

**IN THE HIGH COURT OF SWAZILAND  
HELD AT MBABANE**

**Civil Case No. 1257/09**

In the matter between:

**OBED HLATSHWAYO**

**APPLICANT**

**AND**

**NGANGENYONI DLAMINI**

**1st RESPONDENT**

**VOLOLO SHABANGU**

**2<sup>nd</sup> RESPONDENT**

**BEN PIPI DLAMINI**

**3<sup>rd</sup> RESPONDENT**

CORAM

MCB MAPHALALA, J

For Applicant

Mr. S. Gumedze

For Respondents

Mr. B. Tsabedze

**Summary**

Swazi Law and Custom - appointment and removal of the Governor of a Chiefdom - Powers and Functions of the Family Council or Lusendvo on the death of the Chief.

**JUDGMENT  
10<sup>th</sup> MARCH 2011**

[1] The Applicant instituted legal proceedings challenging his removal from the position of Governor of Kaliba Chiefdom in the Shiselweni Region

[2] The following facts are common cause:

2.1. During his lifetime, Chief Tholo Dlamini of Kaliba appointed Madibhi Jele as his Governor. The Chief died in 1990 and his Governor died in 1995; hence, both the offices of Chief and Governor were vacant. The administration of the area fell under the Family Council; the First Respondent who is the Senior Prince as well as the Third Respondent are members of the Family Council.

2.2. In 1996 the Family Council appointed the Applicant as the Governor of the Chiefdom. The Council further introduced him to the Shiselweni Regional Administrator as well as to the Senior Regional Officer for the Shiselweni Region; the latter in turn introduced him to the Commissioner of Taxes.

2.3. On the 7<sup>th</sup> March 2009, the Third Respondent demanded from the Applicant the keys to the office of the Governor as well as an office stamp; the applicant refused to do this and referred him to the Family Council. On the 21<sup>st</sup> March 2009, the First Respondent convened a community meeting where he dismissed the Applicant as Governor and appointed the Second Respondent in his place. On the 29<sup>th</sup> March 2009, the First Respondent dismissed the Inner Council and appointed a new one.

[3] On the 1<sup>st</sup> April 2009, the Applicant in the company of Enock Dlamini and Mcanjelwa Dlamini reported the removal of the Applicant and Inner Council to the Ludzidzini Royal Committee; however, the Committee declined to entertain this matter on the basis that there is a pending High Court matter between the applicant as well as the First and Third Respondents being Civil Trial No. 986/2009. In the circumstances, there is no pending matter before the Ludzidzini Royal Committee as between the parties with regard to the dismissal of the Applicant and the Inner Council.

[4] The First Respondent argues that he is the Senior Prince and that by virtue of his status aforesaid, he is the Acting Chief of Kaliba; and, that in terms of Swazi Law and Custom, he is the Competent Authority of the Area, and has the power to dismiss the Applicant from the position of Governor as well as the Inner Council.

[5] Both parties agree that the Applicant and Inner Council were appointed by the Family Council; however, they differ on who has the authority to remove them. The Applicant argues that it is only the Family Council who can remove him and the Family Council; and the First Respondent argues that it is only him as the Senior Prince who has the power to remove them.

[6] Section 233 of the Constitution provides that:

**"(3) The general rule is that every Umphakatsi (Chiefs residence) is headed by a chief who is appointed by**

**Ingwenyama after the chief has been selected by the Lusendvo (Family Council) and shall vacate office in like manner.**

**(4) The position of a chief as a local head of one or more areas is usually hereditary and is regulated by Swazi Law and Custom."**

[7] The most important Traditional Structure within a chiefdom is the Family Council which comprises important princes and princesses from specific households; their main function is to select the chief designate to be presented to the Ingwenyama for appointment. Once the chief has been appointed, he in turn appoints the Governor as well as the Inner Council. On his death the Family Council takes over the administration of the chiefdom with the assistance of the Governor who was left behind by the late Chief. The Governor and the Inner Council remain in their positions pending the appointment of the new chief. In the event that the Governor dies, the Family Council appoints another Governor to hold fort until a new chief is appointed. However, the Family Council has the power to remove a Governor they have appointed for a "just cause" such as ill-health, insubordination or for gross misconduct; similarly, the Family Council has authority to appoint and remove the Inner Council they have appointed.

[8] The Senior Prince of the Umphakatsi is different from the Senior Prince referred to in Sections 8 and 234 of the Constitution. Both are appointed in terms of Swazi Law and Custom; however, the one

referred to in the Constitution is the paternal uncle of the Ingwenyama, and, his function is to perform the functions of the Queen Regent if she is temporarily out of the country or if for any reason she is temporarily unable to perform the functions of her office. In performing those functions, he has to take into account any specific instructions that she makes. He is advised by Liqoqo in the performance of his duties and, he is usually a member of Ligunqa referred to in Section 230 of the Constitution.

[9] The Senior Prince of a Chiefdom is a member of the Family Council. He summons and chairs meetings of the Family Council. He is not automatically an Acting Chief by virtue of his Status as Senior Prince. He does not take unilateral decisions in the absence of the Family Council; he does not have a veto power over the decision-making process. The Family Council can appoint any person within the Senior Royal Households as an Acting Chief of the Area; the Senior Prince is also eligible to this appointment.

[10] The Kaliba Family Council did appoint the Applicant as the Governor of the chiefdom; and soon thereafter, the Family Council split into two factions over the candidate to be selected as chief of the Area. The applicant was perceived by the First Respondent and his faction to be siding with the other faction; hence, he dismissed him for insubordination and lack of loyalty to him. However, the other faction still regards him as the legitimate Governor for the Area. As I have stated above, the First Respondent does not have authority to dismiss

the Applicant or the Inner Council. He alleges that before dismissing him, he consulted with his faction.

[11] Furthermore, there is no evidence that the Family Council before the split selected the First Respondent to be the Acting Chief of the Area; hence, he cannot be regarded as the Competent Authority of the Area in accordance with Section 10 bis (2) of the Swazi Administration (Amendment) Act No. 6 of 1979. This Section defines a "Competent Authority" as a person appointed by the Ingwenyama in Libandla for the purpose of administration in a Swazi area and includes a chief appointed under Section 1 of this Act or any person holding such office. From this definition, it is apparent that the competent authority at Kaliba is the Family Council.

11.1. The Swazi Administration Act No. 79 of 1950 does not provide for the appointment of an Acting Chief. However the Swazi Administration Order No. 6 of 1998 did provide for the appointment of an Acting Chief. Section 8 of the said Order provided that:

"(1) Where a person to be appointed as a chief under Section 7 is below the age of eighteen (18), then such person shall not for the time being be appointed as a chief, and it shall be the duty of the Lusendvo so assembled to designate another person to act as a Chief.

(2) The Ingwenyama shall, by notice published in the gazette, appoint the person designated in terms of subsection (1) to be the Acting Chief and shall specify the period of such acting appointment.

(3) An Acting Chief shall, pending the appointment of the rightful chief and with the approval of Lusendvo, exercise and perform the functions of the chief."

11.2 The Swazi Administration Act of 1950 did not provide for the appointment of Indvuna; however, Section 38 (1) of the Swazi Administration Order of 1998 provided that:

"A Chief may, in accordance with Customary Law, appoint any person as an Indvuna in respect of his chiefdom and may in like manner terminate the appointment."

11.3. The Swazi Administration Order of 1998 was declared invalid by a full bench of the High Court in the case of **Chief Mliba Fakudze and three others v Minister of Home Affairs and three Others** High Court Case No. 2823/2000. The Respondents appealed to the **Court of Appeal of Swaziland**, as it then was, in the case of the **Minister of Home Affairs and Three Others v Chief Mliba Fakudze and three Others** Appeal Case No. 6 of 2002. The appeal was

dismissed with costs; hence, the Swazi Administration Act of 1950 is the applicable law with all its short-comings.

11.4. There is an urgent need for Parliament with the assistance of the Attorney General to revisit the Swazi Administration Act No. 79 of 1950 as well as the Swazi Administration (Amendment) Act No. 6 of 1979 with a view of effecting necessary amendments that are in accordance with the Constitution. In so doing, they have to incorporate those provisions of the invalidated Swazi Administration Order No. 6 of 1998 which are not inconsistent with the Constitution. Such an exercise will culminate in a unified and Consolidated Swazi Administration Act which will make this area of the law certain.

11.5. However, Section 10 bis (2) of the Swazi Administration (Amendment) Act No. 6 of 1979 does provide for the Acting Chief or Family Council in its definition of "Competent Authority", "as a person appointed by the Ingwenyama in Libandla for the purpose of administration in a Swazi area and includes a chief appointed under Section 1 of this Act or any person holding such office".

[12] In the circumstances I make the following order:



- (a) The dismissal of the Applicant by the First Respondent in March 2009 is hereby set aside as being of no force or effect.
- (b) The Respondents are hereby interdicted and restrained from interfering with the Applicant in the performance of his functions as Governor of Kaliba Chiefdom.
- (c) The dismissal of the Inner Council by the First Respondent in March 2009 is hereby set aside as being of no force or effect.
- (d) The appointment of the Second Respondent as Governor of Kaliba by the First Respondent in March 2009 is hereby set aside.
- (e) The appointment of the New Inner Council by the First Respondent in March 2009 is hereby set aside.
- (f) The Respondents are directed to pay costs of suit on the ordinary scale.

**M.C.B. MAPHALALA**  
**JUDGE OF THE HIGH COURT**

