

SWAZILAND HIGH COURT

ENOCK LWANE MASEKO

Plaintiff

Vs

TFOLWAPHI JANE MKHWANAZI

Defendant

Civ. Trial No. 2922/1999

Coram Sapire, CJ

For Plaintiff Mr. Jele

For Defendant Mr. Shilubane

JUDGMENT

The Applicant is the registered owner of Lot No 374 situate in Ngwane Park Township, district of Manzini Swaziland. He holds the property in terms of a deed of transfer, duly registered in terms of which the Estate of the Late Ndodelana Solomon Mkhathshwa represented by the executrix dative Sarah Makatshwa passed ownership to him and confirmed that the property was sold for E120 000.

In this application, the applicant seeks the eviction of the first respondent who is in occupation thereof, from the property.

2

The Respondent resists this claim, on the basis that the deed of sale in terms of which the applicant purchased the property is fatally defective in a number of respects. She has also counterclaimed for the setting aside of the transfer which would have the effect of restoring ownership in the property to the Estate.

The Respondent's resistance and counterclaim are ill founded.

She was not a party to the sale of the property and has no interest as a complete outsider to seek the setting aside of the transfer. Whatever defects there may have been in the original transaction the Executrix Dative after being duly appointed as such clearly adopted the sale, transferred the property and accepted the purchase price on behalf of the Estate. This cannot now be reversed at the behest of a party having no interest or part in the transaction. She, the Respondent personally had no rights, which were affected. She has no right of occupation irrespective of who the owner is. In short she has no locus standi.

The Estate has already been wound up and a liquidation and distribution account has received the approval of the Master of the High Court. It has lain for inspection without objection.

The respondent has shown no entitlement to occupy the property adversely to the owner in terms of the duly registered title deed.

For these reasons the Applicant is entitled to the relief claimed.

There will be an order for the ejection of the Respondent and all persons holding through or under her from the property herinbefore described. The counter-appliction is dismissed the Respondent is to pay the costs of all parties to the proceedings.

SAPIRE, CJ