THE HIGH COURT OF SWAZILAND

MAJAWONKHE HLETA Applicant

And

GCOKOMA DLAMINI & THREE OTHERS Respondents

Civil Case No, 511/2004

Coram S.B. MAPHALALA – J

For the Applicant MR. MDLULI

For the Respondents MR. MNGOMETULU

(05/08/2004)

On the 23rd February 2004, the Applicant moved an urgent application before this court and obtained a rule nisi for spoliation ante omnia. The order granted was for, inter alia directing the Respondents to forthwith remove the fence and restore possession of the premises so enclosed and situate at Ensuka area homestead no, 035 in the Hhohho region to the Applicant and failing compliance therewith directing and authorising the Sheriff or his duly authorised Deputy with the assistance of the Royal Swaziland Police to remove the aforesaid fence and restore the status quo ante.

In prayer (d) the Applicant prayed that the Respondents be restrained and interdicted from intimidating, harassing and/or threatening violence to the Applicant and his family residing at the aforementioned homestead.

The 1st Respondent is the Chief of the area where this dispute arose. The 2nd Respondent is a member of Chief's kraal under the 1st Respondent. So are the 3rd and 4th Respondents. The Applicant is a subject under the 1st Respondent.

The Applicant has filed a founding affidavit in support of his application. The Respondents oppose the application and to this end have filed various affidavits by each Respondent.

The issue for determination presently is an application made by the Applicant seeking to set aside the answering affidavits of the 1st, 2nd, and 4th Respondents as an irregular step within the meaning of Rule 18 (12) and further on the basis that they are fatally defective in that they lack sufficient particularity to enable the Applicant to reply thereto and as such do not comply with the requirements of Rule 18 (3), (4) and (5) of the High Court Rules.

Mr. Mdluli who appeared for the Applicant relied on the legal authorities of Herbstein et al, The Civil Practice of the Supreme Court of South Africa, 4th ED at page 450, Trope vs South African Reserve Bank 1993 (3) S.A. 264, Sasol Industries vs Electrical Repair Engineering 1992 (4) S.A. 466 and Harms, Civil Procedure in the Supreme Court at page 263 to the general proposition that pleadings must have sufficient particularity and not to be vague and embarrassing.

It appears to me that the attack by the Applicant is that the answering affidavit of the 3 rd Respondent has been used by the Respondents as the main affidavit instead of that of the 1st Respondent. It would appear to me further that the arguments by the Applicant are neither here nor there. The offending affidavits, in my view contain clear and concise statements of the material facts upon which each Respondent relies for his answer to the founding affidavit of the Applicant. Each of these affidavits is divided into paragraphs, which are consecutively numbered and they contain distinct averments as prescribed by Rule 18 (3). That the 3rd Respondent's affidavit is used as

the main affidavit does not detract from the fact that in law each Respondent in any application is entitled to advance his or her defence and this depends on what allegations are levelled against him in the founding affidavit. These affidavits do not contain hearsay evidence neither do they contain any other objectionable matter prohibited by Rule 6(15).

I find therefore that the application moved in terms of Rule 18 has no merit and order that the matter proceeds on the points in limine.

I also rule that the costs to be costs in the course.

S.B.MAPHALALA

JUDGE