

## A MATTER OF JUSTICE FOR ALL.

By John GI Clarke.

President Zuma has accepted the determination of the Commission for Traditional Leadership Claims and Disputes that the King of amaMpondo, Mpondombini Justice Sigcau is not the rightful heir to his uncle King Mandlonke, who died in 1937 without producing an heir.

Most urbanized South Africans probably regard the institution of Traditional Leadership as a costly anachronism that does not belong in a modern constitutional democracy. Yet in the case of the Kingship of the AmaMpondo if government installs the pretender to the throne, (a third generation descendent of Mandlonke's younger brother, Nelson), President Zuma may find himself remembered by history as having presided over what colonial and apartheid forces never quite managed to achieve: the emasculation of the amaMpondo as an indigenous people. Historically the territory did not have much to offer by way of mineral wealth. Now it does: titanium and other valuable minerals have been found in vast deposits along the Pondoland Wild Coast.

A more exquisite irony is that, while deeply embedded in the customs and traditions of amaPondo indigenous culture, the incumbent Royal Family has shown itself far more sympathetic to the constitutional rights of their subjects than that shown by a succession of cabinet ministers – all of whom have sworn an oath to uphold the Constitution- who have visited Pondoland on various occasions over the past six years to try and persuade the amaMpondo that the Xolobeni Mining scheme and the associated N2 Wild Coast toll road is what they need to progress into the 21<sup>st</sup> Century. They have been singularly unsuccessful thanks in no small measure because of the Royal House's stout support for the communal land rights of their subjects.

The nagging question those of us who cherish our constitutional democracy must ponder is simply this: has the Commission's determination to overturn a 72 year old decision made by the Royal House of AmaMpondo which installed Mpondombini's father Botha Sigcau as King, have anything at all to do with the fact that the incumbent King has proved a troublesome obstacle to the ambitions of Government to award mining rights for the vast titanium resources of the Wild Coast to an Australian mining company and their corrupt BEE partner Xolco?

Since the whole matter turns on matters of historical and geographical (or more precisely geological) fact, some background with respect to both is instructive.

Pondoland was the last African territory of South Africa to be annexed by the British Colonial government. The indigenous people, the amaMpondo, whose identity is deeply vested in the beautiful landscape, have withstood colonial and apartheid manipulations with legendary courage. After notorious ivory trader Henry Francis Fynn shot the last elephant in the early nineteenth century, foreign interests had little use for Pondoland other than a source of cheap labour for the gold mines of the Witwatersrand. The only way Cape Prime Minister Cecil Rhodes could get them to avail themselves was to compel them to enter the cash economy by imposing taxation. This necessitated a surrender of their sovereignty. This was only achieved in 1894 after Rhodes gave King Sigcau and his assembled councilors a demonstration of what fate awaited them if they refused. On his order a soldier flattened a nearby maize crop with a short burst of machine gun fire. Reluctantly the King signed the treaty, but continued to annoy Rhodes by his uncooperative attitude. When the people still refused to pay hut taxes Rhodes had King Sigcau arbitrarily arrested and imprisoned on Robben Island without trial. Fortunately the intervention of the chief justice de Villiers compelled his release. "He may be a native, but he is still a British subject, and must be accorded the same rights that any other British subject enjoys" he said.

Some forty years later in May 1936 Prime Minister Jan Smuts wrote “The Pondos are a native tribe living between the provinces of the Cape and Natal, and are generally considered somewhat backward in comparison with other native tribes in the Union of South Africa.... They have retained their ancient tribal domains, and have not an acute land question such as obtains among other native tribes”.

In 1960 the apartheid regime changed that. The “land question” came into sharp focus when they attempted to rationalize land use in terms of the Tomlinson commission recommendations and the imposition of the Bantu Authorities Act. Despite having co-opted the King and many chiefs they found themselves facing rebellion from unarmed Pondo tribesmen. Eleven people were killed by police. Over 4700 were arrested and 22 people tried and executed.

As South Africa moved toward democracy in the late 1980’s heavy minerals deposits along the East Coast became increasingly valuable. When the Government of President Nelson Mandela refused mining rights to Richards Bay Minerals to mine the dunes of St Lucia on the KZN coast, attention turned to alternatives deposits. Prospectors found that the entire stretch of coastline known as the Pondoland Wild Coast had vast reserves. It was no longer only the cheap labour of the amaMpondo but the vast titanium deposits buried in their ancestral lands that the mining industry wanted.

The Pondoland “land question” was about to become a whole lot more acute.

But the rugged geography of Pondoland and unique history of the amaMpondo conspired to make the minerals unobtainable: unless engineers could flatten the topography and politicians engineer the sentiments of local residents to embrace mining (a considerable challenge given that a century of exploitation as poorly paid migrant labourers had left the amaMpondo with a decidedly jaundiced view of the supposed benefits of mining).

The solution proposed to the problem of geography was to offer a private sector consortium a concession to construct a new 100 km road running conveniently close to the proposed mining site, with impressive large span bridges constructed over the Mzamba, Mntentu and Msikaba gorges. Hugely expensive, but doable if the consortium were given rights to toll the National road from Durban to East London, so that commuters between Durban and the South Coast could cross subsidize the cost of the new road through Pondoland.

Solving the problems of history was more challenging. More so because King Mpondombini Justice Sigcau insisted that the development schemes could not proceed without a thorough and transparent consultation process, commencing from the grassroots. Only if the amaMpondo were able to see manifest benefit to them would the Royal House support them notwithstanding whatever benefit would accrue to the National Economy.

This was made clear when in July 2004 Minister Martinus van Schalkwyk led a delegation of three cabinet colleagues and the Premier of the Eastern Cape to consult with the Royal House. Afterwards the media were told that government acknowledged that consultation had been poorly done, and promises were made that this would be promptly remedied. Lulu Xingwana then deputy minister of Minerals and Energy is on record stating that the newly enacted legislation obliged government to consult thoroughly “including with the Royal House”.

Minister Buyelwa Sonjica wasn’t there. If she had been she would have realized how foolish she sounded, when four years later, after hearing the unambiguous rejection of the Xolobeni mining by the local Amadiba community, she stated “this is not a human rights matter. It is simply a process of consultation that was not done properly”.

She promised, virtually in the same words that Lulu Xingwana had used four years earlier, to personally return to the Royal House at Qaukeni and to the Amadiba Tribal area to redress the problem.

Neither she nor her successor Minister Susan Shabangu have done so yet.

Have they been waiting for a King more amenable to the Xolobeni Mining venture to be installed?

The feeling on the ground is that, masked behind the Xolobeni mining, N2 Wild Coast Toll road and now traditional leadership challenge are fundamentally corrupt corporate and political interests. When challenged, in the absence of a constitutionally defensible case the only advantage that such interests have is deep pockets to fund litigation by attrition.

The amaMpondo stand to lose a noble King and Queen. But they still have two ‘aces’; firstly the Constitution in terms of which their fundamental human rights are guaranteed, notably their right to freedom of expression, self determination and administrative justice, and secondly a free press through which public sympathy and voluntary contributions can be sought to pay for the best lawyers available.

The titanium on the Pondoland Wild Coast will remain forever ‘unobtainium’ so long as all who cherish our constitutional democracy defend the freedoms we now have.

The proposed Protection of Information Bill will if passed almost certainly rob them of one of their aces. But for as long as they have the Constitution that ace trumps any card played by their latter day would-be colonizers.

Appearances notwithstanding, the extraordinarily revisionist determination of history by the Commission for Traditional Leadership that King Mpondombini Sigcau is not the rightful King of AmaMpondo is not only a matter of Justice in terms of the customary law of an obscure “backward native tribe” on the Wild Coast. It is all about the sovereign future of South Africa’s constitutional democracy.

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