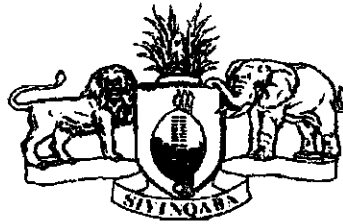


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SWAZILAND HIGH COURT

Chief Mtfuso II And Others
(Formerly known as Nkenke Dlamini)
Applicant
vs

SWAZILAND GOVERNMENT & OTHERS
Respondent

Civ. Case No. 2685/2000

Chief Mliba Fakudze And Others
Applicant

Vs

SWAZILAND GOVERNMENT AND OTHERS
Respondents

Civ. Case 2823/2000

Coram

Sapire, CJ + 2 Assessors
(Messers Hlope and Mavuso)

For Plaintiff (Chief Mliba & Others)
For Defendant

L. Maziya
P.M. Dlamini

For Plaintiff (Chief Mtfuso & Others)
For Defendant

P.R. Dunseith
P.M. Dlamini

JUDGMENT
(05/09/2000)

The two applications before the court arise from a long standing chieftaincy dispute. This is not the correct forum in which to resolve this dispute, or to review any decisions which have taken place in regard thereto by the relevant authorities. What however does concern us is the removal order made by the respondent in both matters pursuant to an order made by the Ingwenyama in terms of the Swazi Administration order 1998.

Because this matter involves aspects of Swazi Law and Custom and to a certain extent Swazi protocol I summoned to my assistance two assessors who are present today and who have been present at the hearing to assist me and advise me on these aspects of the matter. I have had the benefit of deliberations with them on the issues raised and I would like at this stage to express my gratitude for the assistance which they have so readily given.

The issues however of law have to be decided by me in the light of what the factual situation is regarding Swazi law and custom as it pertains in this matter. The two applications at this stage are for similar relief.

The application of the Chief Mtfuso II, formerly known as Nkenke Dlamini, and two others, Isaac Dlamini and Makinini Sikhondze is an application in which the applicants are represented by Mr. Dunseith. The Attorney general has appeared for the respondent which is the Swazi government.

The original relief sought was as follows: The applicants brought the matter as a matter of urgency and they sought an order declaring the removal orders requiring the applicants to leave KaMkhweli Area by the 5th of September 2000 to be stayed and suspended pending the final determination of the appeal to the Ngwenyama relative to such removal orders in terms of Section 28(2) of the Swazi Administration order 1998. They also asked for an order interdicting and restraining the Minister for Home Affairs and the Royal Swaziland Police or any other Government authority from taking any action against the applicants pursuant to the aforesaid orders pending final determination of the said applications to the Ngwenyama for review of such removal orders. There is also a request for costs.

The application by the Chief Fakudze is in a different form and in this case the applicants are represented by Mr. Maziya. The relief sought was an order setting aside the rules of court. This is not quite what was really intended. The application was made as a matter of urgency and what was required that the rules be altered accordingly for the purpose of this application. The ultimate relief was setting aside

what was described as the purported undated removal orders of the Minister of Home Affairs being B1, B2, B3 and B4 attached to the founding affidavit and failing such an order, an order staying execution of the eviction orders pending the applicants' audience with the Ngwenyama.

The point of similarity is that interim relief of the same nature was requested. Such relief is framed as an order suspending the operation of the orders made by the Minister pending a hearing by the Ngwenyama of the appeal to which the applicants are entitled both in terms of the Swazi Law and in terms of the Statute under which his Majesty made the original eviction order.

It is interesting and instructive to observe the terms of the removal order to which His Majesty's signature is appended. It contains instructions for the removal of certain persons and their dependants by the Minister of Home Affairs under Section 28(3) and reads

In exercise of the powers conferred upon me by Section 28(3) of the Swazi Administration Order, 1998, I, Mswati III, Ngwenyama of Swaziland, instructs the Minister for Home Affairs to make an order removing the following persons and their dependants –

1. *Nkenke Dlamini*
2. *Isaac Dlamini*
3. *Makinini Sikhondze*

Of kaMkhweli area in the Lubombo Region under Chief Prince Maguga, from kaMkhweli area to an area to be located by the Minister for Home Affairs.

The order is said to be in terms of Section 28(3). Section 28(3) empowers the Ngwenyama (in so far as an act of Parliament was necessary for this purpose) as follows

"The Ngwenyama may at any time instruct the Minister for Home Affairs in writing to make an order containing such conditions as the Ngwenyama may consider appropriate for the removal of any person or any of his dependants living with him from one Swazi area to another Swazi area"

The order of His Majesty is silent as to when the removal should take place. It is silent as to which area these persons are to go. The order as signed by His Majesty instructs him to go to an area to be allocated by the Minister of Home Affairs. In terms of the Act it would seem that the choice of the area is that of His Majesty and that the order should contain the terms of the removal and it must also contain the area to which the people have to be taken. The same consideration applies in both cases. It is not for this court to consider the validity or otherwise of the order made by His Majesty and sub-section 10 of Section 28 reads

"A Court shall not have jurisdiction to inquire into any order made under sub-section (3) nor shall any court issue an interdict or otherwise order the stay of such an order as a result of an appeal against conviction under sub-section (5)."

The specific reference is however to an order made under 3 and that is an order made by His Majesty. The orders made by the Minister in this case were made by the Minister himself. In so far as they impose conditions as to the date by which the removal should take place and the area to which they are to remove I find that it is open for this court to deal with such order as these matters are not dealt with in the orders of the Ingwenyama. Section 28 under which the Ngwenyama has acted provides that

"A person whose removal has been ordered under subsection (3) or who has, in terms of subsection (6) been removed may, within a period of not more than thirty days from the date when the order was served upon him or such removal effected, apply to Ngwenyama (embule ingubo eNkhosini) for the review of such an order or removal."

It is the words in Siswati I have just mentioned for which I require elucidation and explanation. It is in this respect that my assessors have been most helpful. It is clearly the recognized right of any Swazi affected by an order of His Majesty to make an appeal of this nature to His Majesty. What has disturbed my assessors and myself in regard to this matter is that according to the allegations which have been made and

which have not really been denied, all the applicants in the case of application by Mr. Dunseith that is in the case of Chief Mtfuso II, their access to His Majesty was blocked by officials and free access to His Majesty was prevented. This free access is an essential part of Swazi Law and Custom and the blocking or placing difficulties in the way of such an appeal is as I say disturbing.


In view of this we have come to the conclusion that the correct way of handling the matter is that the order of the Minister, (which is not the order of His Majesty) but the order of the Minister in so far as it places a date on the removal should be inquired into and the order should be in fact extended or suspended until such time as all the applicants who are affected by the order have had the opportunity of exercising their traditional right of appeal to Ngwenyama, which is specifically referred to in the statute.

The order therefore is in these matters that the applications are themselves postponed sine die. In the interim the orders of the Minister are suspended until such time as the applicants have had an opportunity of addressing His Majesty in the traditional way.

This does not mean necessarily as I understand it that they should see His Majesty personally but His Majesty may appoint advisers or a committee to investigate the matter. My attention has been drawn by one of my assessors Mr. Mavuso to a case in which he was involved during the reign of the late King Sobhuza. It related to a matter in which a deportation order had been granted. The late King appointed Mr. Mavuso himself and others to enquire into the matter and to advise His Majesty. This is in accordance with the tradition and the tradition and Swazi law which is to be applied in cases of this nature.

My assessors agree with this and agree with the order which I have made. We are especially anxious that an impression should not be gained that this court assumes jurisdiction to deal with an order made by His Majesty. What we are doing is to ensure that the terms of the statute are complied with and that the provisions of Swazi Law and Custom as generally known are applied in this case as in other cases. Accordingly there will be an order in both cases suspending the operation of the eviction orders until such time as the applicants have had an opportunity of exercising their rights according to Swazi Law of appeal to Ngwenyama.

I am not making any order for costs. I may indicate that my assessors are in full agreement with the order that I have made.


SAPIRE, CJ