

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 1589/2007

VUSANIDVUBA

Applicant

And

PRINCE Pili HLAPIIIDLAMINI

1st Respondent

THE COMMISSIONER OF POLICE

2nd Respondent

SAMSON NKWANYANE

3rd Respondent

MACALENI DLAMINI

4th Respondent

JOSIAH MAGAGULA

5th Respondent

ATTORNEY GENERAL

6th Respondent

Coram: S.B. MAPHALALA - J

For the Applicant: MR. M. MKHWANAZI

For the Respondents: MR. B. TSABEDZE

JUDGMENT

1st February 2008

[1] On the 11 October 2007, the Applicant filed an urgent application directing the Respondents to restore *ante omnia* a herd of 40 (forty) cattle illicitly despoiled from Applicant's possession.

[2] The Applicant has filed his Founding affidavit in support of this application where he avers *inter alia* that at all material times hereto he has been in lawful peaceful and undisturbed possession of a herd of 40 cattle by virtue of being the owner thereof. The Respondents who were in the company of members of the Royal Swaziland Police from Mbabane Police Station deprived him of the said possession by force. He did not consent to the Respondent's taking away his cattle. The respondents also did not have any statutory enactment or court order authorizing them to forcefully take away his cattle. He alleged further that he was denied his constitutional right to be heard before he was despoiled of the said cattle and the Respondents treated him unjustly and unfairly without any regard to the principles of natural justice. The conduct of the Respondents amounted to a breach of his constitutional right of protection against arbitrary search and entry as the gained entry into his premises without his free consent and thus violating his dignity. That he has a constitutional right to own and possess the said cattle and protection from compulsory deprivation of same and he enjoys equal protection of law like all citizens of this country. In paragraph 19 to 21 averments are made of urgency.

[3] The Respondents oppose the application and in this regard has filed an affidavit of one Macaleni Dlamini who is employed by the Swazi National Treasury as Overseer of all the King's cattle all over Swaziland. He deposed, *inter alia*, that Applicant was not forcefully dispossessed of the 40 herd of cattle. Applicant was given the instrument but refused to take it and said the Chief should read it to him and the Chief complied and read the instrument. The Applicant consented to the taking away of the 40 herd of cattle. Applicant even showed Respondents where the cattle were. The said Answering affidavit is supported by the affidavit of Chief Tembe Petros Dvuba.

[4] The Applicant then filed a replying affidavit contesting most of the averments made by the Respondents in their answering affidavit and supporting affidavits.

[5] The issue that has to be decided by this court is whether Applicant (the person in possession) was deprived by the Respondents of the said herd of cattle without his acquiescence and consent. It is common knowledge that the Mpholonjeni Royal Kraal has always been in possession of the "impholonja" cattle and Applicant had received the call in question merely to look after them as an agent of the Mpholonjeni Royal Kraal. It is also common cause that Applicant received the herd of cattle in question merely as a custodian and possession of the herd of cattle remained with the Mpholonjeni Royal Kraal.

[6] It is also clear on the facts that Respondents gave Mpholonjeni Royal Kraal and Applicant notice of their intended action. An order for the release of the "impholonja" cattle was communicated to Mpholonjeni Royal Kraal through Ludzidzini Governor in time. Applicant was not taken by surprise. Applicant even formed part of the delegation that was commissioned by Mpholonjeni Royal Kraal to go and thank His Majesty the King on his command. It appears on the facts that Applicant acquiesced and consented to the taking of the 40 herd of cattle and this can be inferred from the time it had taken Applicant four (4) months to bring this application. This period is too long for a person who has been dispossessed of his property unlawfully.

[7] It appears to me that 3rd, 4th and 5th Respondents were authorized in terms of Swazi law and custom to dispossess Applicant of the said 40 herd of cattle.

[8] In the result, for the afore-going reasons I find that Applicant has never had peaceful and undisturbed possession of the herd of cattle in question and therefore the application fails with costs.

S.B. MAPHALALA

JUDGE