

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

CIVIL CASE NO. 3437/2004

In the matter between:

**IRENE DUMSILE MAVUSO**

**APPLICANT**

and

**EUGENE BOSHOF**

**1<sup>ST</sup> RESPONDENT**

**REGISTRAR OF DEEDS**

**2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL**

**3<sup>RD</sup> RESPONDENT**

CORAM: Q.M. MABUZA -AJ

FOR THE APPLICANT: MR. MAGAGULA

FOR THE 1<sup>ST</sup> RESPONDENT: MR. SHABANGU

**RULING 7/12/06**

[1] In this matter the Applicant in her notice of motion prays for an order

as follows:

**"(1) That the first Respondent be and is hereby ordered to do all that is necessary to pass the property described as: Share number 23 of Portion 6 of Farm No. 73 situate in the District of Hhohho, Swaziland, measuring 1057 (One Thousand and Fifty Seven) square metres into the name of the Applicant. Failing which the Registrar of the High Court be authorized to sign all transfer documents to effect the said transfer into the name of the Applicant.**

**(2) That the First Respondent be and is hereby interdicted and restrained from selling and effecting transfer of Share No. 23 of Portion 6 of Farm No. 73 situate in the Hhohho District, Swaziland to any other person other than the Applicant.**

**(3) That the First Respondent be and is hereby ordered to pay costs of this Application and the other Respondents to pay costs in the event of opposition of this application.**

**(4) Granting the Applicant further and/or alternative relief as the court may deem fit."**

At the hearing hereof I granted an interim interdict restraining the First Respondent from selling and effecting transfer of the said property to any third party pending the finalization of this matter and I reserved judgment.

[2] Mr. Shabangu for the 1<sup>st</sup> Respondent has raised certain points ***in limine*** which are as follows:

- Application proceedings are inappropriate in instances where a foreseeable dispute of facts exists such as herein.
- Where a party's cause of action is based on a breach of contract such party should proceed by way of action.

[3] At the hearing hereof Mr. Shabangu motivated the points raised in his client's affidavit and added flesh to them as follows:

- (a) A deed of sale was concluded between the parties in respect of certain immovable property. The Applicant says that she paid

the purchase price in full. The 1<sup>st</sup> Respondent denies this.

- (b) The 1<sup>st</sup> Respondent says that he cancelled the deed of sale because of poor payments. The Applicant says that she did not receive the letter of cancellation. The 1<sup>st</sup> Respondent says he sent the said letter to the Applicant.
- (c) The Applicant says that the sale if cancelled was not lawfully cancelled. The 1<sup>st</sup> Respondent denies this.
- (d) The legality of the method of conveyance of the letter of cancellation is denied by the Applicant as she says she did not receive it.
- (e) The 1<sup>st</sup> Respondent says that some of the payments referred to were for leveling of the site, the Applicant denies this and says they were made towards the purchase price.

[4] Mr. Magagula in his submissions added a new fact which does not appear ex-facie the papers namely that there was a township which has been approved and that this fact motivated the 1<sup>st</sup> Respondent not to transfer the property. This new fact needs to be ventilated in oral evidence.

[5] The Applicant says this court should compute the amounts but the court can only do so with the input of both parties. The fact that the court is asked to do this indicates the existence of non-agreement between the parties.

[7] The afore going indicate that there are disputes which have to be resolved by oral evidence. In fact in order for there to be a fair hearing of both parties (vide Section 21 (1) Constitution Act 2005). I order that the matter goes to trial the founding affidavit to stand as declaration, the answering affidavit as a plea and the replying affidavit as a replication. Costs will be costs in the cause.

**Q.M. MABUZA- AJ**