

THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 557/99

In the matter between

SWAZILAND DEVELOPMENT & SAVINGS

BANK

APPLICANT

And

ABRAHAM MUSA MKHALIPHI

RESPONDENT

Coram

S.B. MAPHALALA- J

For the Applicant

MR. THWALA

For the Respondent

MR. JELE

RULING ON POINTS IN LIMINE

(07/03/2002)

Before me is an application brought with a certificate of urgency for an order inter alia interdicting the 3rd respondent from proceeding with the transfer of Farm 324 Mhlosheni to the name of the 1st respondent alternatively in the event that such transfer has already been effected, the third respondent be ordered and directed to expunge from the records in the Deeds registry all entries relating to the Deed of Transfer. That the first respondent be interdicted from alienating and/or encumbering the said Farm pending the finalisation of the application pending before court.

The application is founded on the affidavit of Abraham Musa Mkhalihi who is the executor dative of the estate of the late Stanley Vusumuzi Dlamini. The first

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respondent opposes this application and has filed a preliminary answering affidavit of one Elias Darlington Masuku who is the Senior Manager Recoveries of the 1st respondent. A number of points in limine are raised therein and these are the subject-matter of the present judgment. Mr. Dlamini from the Attorney General who is representing the 3rd respondent informed the court that they are not opposing the application and undertook not to proceed with the transfer until the present application has been disposed of.

After due consideration of the facts and the submissions before me, it would appear to me that in view of the undertaking made by the 3rd respondent not to proceed with the transfer of this property further determination of this application is merely an exercise in futility. This I say because of the main application which is still pending before court and is properly enrolled. The substantive relief in that matter is that the sale in execution of Farm 324 be set aside and this goes to the root of the dispute between the parties.

The logical thing to do by the applicant in the circumstances is to withdraw the present application and that the parties proceed with the main application as the applicant's apprehensions have been allayed by the undertaking made by the 3rd respondent who is not to proceed with the transfer until the dispute between the parties has been finally resolved.

In the result, for these reasons I hold the view that applicant is to withdraw the present application and proceed with the main application for the setting aside of the sale in execution.

That costs be costs in the main application.

S.B. MAPHALALA

JUDGE