voice*, 19 August 2014.

60 *ZoutNet*, 18 September 2012.

This did not end the Venda kingship disputes. The problems which were not within the scope of the work of the Nhlapo Commission, persisted. The Nhlapo Commission only decided on which house of Masingo the custodianship of the Venda kingship rested. However, it failed to address the issue of who amongst the Ramabulana should be king or queen. It is a fact that the Nhlapo Commission and President Zuma concluded that Toni Mphephu had to be the king of all the Vhavenda. This conclusion was merely based on the foundation that Toni Mphephu had been the claimant for the Ramabulana at the Commission. In its decision the Commission relied mostly on customary laws as presented before it, thereby ignoring historical precedents of female rulership, as well the principle of gender equality upheld by the 1996 Constitution of the Republic of South Africa. The Commission did not conduct research to find out if Toni Mphephu was the legitimate heir to the Venda throne. It is based on these gaps that the issue of the Venda kingship is still not settled. In the midst of the Vhangona, Tshivhase and Mphaphuli court cases, the Ramabulana were soon confronted with another court case not far from home.

## 7. VENDA KINGSHIP BATTLES CONTINUE WITHIN THE RAMABULANA HOUSE

In December 2012, the daughter of the late Chief Dimbanyika Tshimangadzo Mphephu, 24-year-old Masindi Clementine Mphephu and her uncle Mbulaheni Charles Mphephu, served court papers on Toni Peter Mphephu Ramabulana, the Co-operative Governance and Traditional Affairs Minister, the Limpopo Premier, President Jacob Zuma, and the National and Provincial Houses of Traditional Leaders. In the court papers, it was argued that the first applicant, Masindi Mphephu, was the only heir to the Venda kingship. The second applicant, Mbulaheni Charles Mphephu, argued that should Masindi not be considered for the kingship, partly due to gender discrimination, he would be the next in line for the position.<sup>61</sup>

The applicants wanted the court to set aside the decision to appoint Toni Mphephu as king of the Vhavenda. Secondly, the applicants wanted the court to declare the practice of only installing males as traditional leaders to be declared unconstitutional. Thirdly the applicants held the view that should the court not rule that Masindi is the sole paramount ruler of the Vhavenda (or alternatively Mbulaheni as second in line); the Commission on Traditional

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61 *Limpopo Mirror*, 21 December 2012.

Leadership Disputes and Claims had to be ordered by court to make a definite ruling on the matter.<sup>62</sup>

The applicants put a detailed genealogy of Patrick Ramaano Mphephu and the houses in terms of succession line in an affidavit to the court. It was stated in the affidavit that Mbulaheni Mphephu was the remaining eldest son of Patrick Ramaano Mphephu. It was also stated that Masindi Mphephu was the only child of the late Dimbanyika Mphephu who was chief of the Vhavenda and also the second eldest son of king Patrick Ramaano Mphephu. Dimbanyika succeeded his father Patrick Ramaano Mphephu because the first born of the cattle (*dzekiso*)<sup>63</sup> house died before his father's death.<sup>64</sup>

Both Mbulaheni Mphephu and Masindi Mphephu held the view that proper procedure was not followed when Toni Mphephu was appointed as king of the Vhavenda. They argued that because Toni Mphephu was appointed *ndumi* to Masindi's father, Dimbanyika Mphephu, he should not have been considered for the position of king. The two applicants further argued that Toni Mphephu did not come from the right cattle (*dzekiso*) house. The applicants wanted the court to rule on several legal issues, which included the High Court's jurisdiction in the matter, whether claims had been prescribed in terms of certain Acts and whether there was an investigation pending with the Commission on Traditional Leadership Disputes and Claims. The court was also asked to determine whether the President's decision to acknowledge Toni Mphephu should first be challenged and whether the legislation was in place to cause it to be a lawful decision.

It was the view of the *Limpopo Mirror* that the outcome of the case might depend on the court's interpretation of the rule of male primogeniture. The applicants argued that the Bill of Rights placed an obligation on the government to develop customary law in line with the Constitution. Mbulaheni Mphephu stated in the affidavit to the court that as a woman, the first applicant, Masindi Mphephu's claim to the kingship would be barred by the rule of male primogeniture. In that case the only claim to the title to be determined would be that of second applicant, Mbulaheni Mphephu.<sup>65</sup>

The case was heard for the first time at the High Court in Thohoyandou on 31 August 2015. The case was finally heard in December 2016 at the same Court. Judge President Ephraim Makgoba dismissed Masindi's case and stated that he would provide his reasons for the dismissal of the case in 2017.<sup>66</sup> Masindi wanted the court to set aside a decision made by President

62 *Limpopo Mirror*, 21 December 2012.

63 Referring to the cattle paid for the marriage of the royal wife.

64 *Limpopo Mirror*, 21 December 2012.

65 *Limpopo Mirror*, 31 August 2015.

66 *Limpopo Mirror*, 16 December 2016.

Jacob Zuma in 2012 recognising Toni Mphephu as king. She declared that she was the only heir to the kingship of the Venda people and that she was merely fighting for what was rightfully hers. In contrast, the Ramabulana royal family argued that succession to the rulership position was not automatic. They further argued that Masindi was born three years before her father was installed as ruler, which made her ineligible for the throne. They also claimed that no *lobola* or dowry was paid for Masindi's mother, which also made her ineligible, and, one last reason which was predictable, the royal house of the Ramabulana claimed that in Venda tradition a woman does not reign.<sup>67</sup> Masindi claimed that soon after she had begun asking to be made queen in 2012, she and her mother Fulufhelo Mphephu had to leave the royal court, and her mother died a year later.<sup>68</sup>

On Thursday, 25 May 2017, Judge President Makgoba dismissed the application to appeal by Masindi Mphephu against the ruling he made in December 2016, claiming that the appeal had no reasonable prospect of success. He also believed no court would come to another conclusion. Nevertheless, Masindi's lawyer, Mr Johan Hamman, did apply to the Supreme Court of Appeal in Bloemfontein, reckoning that a full bench of judges might indeed arrive at a different conclusion.<sup>69</sup> Meanwhile, the court interdict that Masindi Mphephu had obtained to stall Toni Peter Mphephu's crowning, was still standing. Masindi had indicated to News24 that she was ready to take the case to the highest court in the land, the Constitutional Court, if she received negative results in Bloemfontein.<sup>70</sup>

The tension in the Ramabulana royal house clearly shows that customs and traditions were thrown out of the equation when Toni was installed as king. The house of Ramabulana did not take cognisance of the country's constitution as a challenge to their traditional beliefs. It is for this reason that in their defence to the challenge posed by Masindi and Mbulaheni Mphephu, they argued that succession was not automatic and that a woman does not reign the Venda nation. The latter cannot be factual, as has been illustrated with the case of Tinyiko Shilubana. Also, as already mentioned, Makhadzi Phophi Mphephu was regent for almost seven years before Masindi's father, Dimbanyika Mphephu ascend to the throne. She is currently ruler in Dzanani, and this shows that a woman can ascend to the highest traditional authority in Venda.

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67 *Sunday Times*, 5 June 2016.

68 *Sunday Times*, 5 June 2016.

69 *Limpopo Mirror*, 3 June 2017.

70 *News24*, "Venda princess vows to defeat incumbent king in court", <<https://www.news24.com/>>, accessed 13 August 2017.

One is compelled to conclude that Judge President Makgoba's handling of Masindi Mphephu's case seemed to be politically motivated. This view casts doubt on the independence of the judiciary in South Africa. Masindi Mphephu told the *Sunday Times* that (now former) President Zuma traded on his patronage of a disputed claimant to the Venda throne to secure a loan of R8.5 million from the Venda Building Society (VBS) Mutual Bank which he used to pay back the money for upgrades at his Nkandla homestead.<sup>71</sup>

Zuma's mortgage agreement with the bank was among the court papers filed with the Supreme Court of Appeal by Masindi Mphephu. She alleged that Zuma tried to hold Toni Mphephu's coronation three days after the loan was granted. She also highlighted that Toni Mphephu was a shareholder in Dymbeu Investments, a company that, together with the Public Investment Corporation, is the majority shareholder in VBS bank.<sup>72</sup> In light of this revelation by Masindi, it is suspicious that Zuma wanted to hold the coronation of Toni Mphephu only three days after his loan had been granted. This shows a great conflict of interest between the President and Toni Mphephu. One can argue that the announcement by Zuma to declare Toni Peter Mphephu Ramabulana as king of the Venda polity was a political and financially motivated decision, and it had very little to do with Venda traditions and customs.

## 8. THE JUDGEMENT BY THE SUPREME COURT OF APPEAL (SCA) OF SOUTH AFRICA

On 12 April 2019 the Supreme Court of Appeal of South Africa gave a judgement in Bloemfontein, South Africa on Case (948/17) of Mphephu v Mphephu-Ramabulana & others. The judgement proved wrong the assertion by Judge President Ephraim Makgoba made on 25 May 2017, when he was dismissing Masindi Mphephu's application of appeal against the ruling he had made in December 2016. After going through the presentations of the appellant, the SCA decided to refer the matter back to the Thohoyandou High Court in Venda. The order was given on the understanding that another judge should do further adjudication on the merits of the case. In so doing, the SCA set aside Judge President Makgoba's ruling which dismissed Masindi Mphephu's case.

The SCA declared the decision of 14 August 2010 by the Ramabulana Royal Council, identifying Toni Mphephu Ramabulana as suitable heir to the Venda throne, as unlawful, unconstitutional and invalid. It was

71 *Sunday Times*, 11 February 2018.

72 *Sunday Times*, 11 February 2018.

therefore reviewed and set aside. The SCA further dealt with the decision of former President of the Republic of South Africa, Mr Jacob Zuma, dated 14 September 2012,<sup>73</sup> to recognise Toni Mphephu-Ramabulana as king of Venda. It was declared unlawful, unconstitutional, and invalid. It was reviewed and set aside.

The SCA further concluded that the decision of the Ramabulana Royal Council, and that of former President Mr Jacob Zuma, to recognise Toni Mphephu-Ramabulana as king of the Venda polity, were based on criteria that promoted gender discrimination. The decisions were reviewed and set aside on the basis that the discrimination impeded compliance with the provisions of section 2A(4)(c) of the Traditional Leadership and Governance Framework Amendment Act 23 of 2009, to progressively advance gender representation in the succession to the position of king or queen of the Vhavenda. The SCA finally instructed the President of South Africa, Mr Cyril Matamela Ramaphosa and the Limpopo Province Premier, Mr Stanley Mathabatha, to refer the following issues of customary laws and custom to the National House of Traditional Leaders and the Limpopo House of Traditional Leaders respectively for opinion and advice to be submitted to the High Court in Thohoyandou.

The SCA wanted the National House of Traditional Leaders and Limpopo House of Traditional Leaders to advise on whether a child born before the parent is recognised as a traditional leader qualifies to be the successor of the parent to that position of traditional leadership. The last important thing the two Houses of Traditional leaders had to advise President Ramaphosa and Limpopo Premier Mathabatha on was whether, in Venda custom, the *ndumi* qualifies to be identified and recognised as a successor to a position of traditional leadership. In the end the SCA declared that the withdrawal of the certificate of recognition of Toni Mphephu-Ramabulana as “*khosikhulu*” of Venda would remain in place pending the final determination of the matter.<sup>74</sup>

The order of the SCA dealt with the merit of the case, but it stopped short of determining whether Masindi Mphephu or Toni Mphephu is the rightful heir. The SCA was right to refer the matter back to the Thohoyandou High Court. The decision by the SCA was also another opportunity for the Mphephu-Ramabulana to sort out their internal problems. Whether the SCA’s instruction to the President of the Republic, Mr Ramaphosa, and the Limpopo Premier, Mr Mathabatha, will make a practical contribution to a solution for the Masindi

73 Published in Traditional Leadership and Governance Framework Act 41 of 2003, it reads as follows: “Recognition of Mr Toni Peter Mphephu (Ramabulana) as King of Vhavenda Community GNR 766, GG, 53705, 21 September 2012”.

74 The Supreme Court of Appeal of South Africa Judgement, Case No: 948/17.

Mphephu / Toni Mphephu duel, is doubtful. The National House of Traditional Leaders and the Limpopo House of Traditional Leaders cannot be expected to advise on the issues of whether a child born before a parent becomes a ruler can be a successor and whether a *ndumi* can be a successor to the throne, more especially in the Venda case. These two traditional leaders' authorities were not well placed to give sound advice, because leaders from other communities in the Limpopo Province or elsewhere in South Africa are not able to preside over the customs and traditions of the Venda community. It is against this background that one is compelled to agree that only the Mphephu-Ramabulana can resolve their problems internally without involving the courts.

It appears that soon after the SCA judgement, the royal house of Mphephu-Ramabulana had a meeting to bring peace within their ranks. The Ramabulana Royal Council spokesperson Mr Ntsieni Ramabulana issued a media statement in which the family stated it would not be dragging the matter of kingship to the courts anymore as per direction of the SCA. The Ramabulana further confirmed that they had accepted the SCA order, which set aside the decision to make Toni Mphephu-Ramabulana the Venda king.<sup>75</sup> And yet, the end is not near for the disputes around the rulership of the Ramabulana. One could have trusted the veracity of the Ramabulana Royal Council media statement if it had been issued jointly by both warring factions. In contrast, the Masindi Mphephu faction was not willing to accept anything other than her ascending to the throne left vacant by her father, Dimbanyika Mphephu.

The issue of who should ascend to the position of Venda king has since been confirmed by the Limpopo House of Traditional Leaders and National House of Traditional Leaders who pronounced late in 2019 that Masindi Mphephu should be queen of Vhavenda, and not her uncle Toni Mphephu.<sup>76</sup> However, the resolution taken by the two houses of traditional leaders was met with some resistance from some chiefs of Masingo, like Chief Nthumeni Mbangiseni Masia and others who threatened to withdraw their membership from both the Limpopo House of Traditional Leaders and the National House of Traditional Leaders. As we conclude this article, the matter is still to be heard at the High Court in Thohoyandou by another judge.

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75 *Sowetan*, 15 May 2019.

76 *City Press* 9 November 2019.

## 9. CONCLUSION

On 4 July 2020 Toni Mphephu's legal team announced that they will be turning to the Constitutional Court to set aside the SCA's judgement.<sup>77</sup> This failure of the Ramabulana to reach out to Masindi Mphephu could spell doom to the whole kingship of the Venda polity. With Masindi Mphephu being the first queen of the Venda polity, the history of patriarchal beliefs amongst the Ramabulana will be thoroughly rewritten, and so could the history of the Rababulana as the senior royal house amongst the Vhavhenda. Should Masindi Mphephu decide to marry someone outside the royal house of the Rambulana, the Ramabulana are likely to lose the kingship to another royal house. If the kingship of Venda had primarily served a symbolic role in a democratic dispensation, a female ruler reshuffling the hierarchies between the Venda royal houses could have been interpreted as a gesture of reconciliation affirming the vibrancy and adaptability of tradition. However, for as long as traditional leadership positions remain a gateway for the people of that region to the resources of the state, and for as long as the ruling party perceives traditional rulers as lobbyists for voters' support, the stakes remain too high to relegate tradition and culture to the level of symbolic heritage. While Masindi Mphephu could harness the liberal South African constitution in her favour towards the recognition of a woman's right to traditional rulership, it remains to be seen how and whether she will be able or willing to translate this constitutional right into practical benefits for ordinary Venda woman, and men.

## 10. ACKNOWLEDGEMENTS

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<sup>77</sup> *Limpopo Mirror*, 4 July 2020.