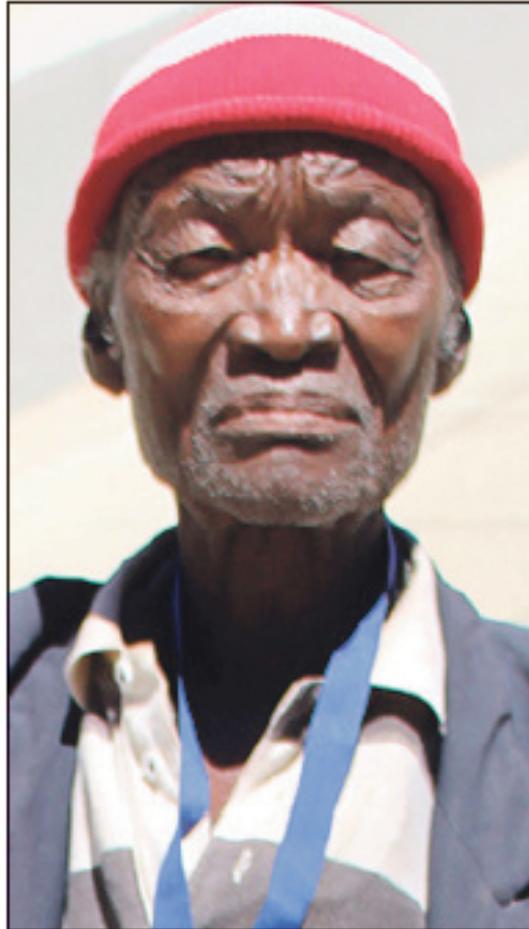


Himba leader wins chief status appeal

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by Werner Menges

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A VETERAN Ovahimba traditional leader from the Kunene region's Epupa area has won an appeal against a High Court judgement in which his official designation as chief of his community was set aside two years ago.

In an appeal judgement delivered this week, the Supreme Court found that the High Court followed a misguided approach to an application to review and set aside the designation of 87-year-old Ovahimba chief Hikuminue Kapika as officially recognised traditional leader, and that the court misdirected itself on the facts of the case.

The appeal court, in a judgement by acting judge of appeal Bess Nkabinde, also found that the High Court substituted the discretion of the then minister of urban and rural development, Sophia Shaningwa, when she considered an application to have Kapika designated as traditional leader, with its own discretion and that this could not be permitted.

Nkabinde, with deputy chief justice Petrus Damaseb and acting judge of appeal Yvonne Mokgoro in agreement, further

found that the issue of Kapika's decision to drop his opposition to a controversial plan to build a new Kunene River dam and hydroelectricity plant in the Epupa area, and his joining of the Swapo Party in 2014, were irrelevant to determine the issues in the application to have his designation as chief of the Ombuku traditional community reviewed and set aside.

High Court judge Shafimana Ueitele set aside Shaningwa's decision in February 2016 to approve Kapika's designation as traditional leader after finding that she failed to give Kapika's half-brother and leadership rival, Mutaambanda Kapika, an opportunity to be heard before she made her decision.

Ueitele also found that when Shaningwa relied on a report of a committee that had to investigate an application to have Hikuminue Kapika officially recognised as traditional leader of his community, she could not have concluded that his designation as chief was in accordance with the customary laws of his community as required in terms of the Traditional Authorities Act.

However, Nkabinde found that Mutaambanda Kapika was not the legitimate chief of his community, although he claimed to have been chosen as traditional leader after a community meeting at which it was decided to remove Hikuminue Kapika as leader. Since he was not a sitting chief in terms of customary law, "it is inconceivable how the minister was obliged to hear him exclusively", Nkabinde remarked.

She also found that the High Court misdirected itself when it concluded there was no sitting chief of the Ombuku traditional community when Shaningwa considered and approved the application to designate Hikuminue Kapika as officially recognised traditional leader.

The true position was that there was a sitting chief, Hikuminue Kapika, who has been traditional leader of his community since the death of his and his half-brother's father in 1982, although he was not officially recognised before 2016, Nkabinde stated.

The appeal court upheld Hikuminue Kapika's appeal against the High Court's judgement, but made no order on the costs of the appeal or the initial High Court case.

Hikuminue Kapika was represented by Elize Angula.

Legal Assistance Centre lawyer Willem Odendaal represented Mutaambanda Kapika, and government lawyer Margaret Malambo-Ilunga represented the minister.