

**IN THE HIGH COURT OF SWAZILAND**

CIVIL CASE NO. 3693/06

HELD AT MBABANE

In the matter between:

**MOSES HLOPHE**

**APPLICANT**

And

**SIPHO SHONGWE**

**1<sup>st</sup> RESPONDENT**

**JEROME DLAMINI**

**2<sup>nd</sup> RESPONDENT**

**OUPA LAPHIDOS**

**3<sup>rd</sup> RESPONDENT**

**STEPHEN DLAMINI**

**4<sup>th</sup> RESPONDENT**

**RICHARD KHESWA**

**5<sup>th</sup> RESPONDENT**

**NHLAMVU HLOPHE**

**6<sup>th</sup> RESPONDENT**

**EZULWINI ROYAL KRAAL**

**7<sup>th</sup> RESPONDENT**

CORAM: Q.M. MABUZA -JUDGE

FOR THE APPLICANT: MR. T. MASEKO

FOR THE RESPONDENTS: MR. B. MAGAGULA

**RULING 6/6/07**

[1] The above application was brought by way of urgency on Notice of Motion dated 11/10/2006 for an order in the following terms:

1. Dispensing with the normal form of service and time limits as provided for by the Rules of this Honourable Court and hearing this matter as one of urgency

2. Calling upon the Respondents to show cause on a date and time to be determined by this honourable Court, if any, why an order should not be made.

2.1. Interdicting and restraining the Respondents and all people acting on their instructions from disturbing violently, harassing and threatening injury to the person duly and lawfully engaged by the applicant on the construction at the Ezulwini business site.

2.2. Interdicting and restraining the respondents and all people acting on their instruction from interfering with the construction work and of the affairs of the applicant going on at the Ezulwini business site.

2.3. Directing the respondents to be restrained and or interdicted from sabotaging the interests whatsoever of the applicant at the construction at the Ezulwini business site.

2.4. Directing the Sheriff or his lawful deputy to effect the order and seek assistance from members of the Royal Swaziland Police, should it be necessary, in carrying out his aforesaid duties.

2.5. Further directing that members of the Swaziland Royal Police take such action as may be necessary to assist in order to ensure that the construction work at Applicant's Ezulwini business site is carried out peacefully and uninterrupted until completion.

2.6. That paragraphs 2.1 to 2.5 above should operate as an interim interdict pending the return date.

3. Directing that costs of this application be borne by the respondents jointly and severally.

4. Further and/or alternative relief.

[2] The nub of the application is that during 2001 the Applicant was allocated land on Swazi Nation Land by Chief Mafelenkhosini Khumalo with his Council of the Ezulwini Royal Residence, after he had khontaed. The Applicant was allocated a business site at the T-Junction between the Mbabane - Manzini Highway at what is commonly known as the Tea Road. The Applicant wished to build a Road House Lodge and recreational facilities.

[3] Chief Mafelenkosini died during 2004 and has not been succeeded. And as usually happens the Libandla he worked with was disbanded and a new Libandla has taken over.

[4] The previous Libandla assisted the Applicant in obtaining a trading from Swazi Commercial Amadoda who successfully applied for the grant of a licence from His Majesty the King.

[5] When the Applicant began to prepare the site while the Chief was alive there were no problems. As soon as he died, problems began. The new Libandla it is alleged have unlawfully interfered,

disturbed and stopped construction work going on at the allocated land without any lawful justification. It is alleged that Siphon Shongwe who claims to be the Indvuna of the Ezulwini Royal Kraal who led the other Respondents to violently order stoppage of the work in the land. It is these disturbances by the Respondents that caused the Applicant to seek relief from this Court. There are several confirmatory affidavits which support the Applicant.

[6] The Respondents who filed a notice to oppose the application filed a notice to raise points of law and did not respond to the Applicants founding affidavit, their argument being that they were only given one day with which to respond. I shall now deal with the points *in limine* as raised.

[7] The first point raised is that the Applicant has failed to set out in his founding affidavit the circumstances that make the matter urgent as required by Rule 25 (b) and (b). I disagree with this submission. The Applicant has adequately set out the circumstances that renders the application urgent and why he believes he cannot be afforded substantial address in due course. I am satisfied that this is so. The arguments raised by Counsel for the Respondents at page 3 paragraph 1.2 and 1.3 of the Heads of Argument is purely conjecture and speculation and must accordingly fail. As far as the issue raised in paragraph 1.4 of the Respondents Heads of Argument Counsel is leading evidence which should not be the subject of points *in limine* but answering affidavits.

[8] I agree with Mr. Maseko's submission that while the rules of Court must be complied with, they should not be used to stifle the speedy resolution of disputes. In particular disputes emanating from the traditional authorities. Experience has

shown that they usually go on and on with no end in sight. It is therefore more often than not prudent that those matters in particular should be resolved by the High Court which has as all embracing jurisdiction and deals with legal concepts and reaches definitive conclusions. To this end I quote from **Andile Nkosi and Another v the Attorney General**.

***"That the rule of court were not complied with is not necessarily conclusive of the matter. Rules governing procedure, such as the rules of Court, are not made to enable the lawyers representing parties to a dispute to score points off one another, without advancing the resolution of that dispute any way. They are guidelines aimed at obliging the litigants to define the issues to be determined, within a reasonable time, and enabling the courts, as a consequence, to organize their administration as quickly, effectively and fairly as possible."***

and also Erasmus H. J et al (2004) Superior Court Practice (service 8 1997) BI - 5

***"The object of the rules in to secure inexpensive and expeditious completion of litigation before the courts. They are not an end in themselves. Consequently the rules should be interpreted and applied in a spirit which will facilitate the work of the courts and enable litigants to resolve their disputes in as speedy and inexpensive a manner as possible. Thus it has been held that the rules exist for the court, not the Court for the rules. Formalism in the***

***application of the rules is not encouraged by the Courts.***

[9] It is impractical therefore for me to tell the Applicant that he should go away and start afresh without considering the expense involved. Justice would not be properly done.

[10] The next point that the Respondents have raised is that the prayer for an interdict does not properly define whether it is a final or interim interdict that is sought. Prayer 2.6 of the notice of motion qualifies Prayer 2.1. It states: "***That paragraph 2.1 and 2.5 above should operate as an interim interdict pending the return date***".

[11] Counsel for the Respondents did not address the issue of the requirements for an interdict in his Heads even though he raised the issue in his points. Nonetheless my view is that these are adequately canvassed in the Applicants founding affidavit.

[12] The Respondents have also raised the point that the business site has not been adequately defined. This submission is incorrect. The area has been properly identified. It is under Chief Mafelenkhosini. The people from Swazi Commercial Emadoda were shown this site. The Respondents know the site. It is where they constantly do battle with the Applicant's employees.

[13] The Respondents have further canvassed the issue of ownership of land on Swazi Nation Land. Their submission is misplaced. Once a Chief and his Libandla have allocated land to a subject there are certain rights that one acquires and one of these is peaceful and undisturbed possession. If anyone interferes with these rights a subject has every right to approach

this Court for relief or redress.

Section 151 (1) of the Constitution states:

**(1) The High Court has -**

**"(a) unlimited original jurisdiction in civil and criminal matters as the High Court possesses at the date of commencement of this Constitution;"**

This point too fails.

[14] The Respondents have submitted that the Applicant has not exhausted the conflict resolution mechanism that exist under Swazi Law and Custom. In my view the Applicant has a choice of fora and may approach the Court that best suits him. Furthermore the issues upon which his cause of action is based and the relief sought are not actionable nor available in the fora the Respondents have suggested.

[15] I am unaware that there exist disputes of fact. The Respondents have not filed their answering affidavit and as the matter stands before me the contents of the Applicants affidavits remain uncontroverted.

[16] The only point of substance that seems to emerge from the points in limine is that the Respondents were given one day within which to respond. On the other hand Mr. Maseko for the Applicant is not adverse to the Court granting an interdict. It is in the interests of justice that this matter should be fully heard and resolved. I have already expressed my sentiments in paragraph 8 herein above.

[17] The order of the Court is as follows:

- (a) The points in limine are hereby dismissed.
- (b) The Respondents are to file their answering affidavits within 10 days hereof.
- (c) An interim interdict in terms of Prayers 2.1 - 2.5 of the notice of motion is hereby granted pending the finalization of this matter.
- (d) Costs are hereby reserved.

**Q.M. MABUZA -JUDGE**