

GENERAL INFORMATION ABOUT THE CASE	
Case URL	http://www.saflii.org/za/cases/ZAKZPHC/2021/42.html
Name of case:	Council for the Advancement of the South African Constitution and Others v The Ingonyama Trust and Others
Court name:	Kwazulu-Natal High Court, Pietermaritzburg
Type of court:	<input type="checkbox"/> Constitutional Court <input type="checkbox"/> Supreme Court of Appeal <input checked="" type="checkbox"/> High Court <input type="checkbox"/> Other
Issue:	Exercise of ownership rights under traditional authorities
Justice(s)/Judge(s):	Madondo DJP (Mnguni and Olsen JJ concurring)
Reference No:	2021 (8) BCLR 866 (KZP)
Filing No:	2745/2018P
DESCRIPTION	
Facts:	The Ingonyama Trust is a body established in 1994 by agreement between the former KwaZulu government and the former government of South Africa. In terms of this agreement (now known as the KwaZulu-Natal Ingonyama Trust Act – the “Trust Act”), the trust - whose sole trustee is Ingonyama yamaZulu – holds all 2.8 million hectares of land that comprised the former Zulu homeland, for the benefit of the members of the communities living on the land. Day-to-day administration of the trust is handled by traditional councils.

	<p>These 5.2 million community members hold a mix of customary/statutory “permission to occupy” (PTO) and informal rights in the land.</p> <p>Beginning in 2007, the trust and its board took a series of actions aimed at cancelling these rights and instead concluding lease agreements with these right-holders, on the premise that a lease was an upgrade to their security of tenure.</p> <p>This case concerned an application by members of this community (and other interested parties) to declare the actions taken by the trust and its board unlawful and unconstitutional; the leases unlawful and invalid; and to have all money paid to the trust in terms of these leases be returned to the persons who made such payments.</p>
<p>DECISION/JUDGMENT</p>	
<p>Decision/Judgment:</p>	<p>This case concerned a challenge to the actions taken by the Ingonyama Trust – a body responsible for the administration of the 2.8 million hectares of land that comprise the former Zulu homeland – in cancelling the “permission to occupy” and other informal rights (protected by the Interim Protection of Land Rights Act, 1996) held by community members who lived on the land, and instead compelling these members to conclude lease agreements in land of which they were the ultimate beneficial owners.</p> <p>The court found that the actions taken by the trust and its board were unlawful and in breach of section 25 of the Constitution, which protects property rights. Traditional authorities were also found to have acted coercively in compelling community members to conclude lease agreements (using e.g. threats that their land would otherwise be taken away). The trust was ordered to pay back all money it received from these lease agreements.</p> <p>The Minister of Rural Development and Land Reform was also found to have breached her duty to fulfil the constitutional right to property held by community members, by failing to properly exercise her powers to administer the PTO system.</p> <p>The court found that, in terms of section 2(2) of the Trust Act, the trust held the land for the benefit of the specified beneficiaries, who are the true ultimate owners of the land; and was required to administer</p>

the land in accordance with applicable customary law. As per Zulu law, each family has a right to be allotted a portion of the land. This portion becomes the property of the family and is passed down between generations. The concept of paying rent is unknown in Zulu law.

The court thus found that the trust had no right to conclude leases, and that the leases undermined rather than strengthened the community members' security of tenure. They also deprived families, communities, and neighbours of their customary law right to participate in decisions related to their land.

It was further found that members were threatened by traditional authorities – being told e.g. that their land would be taken away if they did not sign a lease. This meant no genuine and informed consent was present when leases were concluded, and they were invalid.

Accordingly, the trust's actions were found to be unconstitutional, and they were required to pay back money received from leases.



REFERENCES	
Reference(s) to Court Decision	N/A