

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 1980/2000

MAD ALA SHONGWE 1st Applicant

FOHLOZA ZWANE 2nd Applicant

And

ISAAC MAVIMBELA 1st Respondent

JOEL MAVIMBELA 2nd Respondent

THISHELA NDZIMANDZE 3rd Respondent

AMOS NDZIMANDZE 4th Respondent

Coram: S.B. MAPHALALA – J

For the Applicants: IN ABSENTIA

For the Respondents: MR. S. DLAMINI

JUDGMENT
18th June 2008

[1] This matter being Civil Case No 1980/2000 was called with another being Civil Case No. 3028/2006 where *Mr. Magongo* appeared in the latter. It appeared that the former case appeared before Shabangu J (as he then was) where judgment was never delivered until the demise of the learned Judge, *Mr. Dlamini* for the Respondent urged the court that it proceeds with both matters as they are substantially the same. *Mr. Magongo* for the Applicant in Civil Case No. 3028/2006 objected that Case No. 1980/2000 ought to be disposed first. I agreed with him and I ordered that Case No. 3028/2006 be postponed *sine die* and I heard arguments from *Mr. Dlamini* relating to Civil Case No. 1980/2000.

[2] The Applicants in Case No. 1980/2000 moved an application on Notice of Motion for an order in the following terms:

- 1. Interdicting and/restraining the respondents and their agents or employees from removing, disturbing or interfering and/or damaging any of the houses, buildings or property which forms an integral part of the Applicants' property a farm No. 474.**
- 2. Interdicting and/or restraining the Respondents and/or their agents or employees from harassing, threatening and/or evicting the Applicants from farm No. 474.**
- 3. Directing the Respondents to remove and/or destroy the barbed wire they have erected on farm 474.**
- 4. An order declaring that the Applicants are the lawful occupiers of farm 474.**
- 5. Declaring that the Respondents are not the lawful owners of farm 474.**
- 6. Costs of suit.**
- 7. Further and/or alternative relief.**

[3] The application is founded on the affidavit of the 1st Applicant where he relates all the material facts in the dispute. The 2nd Applicant Fohloza Zwane has filed a supporting affidavit to 1st Applicant's Founding Affidavit. A number of annexures are filed including annexure "MSI", "MS2".

[4] The Respondents oppose the granting of the above cited orders in paragraph [2]. In this regard the opposing affidavit of the 3rd Respondent Thishela Ndzimandze is filed thereto. A further supporting affidavit of Humphrey Horseman Henwood is filed by the Respondents. The

Respondents have also filed a Deed of Sale as annexure "A". Receipts from the offices of William F. Mthembu are also filed thereto.

[5] When the matter was called on the 8th April 2008, there was no appearance for the Applicants. I was informed by Counsel for the Respondents that Applicants were served with a Notice of Set-down way back but have not appeared before court to argue the matter. I allowed Counsel for the Respondent to proceed with the matter as I was satisfied that Applicant had knowledge of the proceedings that day.

[6] In arguments before me Counsel for the Respondents argued that the Applicants have not proved the requirements of a permanent interdict as they have failed to prove that they have a clear right. Secondly, that *in casu* there are disputes of fact which cannot be reconciled on the papers.

[7] The legal authority of *Prest, The Law and Practice of Interdicts, Juta, 1996* at page 42 states the requirements of a final interdict comprehensively. I have considered the arguments advanced by Counsel for the Respondents and I have come to the considered view that Applicant's have not proved a clear right as stated by the above-cited legal authority.

[8] I also find that *in casu* there are disputes of fact as stated by Counsel for the Respondents.

[9] In the result, for the afore-going reasons the application is dismissed with costs.

S.B. MAPHALALA

JUDGE