

THE HIGH COURT OF SWAZILAND

MARY MTHEMBU

Applicant

And

LINAH TOBHI MTHETHWA AND THREE OTHERS

Respondents

Civil Case No. 2372/2005

Coram: S.B. MAPHALALA-J

For the Applicant: MR. Z. MAGAGULA

For the Respondent: MR. C. MAPHANGA

RULING

(On points *in limine*) (2nd December 2005)

[1] This matter came under a Certificate of Urgency for an order setting aside and rescission of the judgment of this court of the 14th July 2005. The Applicant therein describes herself as an adult female Swazi widow of Extension 25, Sidvwashini

Township, Mbabane City, Hhohho District. She has filed her Founding affidavit outlining her case.

Various annexures are attached thereto.

[2] The 1st Respondent opposes the granting of this order and to that end has filed points *in limine*, which are presently the subject matter of this judgment. These points read *in extenso* as follows:

1. **The Applicant has failed to disclose her *locus standi in indicio* specifically.**
 - 1.1 **She has not established a direct and substantial interest in the subject matter or the remedy sought;**
 - 1.2 **Although purporting to act for and on behalf of certain unnamed minors no authority to act as such appears *ex facie* the application;**
 - 1.3 **To the extent that it is alleged in the application that the matter concerns an estate of a deceased person no letters of authority are attached thereto.**

2. **There is no substance to the allegation that the property concerned forms part of the estate in that no *prima facie* proof to that effect exists.**

3. **The application does not comply with the rules of the Honourable Court as regards rescission or variation orders or judgment in the following respects;**
 - 3.1 **The application does not disclose any proper cause or prospect of success;**
 - 3.2 **No reasons for the delay or default in bringing the application early are advanced or given;**
 - 3.3 **No security as to costs has been posted.**

4. **No basis for urgency has been set out.**

4. **The Applicant seeks to obtain an interdict without establishing the prerequisites for granting of such relief in that she has failed to show *inter alia* that she has a clear or *prima facie* right or that she stands to suffer irreparable harm if the relief sought was not granted.**

[3] I shall address the above-cited points *in limine* sequentially hereinafter, thusly:

i) *The issue of locus standi*

[4] In order to have *locus standi*, it is the *onus* of Applicant to show that he has a direct and substantial interest in the subject matter of the judgement of such degree or to entitle her to intervene (see *United Watch and Diamond Co. (Pty) Ltd and others vs Disa Hotels and another 1972 (4) S.A. 409 (C)*). It is also a settled principle of law that as in the case of summons, it must appear from the application that the

Applicant has an interest or special reason entitling her to bring the application i.e that she has *locus standi* in the matter.

[5] It appears to me that *Mr. Maphanga* for the Respondent is correct in his submissions that Applicant has not proved the requisite *loci standi* as enunciated in the above-cited legal authorities. On the Founding affidavit and with specific reference to paragraph 24 to 25 thereof, it appears *ex facie* her deposition that no such interest exist; certainly her status *vis-a-vis* the deceased estate is not established nor is she clothed with *locus standi* to intervene on behalf of unnamed minors. Nowhere in the Applicant's papers is it indicated that the property in question is an asset under the estate in question in that the deceased ever exercised any rights of ownership. In contrast as appears in the original application the 1st Respondent is the registered owner claiming title over the property.

[6] For the afore-going reasons I find it unnecessary to traverse the other points *in limine* as I have found that Applicant lacks the requisite *loci standi in judicio* to move this application.

[7] In the result the application is dismissed with costs.

S.B. MAPHALALA

JUDGE