

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIVIL CASE NO. 4539/05

In the matter between:

INGCAYIZIVELE FARMERS ASSOCIATION

APPLICANT

and

NTOKOZO MABUZA

1ST RESPONDENT

BOY JOHN MATSEBULA

2ND RESPONDENT

NICHOLUS MATSEBULA

3RD RESPONDENT

KHUZWAYO DLAMINI

4TH RESPONDENT

CORAM: Q.M. MABUZA -AJ

FOR THE APPLICANT: MR. Z. MAGAGULA

FOR THE RESPONDENTS: MR. MABILA

RULING 7/12/06

[1] The applicant herein seeks an order in the following terms:

1. Dispensing with the rules relating to service provided for in the rules of the above Honourable Court and to hear the above application as a matter of urgency.

2. That a Rule nisi do hereby issue calling upon the Respondent to show cause on a date to be determined by this Honourable Court why the interdiction of Applicant from entering, ploughing and or taking over the fields which are situate between Inkomazi and Mnyokanyoka rivers allocated to it by Chief Madzanga Ndwandwe should not be lifted.

2.1. That pending the final determination of this matter the rule nisi operate as an interim order with immediate effect.

3. Directing the 1st Respondent to return to Applicants the keys to the office and the main gate.

4. Directing that Respondents pay the costs of this application jointly and severally.

5. Granting such further and or alternative relief as to this Honourable court seems meet.

[2] The Respondents oppose this application and their attorney Mr. Mabila has raised **points in limine** on their behalf.

[3] The **points in limine** raised were:

(a) **Non joinder** The Respondents complain that Chief Madzanga should have been joined in these proceedings.

I agree with the Respondents. The Chief has featured from the beginning in these proceedings and has a very central role to play as Chief of the disputed land. He has a direct and substantial interest herein. The Respondents succeed with regard to this point.

(b) That the Applicant should have come before court with clean hands. The Respondents' affidavit do not indicate whether or not a writ to evict the Applicant was ever issued and served in terms of the Supreme Court's ruling. I am unable to make an informed decision on this item.

(c) That there is a dispute of fact with regard to understanding the import of His Majesty's decision.

[4] There are other issues which the court would wish to know such as whether the land was expropriated for a national project in terms of The Acquisition of Property Act and why the Applicant has been given Government status when it is a private company.

[5] There are also constitutional provisions that should be considered if applicable such as Section 252 and Section 19 of the Constitution Act, 2005 as the matter is ongoing.

[6] Swazi Nation land is a precious commodity for our people because it gives them security of tenure.

[7] Section 19 of the Constitution Act provides:

"(1) A person has a right to own property either alone or in association with others.

(2) A person shall not be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied -

(a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health;

(b) the compulsory taking of possession or acquisition of the property is made under a law which makes provision for -

(i) prompt payment of fair and adequate compensation; and

(ii) a right of access to a court of law by any person who has an interest in or right over the property.

(c) The taking of possession or the acquisition is

made under a court order.

[8] None of what has been described in the proceedings fits the profile above. Argument may be advanced that the cause of action herein arose before the advent of the Constitution. My counter holding would be that the Constitution has only formalized what has prevailed since time immemorial in the common law and also formalized in the Expropriation Act.

In the event I order as follows:

1. That chief Madzanga be joined herein.
2. That the Applicants file its replying affidavit within the time stipulated in the rules, and thereafter the matter may be set down before any judge and evidence be led with regard to the issues successfully complained of.
3. Costs to be costs in the cause.

Q.M. MABUZA-AJ