

**IN THE HIGH COURT OF SWAZILAND**

**CIVIL TRIAL No. 3279/08**

**In the matter between**

Princess Sabsile Dlamini

Appellant

VS

The Regional Administrator  
Hhohho Region

1<sup>st</sup> Respondent

The Elections and Boundaries  
Commission

2<sup>nd</sup> Respondent

The Attorney General

3<sup>rd</sup> Respondent

**Coram:** S.M. Monageng J

For Plaintiff: Mr. B. Sgwane

For Defendant: Mr. T. Dlamini

**JUDGMENT  
22 AUGUST 2008**

[1] The applicant, the Acting Chief of the Madlangempisi area in the Region of Hhohho, Princess Sabsile Dlamini brings this application against the Regional Administrator of the Hhohho region (1<sup>st</sup> respondent), the Elections and Boundaries Commission - (EBC) (2<sup>nd</sup> respondent) and the Attorney General of the Kingdom of Swaziland (3<sup>rd</sup> respondent) on urgency. She requests the Court to stop the elections that will take place from 23<sup>rd</sup> to 25<sup>th</sup> August 2008, that is a few hours from now, for reasons that will emerge later on in the judgment.

[2] She alleges that the second respondent relies on the first respondent for information on setting up of polling chiefdoms or iMiphakatsi. The first respondent is responsible for the coordination of the activities of the Hhohho regional council and also plays the role of pointing out the location of the various chiefdoms or iMiphakatsi within his district or region to the 2<sup>nd</sup> respondent.

[3] Each chiefdom within a district or region is allocated an area code, which is then endorsed on the official geographical and topographical map of the Kingdom, to generally indicate the extent and layout of the piece of Swazi nation land falling under the jurisdiction of the particular chief. The area code together with the number of the chiefs indvuna or headman is also used in allocating a tax identify number to the subject of each chief by the department of taxes.

[4] The applicant says that the area code number allocated to the Magagula chiefdom of Madlangempisi area over which she is the regent chief is number 1026, that of the neighbouring chief to the north of her territory is

number 1025 while that of the chiefdom south of her territory is number 1023, and that her area extends to the southern banks of the Nkomati river. —

[5] She alleges that at the commencement of the nomination stage of the current election period, the 1<sup>st</sup> respondent wrongfully advised the 2<sup>nd</sup> respondent that there was a chiefs kraal or uMphakatsi at a village called eBuhlebuyeza, an area located within the Madlangempisi river, her area. She avers that there is no area code allocated to eBuhlebuyeza and she suspects that amongst the residents of eBuhlebuyeza, there could be separatist subjects from other chiefdoms who would now like to proclaim a new chiefdom, in the area. She submits that there is only one uMphakatsi under area code 1026, the eKukhulumeni uMphakatsi, of which he is the acting Head.

[6] On realising this, applicant says that she engage the 1<sup>st</sup> respondent, who ultimately wrote to the 2<sup>nd</sup> respondent on the 13<sup>th</sup> August 2008, directing him to cause all those who did not belong to the Mandlangempisi chiefdom, but who had registered under the eBuhlebuyeza polling station, to proceed to register or vote under their own chiefs. She says that on the 14<sup>th</sup> August 2008, the 1<sup>st</sup> respondent further urged her to hold discussions with 2<sup>nd</sup> respondent regarding the matter of elections at eBuhlebuyeza.

[7] She met the 2<sup>nd</sup> respondent on the 19<sup>th</sup> August 2008 and 2<sup>nd</sup> respondent told her that 1<sup>st</sup> respondent had verbally withdrawn his letter of 13<sup>th</sup> August, and therefore that the elections at eBuhlebuyeza would proceed as

previously planned. Applicant and her delegation then proceeded to see the 1<sup>st</sup> respondent who refused to meet them, and instead referred them to his subordinates to resolve the matter. She decided to bring the matter before this Court, since it has jurisdiction to deal with it in terms of Common Law and Section 151 (2) of the Constitution.

[8] She further states that if the elections are allowed

to go on grave prejudice will be visited upon her subjects in that people from surrounding chiefdoms, resident at eBuhlebuyeza, would enhance or forster foreign interests, much to the disadvantage of the Ekukhulumeni vote, which would remain weakened and divided and that at least one of the other chiefdoms, under the Madlangempisi inkhundla, would have the pleasure of gaining two Bucopho Committee seats, instead of one seat, much to the disadvantage of the Ekukhulumeni kraal.

[9] She further says that citizens who are resident at

eBuhlebuyeza would be deprived of their right to vote under their own chiefdom. She says that, should the primary elections be allowed to proceed, her subjects would suffer irreparable harm or injury as explained above, and that there would be no remedy for her. In response, the respondents said that registration started on 19<sup>th</sup> May 2008 and eBuhlebuyeza was used as a registration centre. The applicant was aware of this, but did not approach the Court, so there is no urgency in the matter.

[10] The respondents further say that eBuhlebuyeza

was established as a polling station in terms of Section 11 of the Elections Order No. 2/92, and that in terms of Section 11 (3) of the Order, any subdivision of an Inkhundla into polling divisions remains in force until altered under this Section, by the Elections and Boundaries Commission, under the new Constitution, during the fourth year of Parliament, per Section 91 (1).

[11] The respondents also say that the applicant raises issues of chieftaincy, that do not fall under the purview of the High Court per Section 151 (8) of the Constitution. During the course of the arguments, Counsel raised many issues, including the fact that polling stations are published in a government gazette and at the end of it all, the applicant demanded that the government gazette that shows eBuhlebuyeza as a registration or polling station should be produced by the Respondents, and demanded that if anything, I should adjourn the proceedings to allow the respondents to do that.

[12] I wish to make the following observations:

1. The report of the Delimitation Commission of May 1993 shows eBuhlebuyeza as one of the chiefdoms and communities to be serviced by an inkhundla. General notice No 25 of 2008, voter's registration order, 1992 (King's Order in Council No.3 of 1992), Registration Centres for the 2008 General Elections (under Section 5 (4) lists eBuhlebuyeza as a chiefdom/polling station.
2. This information was published on 16<sup>th</sup> May 2008 on

the Swaziland Government Gazette Extraordinary.

[13] I do not understand why the applicant now vehemently says that the polling station was not gazetted. The respondent says that eBuhlebuyeza is a polling station as evidenced by the Government Gazette. After a lot of arguments and exchanges, the issue was narrowed down to whether eBuhlebuyeza is a polling station. The applicant, who alleges that it is not shifted the responsibility to establish that, through production of a Government Gazette publication to the respondents, who had said it must have been gazetted.

[14] In view of the fact that there is an Extra Ordinary Government Gazette dated 19<sup>th</sup> May 2008, I find that it would be unfair for me to order a postponement of the election, which is to be held in a few hours' time, to allow the respondents to look for some gazette. I am minded to agree with the respondents that the applicant set on her rights for three months and did not approach the Court and she cannot be indulged.

[15] I also wish to refer to the letter from Dr. Nsibande, the Regional Administrator, which is reproduced below:

"May I refer you to our telephone discussions and request you your Royal Highness to handle the issue brought by Princess Sabsile to cause all those registered at eBuhlebuyeza to proceed and register eBulandzeni under their own Chiefdom"

[16] This letter was written to the Chairman of the Elections and Boundaries Commission. This letter merely

requests Chief Gija Dlamini to handle the issue. It does not instruct voters to go and register elsewhere. This is obviously a misunderstanding on the part of the applicant, which leaves the only issue being whether or not eBuhlebuyeza is a polling station.

[17] I think it is too late in the day for any more investigation to be done. There is evidence that eBuhlebuyeza was gazetted as a polling station. This is a typical case which should be investigated at a later stage, if necessary. Stopping the elections would not serve any purpose especially that, with the greatest of respect to the applicant, most of her averments are mere speculation.

[18] In the result, the application fails and the reliefs sought are not granted.

S.M. Monageng  
JUDGE