

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 3071/05

In the matter between:

CITY COUNCIL OF MANZINI

APPLICANT

And

DUMISA MKHATSHWA

1st RESPONDENT

CHIEF NKAMANE MKHATSHWA

2nd RESPONDENT

LWANDLE UMPHAKATSI

3rd RESPONDENT

CORAM: Q.M. MABUZA - AJ

FOR APPLICANT: MR. B.W. MAGAGULA

FOR RESPONDENT: MR. Z. MAGAGULA

JUDGMENT 3/02/06

This is an application wherein the applicant claims:

1. That the Respondents and whosoever that is acting under their authority be interdicted from constructing any structure on Plot 1260 Ngwane Park Extension. Manzini, in the District of Manzini.

2. That the Applicant be and is hereby authorised in terms of the Building Housing Act No. 34/1938 to forthwith demolish the illegal structure constructed by the Respondents on Plot 1260 Ngwane Park Extension, Manzini in the District of Manzini.

3. That the Applicant be allowed to engage the services of the Royal Swaziland Police in carrying out prayer 2 of this notice of motion.

4. That the Respondents be and are hereby ordered to pay the costs of the demolition.

5. That the Third Respondent be interdicted from interfering and effecting any other developments in whatsoever manner on Lot 1260 Ngwane Park Extension, Manzini in the Manzini District.

6. That the Respondents be ordered to pay costs of suit.

7. Further and/or alternative relief.

The applicant filed an affidavit in support thereof deposed to by Madoda David Dlamini the City Engineer who is employed by the applicant. In the affidavit the deponent gives the background to the cause of action namely that on or around the 28th June 2005 one of the applicants Building Inspectors, Mathokoza Lawrence Thwala while carrying out a routine inspection discovered a foundation for a construction having been dug out on Plot 1260, Ngwane Park Extension, Manzini. He thereupon requested from the bricklayer that he found on the site written permission which contained plans and drawings that were approved by the City Council of Manzini for the construction of the building. The bricklayer failed to produce the written authority for the erstwhile construction. The bricklayer had been contracted by the 1st respondent Dumisa Mkhathshwa on behalf of the Ticancweni Community to construct the building which was intended for use as a soup kitchen to feed orphans and vulnerable children.

The respondents answering affidavit was deposed to by the 1st respondent Dumisa Mkhathshwa. The core response of the 1st respondent was that the land viz Plot 1260 Ngwane Park on which the soup kitchen was to be built was Swazi Nation Land under the control of the chief of Elwandle who did not

require any planning permission from the Manzini City Council to construct the kitchen thereon. He further states that the Chief of Elwandle allocated the said piece of land for the said purpose.

In due course the services of a surveyor Mr. Dumisa Thwala of A.M Thwala Surveys were obtained and paid for by the applicant. Mr. Thwala conducted a survey and furnished a report about his findings. Mr. Dumisa Thwala deposed to a confirmatory affidavit to that of Madoda David Dlamini on behalf of the applicant which sets out his findings after conducting the survey on Plot 1260, Ngwane Park Manzini.

I may pause to add here that the confirmatory affidavit should have been attached to David Madoda Dlamini's founding affidavit and not the answering affidavit. That is the procedure of our courts and should be adhered to.

Paragraph 7.3 of applicant's founding affidavit (page 7) adequately sets out applicants clear right to the piece of land wherein reference is made to Annexure "MCC2". Annexure "MCC2" is very clear with regard to the boundaries of the City Council in so far as the area known as Ngwane Park ends i.e. along mid spruit, mid Gabogobo stream, mid Mzimnene River.

The court will take judicial cognisance of the black blot that appears on "MCC2" (page 13) as representing the whereabouts of the soup kitchen which is on Council Land. "R3" (on p.52) and "R4" (on p. 53) are not very helpful in pin-pointing the exact location of Plot 1260. The surveyor's report does not take the matter further. In fact Plot 1260 is much more easily identified in "MCC2" and to that end there was no need in my opinion to appoint the services of the said surveyor. The applicant's attorney has requested this court to order the respondents to pay the survey costs. I do not agree for the reasons aforementioned.

My findings therefore are as follows: The order as prayed is granted in terms of prayers: 1,2,3,4,5, and 6 of the applicants Notice of Application.

Q.M. MABUZA
ACTING JUDGE