

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 1016/07

In the matter between:

RAPHAEL MANDLA MBINGO

APPLICANT

and

THANDIE MBINGO

DEFENDANT

CORAM

Q.M. MABUZA -J MR.

FOR THE APPLICANT FOR THE

MALINGA MR.

RESPONDENT

SIMELANE

RULING 26/03/09

[1] The Applicant wishes to enforce an order that he obtained from the traditional structures.

[2] Mr. B. Simelane for the Respondent has raised inter alia a point *in limine* that the right that the Applicant claims

as the basis for the order he seeks from this Court does not exist at common law.

[3] The Applicant's father is deceased. Before he died he authorised and or instructed the Applicant to build a home for him (deceased) on a portion of the land that is now the subject of dispute herein.

[4] Mr. Simelane's contention cannot be correct. According to Swazi law and custom such a right exists. The death of the deceased fortifies its existence even more than if he were still alive. It is most unfortunate that Swazi law and custom remains uncodified. As a result its development remains static in favour of the common law. In the event the court orders that:

- (a) The point of law is dismissed.
- (b) The matter is referred back to the traditional structures for them to enforce their decision in this matter and to mete out whatever penalty follows the failure of the Respondent to abide by their decision.


O.M. MABUZA -J