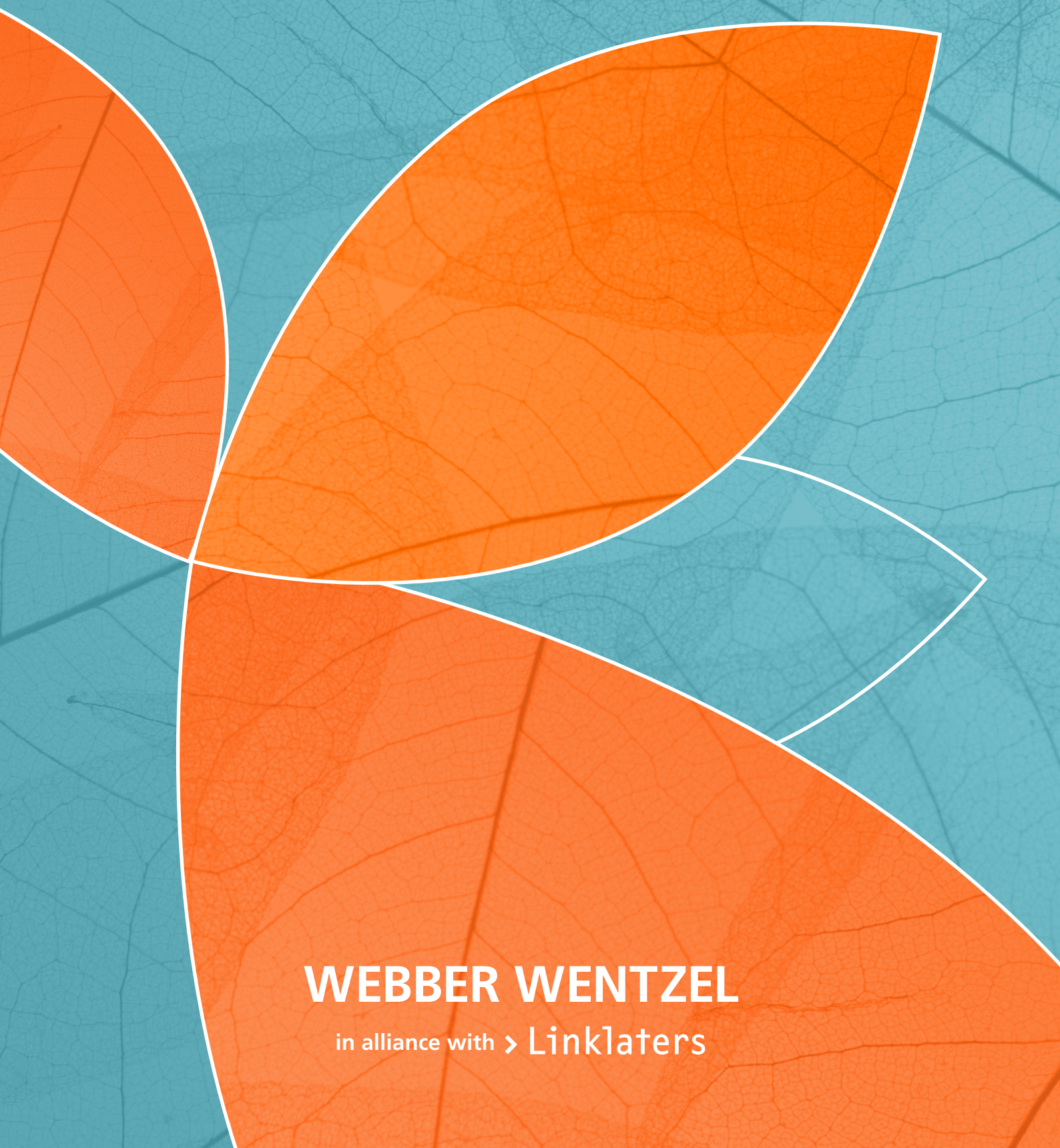
PRO BONO ANNUAL REPORT

FY2023



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CHAIR'S FOREWORD | CHRISTO ELS

The South African legal system is sophisticated. It enables foreign investment, and commercial and financial activities which have a direct positive impact on South Africa's economy. As a large corporate law firm practising in South Africa, we facilitate projects and deals, thereby contributing to the economy of our country. Similarly, using the law to help the poor, the marginalised and the disadvantaged contributes significantly to the general well-being of the nation. For this reason, our full-time Pro Bono team as well as our fee-earning attorneys render pro bono legal services every working day of the year.

Our pro bono legal work continues to be a critical aspect of our firm's purpose, which is to have a transformative and sustainable impact on our society. I am proud to report that, in our most recent financial year, our firm spent 15,000 hours on pro bono-related matters, valued at approximately ZAR 48, 7 million.

On behalf of the Webber Wentzel leadership, I wish to express a special word of thanks to Moray Hathorn, the founder of the firm's pro bono team, who retired in 2022. We will miss your characteristic determination, Moray. On the next page you will read more about Moray's advocacy for pro bono work.

CHRISTO ELS
CHAIR

THE YEAR IN REVIEW | ODETTE GELDENHUYS

Manifested in our pro bono legal work is the firm's commitment to upholding the United Nations' Sustainable Development Goals. The specific goals reflected in the matters highlighted in this Annual Report are **reduced inequality, sustainable communities** and **access to justice** for all.

The impact that a law firm can have on its local community through pro bono work is truly immeasurable. Through our pro bono work we demonstrate that we are not only professionally capable of assessing and advising our clients on their ESG affairs, but that we also mirror their efforts by promoting our own social ideals through our pro bono offering.

Apartheid formally ended through a series of bilateral and multi-party negotiations between 1990 and 1993, with South Africa's first democratic elections taking place in 1994. This triumph for justice could not have been achieved without the sacrifice and unwavering commitment of countless activists and political exiles – some of whom gave their lives for the pursuit of freedom. The need for justice in a post-apartheid world requires that we must set right some of the injustices of the past. In this Annual Report we highlight three matters.

Finally, our work is guided by our obligation to play a role in promoting the transformative goals of the Constitution of the Republic of South Africa. The other matters highlighted in the Annual Report illustrate such efforts.

Our pro bono work is supported by many advocates who provide their services on a pro bono basis as well.

ODETTE GELDENHUYS
PRO BONO HEAD

FAREWELL TO MORAY HATHORN, AN ADVOCATE OF EQUALITY

"Webber Wentzel's effective and strong Pro Bono unit has made it a leader in public interest law practice, whilst meaningfully giving opportunities to young lawyers to pursue this practice area. The firm can be proud that both Equal Education Law Centre and Section 27 are helmed by alumni of the firm, and it can take pride in the role of its alumni in the Equality Collective in the Eastern Cape. For me to have been part of this effort has been a fulfilment of a near life-long commitment to public interest law practice. For that, I am very grateful."

Many years after Moray started his career at Webber Wentzel as a newly-admitted attorney, he returned to establish the first full-time Pro Bono unit at a South African firm in 2003.

Moray has focused particularly on public interest litigation. He has worked to ensure that disadvantaged South Africans are able to pursue their rights to land reform and housing, and to promote individual human rights on issues like gender-based violence and discrimination. He has been involved in litigation in the Magistrates' Courts, the Labour Court and Land Claims Court, the High Court and the Constitutional Court. He has handled negotiations with government at municipal, provincial and central level as well as at ministerial level.

A quick summary of a few of the prominent matters that Moray has acted in demonstrates his depth and breadth of experience:

- He represented the family of the late Ahmed Timol in the re-opened inquest into the cause of his death during solitary confinement under the apartheid security laws. The family obtained a judgment that overturned the original inquest verdict of suicide and ruled that Ahmed Timol was pushed to his death.
- He represented the Khomani San to ensure they received an appropriate level of state support for the administration of land restored to them in terms of the Restitution of Land Rights Act, which includes land within the Kgalagadi Transfrontier National Park.
- He worked with the Southern Africa Litigation Centre in an urgent application to compel the South African Government to arrest and render the former President of Sudan, Al Bashir, to the International Criminal Court.
- He assisted the occupiers of the Harry Gwala informal settlement to realise their rights under national housing policy to interim services and upgrading.
- He represented the Makuleke community in their successful claim to the Pafuri Region of the Kruger National Park in terms of the Restitution of Land Rights Act.

Moray has been recognised for his work through various awards. He was named Attorney of the Year in 2018 by African Legal Awards, recognising his tireless efforts to pursue justice for those who lack a voice. He is named in leading legal publications as an expert in the fields of dispute resolution, administrative and public law. He has contributed to books and publications on land resettlement issues.

Over the years Moray has served on the boards of various NGOs, including the Treatment Action Campaign and the Human Rights Institute of South Africa, and has been a member of the International Bar Association's Pro Bono Committee. He is also a founder director of ProBono.Org, a public interest law clearing house in South Africa.

Moray's most enduring legacy for Webber Wentzel is the Pro Bono team that fiercely defends the most vulnerable members of our society and steadfastly applies the Constitution.

01 CLOSURE FOR FAMILIES

During apartheid, many activists were detained by the Security Branch, a division within the police that had the protection of law to detain, torture, and commit other heinous crimes. Sadly, some activists died at the hands of the Security Branch, who provided no reason, or fabricated excuses, for their deaths. Evidence was lost, or simply not provided to the judiciary. Today there are still families who have not received the explanations for their loved ones' deaths for which they begged desperately.

We have worked tirelessly to re-open some of the inquests into the deaths of political activists who died during apartheid. Significantly, these re-opened inquests provide an opportunity for the families to gain closure.

The Webber Wentzel Pro Bono team proudly assisted the family of Imam Abdullah Haron in the re-opened inquest into his death in police custody in 1969. Haron, an anti-apartheid activist and religious leader, was detained by the Security Branch on 28 May 1969 and held in solitary confinement under section 6 of the then Terrorism Act.

On 27 September 1969, his family was informed that he was dead. Because the Imam had died while in police custody, an inquest had to be held. When reading the record of the 1970 inquest now, the bias of both the state prosecutor and apartheid magistrate is blatantly obvious. It was therefore no surprise that despite clear trauma to Imam Haron's body, which included a broken rib and 27 visible bruises in different places, the inquest magistrate found that no one was to blame for his death.

In November 2022, the re-opened inquest heard evidence from family members, former political detainees, two pathologists and an aeronautical engineer. This evidence elicited an array of emotions as it revealed answers to the questions that had lingered for decades. Every day, spiritual leaders and community leaders attended the re-opened inquest, supporting and praying with the family and for the larger victim community.

Judgment is currently awaited. It is hoped that the judgment will reflect what the inquest judge said in his opening remarks, when quoting a Muslim community member:

"And this is what we ask in setting out the wrongs that were done to Imam Haron and his family. Things must be put right. No excess, no deceit, no hiding. Just put truth and justice back into society. This very simple act allows for healing, balance, and regrowth. This is at the heart of all our sincere calls for justice, for environmental justice and a just world. Acknowledge the wrong, understand it and put the world to right. There can be no justice without truth; we must return to truth."

Counsel: Advocates Howard Varney and Naefa Kahn

02 THE LONG JOURNEY FOR JUSTICE FOR NOKUTHULA SIMELANE HAS BEEN POSTPONED AGAIN

The firm has been involved in numerous complex litigious matters relating to human rights and social justice. One case involves an apartheid era crime, in which we are helping to seek justice for the family of anti-apartheid activist, Nokuthula Simelane, who disappeared without a trace 40 years ago after being abducted and tortured by former security policemen. When she went missing, Simelane was a 23-year-old university graduate and acted as a courier for Umkhonto we Sizwe, the armed wing of the African National Congress. While the Truth and Reconciliation Commission found that she was kidnapped, tortured and had disappeared, the location of her remains has not been revealed and her murderers have not been held to account.

In 2015, we were instructed by Simelane's sister to act in an application before the Gauteng Division of the High Court to compel the National Director of Public Prosecutions to hold a formal inquest into Nokuthula's disappearance.

In 2016, a prosecution was brought against Willem Coetzee, Anton Pretorius, Frederick Mong, and Msebenzi Radebe, formerly of the Soweto Special Branch police, for their alleged roles in her murder. Since the indictment was issued, Mong and Radebe have died. Willem Coetzee appears to be suffering from dementia and he might not be fit to stand trial. To date the trial has not begun.

We fear that, despite our best efforts, this may be a case of "justice delayed is justice denied".

Counsel: Max du Plessis SC and Advocates Howard Varney, Thai Scott, Kerry Williams, Chris Gevers and Celeste Moodley

03 THE NEED FOR JUSTICE IN A POST-APARTHEID WORLD

Thlomedi Ephraim Mfalapitsa and Christiaan Siebert Rorich are on trial for murdering Eustice 'Bimbo' Madikela, Itumeleng Peter Matabane (also known as Ntshingo) and Fanyana Nhlapo, and seriously injuring Zandisile Musi. The four were anti-apartheid student activists and members of the Congress of South African Students, collectively known as the COSAS 4. In 1982 the four men had been lured by "askaris" (informers) to an old pump house which had been rigged with explosives by Security Branch members. Their families were told that they had blown themselves up. The Security Branch covered up the murders and the actual cause of the deaths remained concealed until May 1999 when some of the perpetrators applied for amnesty before the Truth and Reconciliation Commission. All amnesty applicants were denied amnesty and the case was referred to the NPA for further investigation and prosecution. Only in August 2021 were Mfalapitsa and Rorich charged with kidnapping and murder.

Despite clear case law authority, the South African Police Services refused to pay the reasonable legal fees for Rorich, causing several delays to the trial. We represented the COSAS 4 families in an application which resulted in a court order that SAPS must pay Rorich's reasonable legal costs. Despite this judgment, the SAPS failed to pay the legal costs. Instead, the Minister of Police filed an application for leave to appeal, and we assisted the late Madikela's family to intervene. Ultimately, the Minister's application was unsuccessful, and the SAPS must now act so that justice is not delayed any further.

Counsel: Advocates Howard Varney, Thai Scott, Chris Gevers and Tebogo Kgole

04 PRACTICING AT THE INTERSECTION OF THE CONSTITUTION, CUSTOMARY LAW, COMMON LAW AND STATUTORY LAW

In the landmark case of Maledu and Others v Itereleng Bakgatla Minerals Resources (Pty) Limited and Another, the Lesetlheng Community was recognised as the informal land rights holders of a platinum-rich farm in the North West Province, in terms of the Interim Protection of Informal Rights Act. The farm was bought in 1918 by 13 dikgoro ("clans"), although it was not registered in their names. In Maledu, the court ruled that the Community was entitled to collective protection, even against a holder of mining rights. The court directed Pilanesberg Platinum Mine, the mineral rights holder, to consult with the Lesetlheng Community about appropriate compensation as envisaged under section 54 of the Mineral and Petroleum Resources Development Act.

When a dispute arose over how the proceeds of compensation should be divided, a multi-party arbitration, with former Deputy Chief Justice Moseneke as the arbitrator, was agreed. The core dispute was whether the compensation, which was contractually earmarked for the descendants of the 13 dikgoro, should be held in trust and administered in their collective favour or whether each of the dikgoro should receive a pro rata portion of the compensation amount. This dispute, in turn, hinged on the determination of whether the farm was communally-owned under customary law or under common law ownership.

Justice Moseneke characterised the dispute as one "located at the intersection of our Constitution, customary law, common law and statutory law".

He found that the foundation of the obligation of Pilanesberg Platinum Mine to pay compensation to the Lesetlheng Community was its communal title as set out in Maledu, where the court held that the Lesetlheng Community's right to land was derived from shared rules determining access to land held in common by such a group.

The arbitration award is groundbreaking. It makes it clear that Pilanesberg Platinum Mine has pressing contractual obligations to pay compensation to the Lesetlheng Community, that compensation payable under section 54 of the Mineral and Petroleum Resources Development Act (MPRDA) comes with attendant reciprocal duties, and that compensation is refundable by the beneficiaries if the mineral rights holder is not guaranteed unhindered access for the duration of the mining right.

Counsel: Advocates Ori Ben-Zeev and Yanela Ntloko

05 EQUALITY FOR MUSLIM MARRIAGES

In 2022, the Constitutional Court confirmed an order declaring the Marriage Act and the Divorce Act inconsistent with the Constitution, in that they failed to recognise marriages solemnised in accordance with Sharia law as valid in South Africa. Webber Wentzel represented the Muslim Assembly Cape as an amicus party in both the High Court and Constitutional Court proceedings.

The Muslim Assembly Cape is a community-based organisation for Muslims and the wider community in Cape Town. Its purpose is to consolidate and strengthen families through education, undertake community development for disadvantaged people, implement anti-poverty initiatives and provide guidance in all spheres of social, religious, educational and cultural life.

The Muslim Assembly Cape submitted that Muslim marriages should be recognised in their own right. It presented evidence that Muslim women frequently lack the requisite bargaining power to assert their rights and negotiate the terms of their marriages at inception. Taking into account all the submissions made before it, the Constitutional Court found that the Marriage Act and Divorce Act unfairly discriminated against spouses in Muslim marriages and children born of such marriages, without any justification. These Acts also infringed the right to dignity, access to court and the principle of the best interests of the child. Accordingly, the two impugned Acts were found to be inconsistent with sections 9, 10, 28 and 34 of the Constitution.

The Muslim Assembly Cape was instrumental in highlighting the harm and prejudice caused by the non-recognition of Muslim marriages, particularly to women and children. This evidence was used to underscore the necessity for relief with retrospective effect. Although the Court did not accede to the full extent of unlimited retrospectivity, it held that the order should apply to all marriages concluded under Sharia law that existed at 15 December 2014, the date that the application was instituted in the High Court.

Counsel: Advocate Shafia Mahomed

06 REINSTATING THE IN SITU UPGRADING PROCESS IN THE PROTEA SOUTH INFORMAL SETTLEMENT

Over a period of eight years, and with no fewer than seven court orders, the community of the Protea South informal settlement has sought to enforce and guide the mandatory processes for the development of in situ housing solutions in terms of the National Housing Code.

The most recent order was handed down by Justice Francis in the Johannesburg High Court in 2022, in his capacity as the case management judge, appointed by the Judge President. The 2022 court order provides a clear road map for the City of Johannesburg for the finalisation of the design investigation, footprint and preparation phases of the Protea South informal settlement layout plan by 31 December 2023.

Should all go according to plan, 12,000 units of low-income housing will be developed, providing housing for all those living in the Protea South informal settlement, and more.

Counsel: Advocate Roshnee Mansingh

07 PROBING DISCRIMINATORY PRACTICES BY MEDICAL AIDS

In this ongoing matter, the issue is the right of access to health care services. The Educational Psychology Association of South Africa is the largest organisation of educational psychologists and is recognised by the HPCSA Professional Board of Psychology as the major representative association of educational psychologists in South Africa.

Based on the experience of its members, we lodged a complaint on their behalf with the Council for Medical Schemes that several medical schemes discriminate against educational psychologists by rejecting claims to cover their services. The exclusionary conduct manifests itself in three ways:

- certain scheme rules categorically exclude claims submitted for services rendered by educational psychologists; or
- benefit options exclude services rendered by educational psychologists; or
- medical schemes incorrectly interpret the scope of practice applicable to educational psychologists as a means to exclude claims submitted for services rendered by educational psychologists.

The CMS rejected EPASSA's complaint and incorrectly held the view that EPASSA did not provide evidence of discrimination against medical scheme beneficiaries, however, an internal appeal to the CMS ruled in favour of EPASSA and the registrar was ordered to conduct an inquiry in terms of the applicable legislation against seven listed medical schemes.

Counsel: Kameshni Pillay SC and Advocate Yanela Ntloko

08 THE ROLE OF CUSTOMARY AFRICAN LAW IN STABLE COMMUNITIES

After four High Court hearings, two Constitutional Court hearings and three Supreme Court of Appeal hearings since 2011, in late 2022 the Supreme Court of Appeal ordered that the late King of Pondoland, Kumkani Mpondombini Sigcau, was the rightful king of the amaMpondo.

Prior to the SCA order, the Commission on Traditional Leadership Disputes and Claims had concluded that Mpondombini Sigcau was not the king of the amaMpondo; and President Ramaphosa recognised Zanozuko Sigcau as their king.

In its most recent order, the Supreme Court of Appeal noted that the late Mpondombini Sigcau's ascendency to the leadership of the amaMpondo in 1979 was not confined to kinship but also based on a choice made by the community in an election. In addition, Mpondombini Sigcau was supported by 25 of 28 senior traditional leaders.

Among other findings, the SCA found that the Commission erred in its finding in 2008 that Zanozuko Sigcau was the rightful successor to the throne. It had failed to take into account the preference of amaMpondo for Mpondombini Sigcau over the father of Zanozuko, the question of the suitability for office and popular suitability aspects of those who contested the throne. Sadly, Mpondombini Sigcau died before the completion of the litigation. The vacancy that now exists in the queenship/kingship of the amaMpondo must be filled in accordance with the Traditional and Khoi-San Leadership Act.

The judgment has been described as "an important foundation for our African customary law".

Counsel: Geoff Budlender SC and Advocates Michael Bishop and Michael Mbikiwa

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THE CORE TEAM CONSISTED OF THE FOLLOWING:

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Moray Hathorn, Consultant
Retired 20 November 2022

Asmita Thakor, Partner
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Ayanda Ngubo, Partner
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IN ADDITION, A NUMBER OF ASSOCIATES WORKED IN THE TEAM FOR VARIOUS PERIODS OF TIME:

Nkosinathi Thema

Samantha Robb

Jacky van Schalkwyk

Lucia Saleolo

Bongiwe Sindane

THE FOLLOWING CANDIDATE ATTORNEYS SPENT ONE ROTATION WITH THE CORE TEAM:

Patrick Heron

Emily Gammon

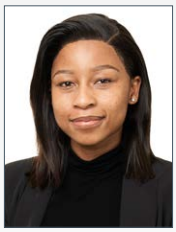
Kiara Ghirao

Louise Levick

Shazelle Jeevaruthnam

Emily Elphick

Eugene Chaphi



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About Webber Wentzel

We are the leading full-service law firm on the African continent, providing clients with seamless, tailored and commercially-minded business solutions within record times. Our alliance with Linklaters and our relationships with outstanding law firms across Africa ensures our clients have the best expertise wherever they do business.

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