

IN THE HIGH COURT OF SWAZILAND
HELD AT MBABANE

In the matter between

SOS CHILDREN'S VILLAGE ASSOCIATION SWAZILAND
Applicant

And

NONHLANHLA FAKUDZE
Respondent

Civil Case No. 1589/2007

Coram

S.B. MAPHALALA – J

For the Applicant

MR. W. MKHATSHWA

For the Respondent

MR. P. DLAMINI

JUDGMENT

1st February 2008

[1] An application for the ejectment of the Respondent in the main application was brought before this court on the 13th July 2007, successfully and an order granted for her ejectment from the premises of the Applicant. Subsequently an application for stay of execution of the said order was moved, which application is now before court for argument. An order was granted for the stay of the said order pending finalization of the application and a rule *nisi* returnable on the 13th August 2007.

[2] Instead of the Applicant moving an application for rescission of the judgment, for purposes of bringing the matter to finality an application for joinder was moved on the 31st August 2007, which sought to join the Ministry of Education, Ministry of Public Works and Transport through the Attorney General's office of the application. The application was opposed on the 2nd November 2007, and the application was dismissed.

[3] Presently the parties have filed the required affidavits. The application before court presently is for an order *inter alia*, restraining and interdicting the 1st Respondent from carrying out the eviction of the Applicant from House No. 2 S.O.S. Village, Mbabane, situate at Mbabane in the district of Hhohho. Granting Applicant leave to apply for a rescission of the said order of eviction and granting Applicant the costs of the application in the event of the successful opposition.

[4] The factual background of the matter is that the Applicant's occupation of the said house (subject matter in these proceedings) is by virtue of her employment as a teacher and stationed with the 1st Respondent, at its Sidvwashini premises, Mbabane. The Applicant's occupational title is inherited from the period prior to the school itself being taken over by the Swaziland Government. A Memorandum of Agreement was duly drawn up by which the Swaziland Government, through the Ministry of Education took over the school. Applicant remained a teacher at the school but now effectively employed by the Swaziland Government, through the same

ministry. As part of its obligations to provide housing for civil servants, the Ministry of Public Works and Transport advised the Applicant, among others to remain in occupation of the said house, the subject matter herein being a part thereof.

[5] Pursuant to various correspondences (listed as annexure “B”, “C”, “D” and “E”) to the 1st Respondent’s application, an order was finally sought and obtained on the 13th July 2007 for Applicant’s eviction.

[6] According to the Applicant her eviction, in light of the foregoing facts is clearly unmerited. The circumstances that have led the Applicant to be in contempt clearly do not constitute willful contempt. Further that Applicant will be seeking an order, in the alternative, directing that the Ministry of Public Works and Transport be compelled to provide the Applicant with alternative accommodation within a specific period on the legal authority of *Moosa Caisim NNO vs Community Development Board 1990 (3) S.A. 175 A*).

[7] On the other hand it is contended for the Respondent that the Applicant has no *bona fide* defence to her claim to the property and further that the 1st Respondent in the current application is the owner of the said premises.

[8] It would appear to me that the contentions by the Respondents are correct on the facts of the matter. I say so because the Applicant occupied

such premises by virtue of her being an employee of the 1st Respondent, which employment relationship ceased on termination of the Applicant's services and upon the 1st Respondent and Swaziland Government entering into an agreement in 2006. It also appears that Applicant conceded by requesting for an extension to continue staying at 1st Respondent's premises that she was no longer entitled to stay at the aforesaid premises. Further, she acknowledged that she was made to sign a lease agreement with the 1st Respondent, which clearly shows that she is aware that the 1st Respondent is the rightful owner of the premises.

[9] It is abundantly clear to me that the Applicant has failed to show cause why she should not be ejected from the premises of the 1st Respondent and further failed to bring the application for rescission neither has a defence been disclosed.

[10] In the result, for the afore-going reasons the ejection of the Applicant is made final and Applicant to pay costs of this application.

S.B. MAPHALALA

JUDGE