IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE **CASENO. 394/10**

In the matter between:

NDZIMANDE THEMBINKOSI **APPLICANT**

AND

MAZIYA NTOMBI MR. MNISI

Coram	**Ota J.**
For Applicant	Mr.S.P Mamba
For Respondent	MR A. Juma

JUDGEMENT

OTA J.

[1] The applicant herein prays for the following reliefs against the Respondents :-

1. That the Respondents and / or anyone acting under their instruction be forthwith interdicted and restrained from utilizing, setting their foot on the land and effecting any development in the form of any building or structures on the land situated at Kwaluseni area next to Dinner Time Shopping Complex, Matsapha, in the Manzini District, lawfully belonging to the applicant.

2. That the members of the Royal Swaziland Police Matsapha are to assist in effecting this order.

3. Costs of suite.

4. Further and / or alternative relief.

[2] In support of the foregoing reliefs claimed, the Applicant alleges the following facts in his founding affidavit; That he was born in **Kwaluseni** and the land in dispute belongs to him after being allocated to him by his parents, **David Ndzimandze** and **Khanyisile Ntuli.** That during the year 2008, the 1st Respondent's husband one **Phineas Maziya** (deceased) **(Phineas)** loaned to the Applicant the sum of E8, 000.00. That the said **Phineas** later went to the areas Inner Council to file a complaint against the Applicant, for failure to

settle the debt. That the Applicant was summoned to the Inner Council. That at the Inner Council the Applicant admitted owing the said **Phineas** and undertook to pay him. That when the Applicant subsequently got the money to pay the debt, he requested of the said **Phineas,** that they both go to the Inner Council together with their wives, so that the Applicant could make the payment and settle the matter. That when they went to the Inner Council, the Applicant's wife was in attendance, but **Phineas'** wife failed to attend.

That the applicant paid the sum of E8,000.00 and interest in the sum of E7,000.00. That this payment is evidenced by the letter of confirmation from the Inner Council exhibited to these proceedings as annexure "TDI".

[3] That surprisingly to the Applicant, the 1st Respondent who is the wife of **Phineas,** now claims that the land was security towards the debt. That the land now belongs to she and her family, since the Applicant was owing her husband **Phineas,** now deceased. That the 1st Respondent has allocated the said land to the 2nd Respondent, a Pastor, to use it for the purposes of running his church, as a place of worship. That consequent to these events, the

Applicant reported the matter to the Ndabazabantu of Manzini, the office entrusted in terms of the Swazi Administration order to deal with issues of Swazis pertaining to their welfare. That it was resolved at this forum that the land belongs to the Applicant and should be given back to him, as is evidenced by the ruling of the Ndabazabantu exhibited in these proceedings as annexure "TD2," which ruling has not been reviewed or appealed against.

[4] The Applicant alleged, that he is entitled to the interdict sought, in that he has a clear right to the use and enjoyment of the land. That he is already suffering and continues suffering because he is unable to use the land for the benefit of himself and his family. That he has no other alternative remedy than to approach this court for redress, since he has exhausted the Swazi Customary Law structures and the Respondents are in defiance of the orders issued by these structures.

[5] That the Respondents will suffer no prejudice by the granting of the reliefs prayed, since the traditional structures have already issued a ruling that has not been appealed or reviewed. That all the Applicant seeks is to put

into effect the existing orders since the traditional structures do not have a clear mechanism to effect their orders.

[6] In her Answering Affidavit, the 1st Respondent alleged the following facts: That the land in issue belongs to the **Ndzimandze** family and not the Applicant. That it is the Applicant's grandfather who *khontaed* not the Applicant. That her **husband Phineas** loaned to the Applicant the sum of E6, 000, and later another amount of E4, 000. That **Phineas** never went to the Inner Council to complain. That the Applicant gave **Phineas** the land in issue as security for the loan. That the Applicant never paid E8, 000.00 or any amount at all to **Phineas.** That upon realization by the Applicant that he could no longer pay back the loan, that the Applicant gave the said land to **Phineas,** and accompanied **Phineas** to the Umphakatsi to pay an amount of E2,000.00 as a *khonta* fee, as is evidenced by annexure A, a copy of the receipt from the Umphakatsi. That it is thus surprising to see the letter of confirmation from the Inner Council, as no money was paid. That two meetings were called by the Umphakatsi, in which meetings the sister of Applicant one **Mrs Lukhele B,** was present. That the question as to the

whereabout of the records of payment was raised there, and there was no answer. That the conclusion was that the money was never paid back. That these facts are confirmed by the confirmatory affidavit of the said **B. Lukhele** which forms a part of these proceedings. The 1st Respondent further alleged, that the Umphakatsi would never have accepted E2,000,00 as a *khonta* fee had **Phineas** been paid his money. That the land is no longer held as security, as **Phineas** *khontaed.* That the land now belongs to the 1st Respondent since **Phineas** is deceased. That the matter was never resolved by the Ndabazabantu as there was no proof that **Phineas** was paid. That all these facts are confirmed by the confirmatory affidavit of **B. Lukhele.** That the Applicant therefore has no right over the said land.

[7] In her confirmatory affidavit, **B. Lukhele** alleged, that she attended the meetings at the Umphakatsi and Ndabazabantu in Manzini where her brother, the applicant, reported the matter. That there was however no proof that the Applicant had paid **Phineas** any amount. That the Applicant lied under oath in alleging that the Umphakatsi and Ndabazabantu resolved the matter. That

the Applicant accompanied **Phineas** to the Umphakatsi to pay the E2,000.00 *khonta* fee for the said land. That the land in question does not belong to the Applicant but belongs to the Ndzimandze family as a whole.

[8] It is on record that the Applicant filed a Replying Affidavit, wherein he contended that the question of the ownership of the said land is not an issue before this court. That same is Res judicata, having been deliberated upon by the Kwaluseni Royal Kraal and the Ndabazabantu and a Ruling issued to the effect that he owns the said land, which Ruling has not been appealed or reviewed.

[9] When this matter served before me for argument on the 8th of June 2011, the Applicant was represented by **Mr. S. P. Mamba,** and the 1st Respondent represented by **Mr. A. .hi ma.** It is noteworthy that the 2 Respondent, did not participate in these proceedings.

[10] Be that as it may, I have very carefully considered the heads of argument filed of record as well as counsel's oral submissions in court, and I will refer to them as the need arises in this decision.

[11] Now, since the Applicant seeks a final interdict against the Respondent, it is apposite for me at this juncture to re-state the trite principles of law that must guide the court in a judicial and judicious exercise of it's discretionary power in granting a final interdict. These principles were evolved in the celebrated case of **Setlogelo v Setlogelo 1914 AD 221 at 227,** where the court declared as follows:-

"It is well established that the pre-requisite for an interdict are a clear right, injury actually committed or reasonably apprehended and the absence of similar protection by another remedy "

[12] It is thus ineluctable from the foregoing, that for an applicant for a final interdict to succeed in his application, he must demonstrate the following:-

1. A clear right

2. Injury actually committed or reasonably apprehended, and

3. The absence of similar protection by any other remedy or irreparable harm.

[13] It is worthy of note that a re-statement of these principles in courts of this Kingdom has rendered them sacrosanct. Some of the local cases in which these principles were considered, include but are not limited to **Daniel Didabantu Khumalo v The Attorney General Civil Appeal No. 31/2010. Mhlatsi Haword Dlamini v Prince Mahlaba Dlamini Civil Appeal No. 15/2010.**

[14] The question that arises at this juncture is: Do the facts of this case when juxtaposed with the principles evolved in **Setlogelo (Supra)** vindicate the Applicant's prayer for a Final Interdict?

[15] I will now proceed to deal with the principles established in **Setlogelo (supra)** ad seriatim *vis a vis* the facts stated, in answer to the above poser.

[16] (1) **<u>Clear Right</u>**

This requirement to my mind is the most important of the three requirements evolved in **Setlogelo (supra).** This is because the question of injury actually committed or reasonably apprehended, as well as alternative remedy, are all predicated on the presence of a clear right to the subject matter of the dispute. Therefore, the absence of a clear right automatically renders the other requirements non-existent. The Applicant must therefore demonstrate a clear right to the subject matter of the interdict. The right which the interdict seeks to protect must be a legal right and that right must be that of the Applicant's. The facts averred in the affidavit of the applicant must be such as can established the existence of the legal right. In the case of **Minister of Law and Order v Committee of the Church Summit 1994 (3) SA 89 at 98, Friedman AJP,** postulated the law on the question of a clear right for a Final Interdict in the following language:-

> *" Whether the applicant has a right is a matter of substantive law. The onus is on the applicant applying for a Final Interdict to established on a balance of probability the facts and evidence which he has, a clear and definitive right in terms of substantive law. The right which the*

applicant must prove is also a right which can be protected. This is a right which exits only in law, be it at common law or statutory law"

[17] In casu, it is common cause that **Phineas Maziya** (deceased) loaned some money to the Applicant and that the Applicant used the land in issue as security for said loan. Applicant alleges that he paid back the money with interest to **Phineas.** That this payment was made before the Inner Council of Kwaluseni area, where Applicant was born and where the land in dispute is situated. That subsequently, the Ndabazabantu of Manzini, deliberated, on this matter and held that the land belongs to the Applicant.

[18] The 1st Respondent on the other hand as I have already demonstrated herein, denies that the Applicant paid the said money back to **Phineas.** She denies that this matter was ever resolved by the Inner Council or by the Ndabazabantu because the Applicant failed to produce a record of the alleged payment he made to **Phineas.** She called in aid the confirmatory Affidavit of one B. **Lukhele,** Applicant's Sister, in support of her position.

[19] There is no doubt that by the tenor of her argument, that the 1st Respondent put the question of the rightful owner of the said land in issue in this application. It is by reason of this fact that the Applicant has raised the legal defence of res judicata, to the question of the ownership of the said land.

[20] The first port of call to my mind in tackling the special defence raised by the Applicant, is therefore to regurgitate the position of the law on this defence.

[21] Now, the legal defence of res judicata is based on the sound rule of law that there must be an end to litigation. That the parties having fought an action to conclusion before a court of competent jurisdiction, have no powers of their own, to seek to relitigate the same matter, on the same ground, before the same court or another court of competent jurisdiction.

[22] The learned editors **Herbstein and Van Winsen, in the text The Civil Practice of the Supreme Court of South Africa(4 edition), 249-250,** elucidated the requisites of a successful plea of res judicata, in the following parlance:-

"The requisites of a plea of lis pendens are the same with regard to the person, cause of action and subject matter as those of a plea of res judicata, which, in turn, are that the two actions must have been between the same parties, or their successors in title, concerning the same subject matter and founded upon the same cause of complaint. For a plea of res judicata to succeed , however, it is not necessary that the "cause of action " in the normal sense in which the term is sometimes used as a term of pleading should be the same in the latter case as in the earlier case. If the earlier case necessarily involved a judicial determination of some question of law or issue of facts in the sense that the decision could not have been legitimately or rationally pronounced without at the same time determining that question or issue, then that determination though not declared on the face of the recorded

decision, is deemed to constitute an integral part of it, and will be res judicata in any subsequent action on the same subject matter. The same principle will generally apply when the plea is one of his pendens. In order to decide what matter is in issue, one should consult the pleadings, not the evidence led"

[23] It is indisputable from the excerpts of Herbstein etal ante, that the requisites of a successful plea of res judicata are as follows:-

1. There was a prior judgment between the same parties.
2. In respect of the same subject matter
3. On the same ground

[24] See **Clement Nhleko v M.H Mdluli and Company and another Civil Case No. 1393/09,** at page 8.

[25] Now there is no doubt that by the tenor of the I[s] Respondent's opposition to this application, which is clearly decipherable from the Answering affidavit filed of record, as well as the confirmatory affidavit, of **B. Lukhele,** that the I[s] Respondent is asking the court to reach the conclusion that she now owns the said land subject matter of this application, therefore, the Applicant does not have a clear right to the interdict sought.lt is her position that the Applicant never paid back the amounts owed to her late husband, **Phineas,** that this matter was never deliberated in the Inner Council of Kwaluseni Royal Kraal and that the Ndabazabantu never ruled that the land be returned to the applicant. That the land was given to her late husband **Phineas** by the applicant and that **Phineas** paid a *khonta* fee of E2,000.

[26] I must say that I cannot countenance this proposition advanced by the 1st Respondent. I say this because there is overwhelming documentary evidence from both the Inner Council of the Royal Kraal of Kwaluseni and the Ndabazabantu , attesting to the fact that the issues which the 1st Respondent

seeks to raise herein, have been deliberated upon and settled by those customary adjudicatory structures.

[27] I notice that the jurisdiction of those customary adjudicatory structures to deliberate and settle this matter is not challenged or controverted throughout the tenure of this application. I also want to note here for avoidance of doubts, that I am firmly convinced that these customary or traditional adjudicatory structures had the competence to deliberate upon and settle this matter. I say so because it is common cause that both the Applicant and the 1st Respondent are resident in the Kwaluseni area in Matsapha in the Manzini District and that the land in dispute is also situate in this area. This matter thus properly falls within the customary adjudicatory structures established in these areas, which have the competence to adjudicate upon and settle disputes arising within that area in terms of Swazi customary law. Swazi customary law is recognized, adopted, applied and enforced as part of the law of Swaziland, pursuant to section

252(2), (3) and (4)of the constitution of the Kingdom of Swaziland Act, No. 001, 2005 in the following language.

"252 (2) Subject to the provisions of this constitution, the principles of Swazi customary law (Swazi Law and Custom) are hereby recognized and adopted and shall be applied and enforced as part of the law of Swaziland.

(3) The provisions of subsection (2) do not apply in respect of any custom that is, and to the extent that it is, inconsistent with a provision of this constitution or a statute, or repugnant to natural justice or morality or general principles of humanity

(4) Parliament may -

a) provide for the proof and pleading of the rule of custom for any purpose;

b) *regulate the manner in which or the purpose for which custom may be recognized, applied or enforced; and*

c) *provide for the resolution of conflicts of customs or conflicts of personal law "*

[28] It is obvious to me that it is in furtherance of this constitutional mandate that parliament established the Swazi National Courts, pursuant to the Swazi Courts Act 80/1950, which by section 7 thereof, confers civil jurisdiction on these courts as follows:-

> "7 (1) *Every Swazi court shall exercise civil jurisdiction, to the extent set out in it's warrant and subject to the provisiosn of this Act, over causes and matters in which all the parties are members of the Swazi nation and the defendant is ordinarily resident, or the cause of action shall have arisen within the area ofjurisdiction of the court"*

[29] The only cases which are excluded from the Jurisdiction of the Swazi courts are as enumerated in section 9 of the Swazi courts Act as follows:-

> "9 (a) *Cases in which a person is charged with an offence in consequence of which death, is alleged to have occurred, or which is punishable under any law with death or imprisonment for life;*
>
> *(b) Cases in connection with marriage other than a marriage contracted under or in accordance with Swazi Law and Customs, except where and in so far as the case concerns the payment or return or disposal of dowry.*
>
> *(c) Cases relating to witchcraft, except with the approval of the Judicial Commissioner"*

[30] In as much as the Ndabazabantu is not a Swazi National court strictu sensu, I hold the view that the foregoing legislation which addresses Swazi customary or traditional adjudicatory structures is also attributable to it. Besides, the principles of Swazi law and Custom which are applied by these courts have constitutional hegemony, which is extant in Section 252 (2) of the Constitution as already stated, thus according them binding force. This fact was recognized by the Supreme Court vide the words that fell from the

lips of his Lordship **Ramodibedi CJ,** in its recent decision in the case of **The Commissioner of Police and Another V Mkhondvo Aaron Maseko, Civil Appeal NO.03/2011,** at 10, wherein his Lordship declared thus

"It *is plain from S252 (2) of the Constitution that the principles of Swazi Law and Custom are "recognized and adopted and shall be applied and enforced as part of the Law of Swaziland 'no court of this country can simply ignore this constitutional provision as was apparently done in the present case ".*

It is inexorably apparent from the totality of the foregoing, that the dispute in question which arose out of a simple debt owed to **Phineas** (deceased) by the Applicant all of whom were resident at the Kwaluseni area, was well within the jurisdiction of the Kwaluseni Royal Kraal as well as the Ndabazabantu.

[31] It is therefore beyond dispute, not withstanding the cries of the 1st Respondent herein, that the question of the ownership of the land in dispute was settled by the Kwaluseni Royal Kraal and the Ndabazabantu. My

conviction here is informed by the documentary evidence, which are exhibited in these proceedings as annexures TD1 and TD2. For avoidance of doubts I deem it expedient to regurgitate these annexures in extenso.

[32] Annexure TD1 which appears on page 8 of the book of pleadings emanates from and bears the stamp of the Kwaluseni Royal Kraal. This annexure demonstrates the following.

Kwaluseni Royal Kraal

P.O. Box2424

MANZINI

22/09/10

To whom it may concern

This serves to confirm that ***Thembinkosi Ndzimandze*** *had a land dispute* ***Mr. Phineas Maziya*** *at Kwaluseni Royal Kraal late last year. It was resolved*

that the land originally belongs to ***Mr. Ndzimandze*** *as the land was not sold to him, but* ***Ndzimandze*** *loaned the money from him, which he later paid it back to him at the presence of the Inner Council in October 2008. Having paid the money in cash as fifteen thousands, his wife claimed the land which is totally banned, since she was not present during the payment"*

[33] The foregoing document from the Inner council of the Kwaluseni Royal Kraal, to my mind, substantiates the Applicant's contention that he paid back the money owed to the deceased **Phineas,** before the Inner Council of the said Royal Kraal.

[34] Then there is annexure TD2 which appears on page 9 of the book of pleadings. This document which is dated the 8th of March 2010, is headed Ministry of Tinkhundla Administration and Development. It is signed by Ndabazabantu WakaManzini and bears the stamp of the Ndabazabantu of Manzini. It is worthy of note that this document is written in *siSwati*. A translated version of this document which was duly certified as a true translation by one **Gugu Precious Vilakati,** on the 25th of January, 2011, is

filed in court and forms a part of these proceedings. This document which is obviously the verdict of the District Commissioner of Manzini in the case between the Applicant and **Phineas Maziya** demonstrates the following:-

" MINISTRY OF TINKHUNDLA ADMINISTRATION AND DEVELOPMENT

Tel: 5052291
Fax: 50502294

P.O. Box 13

MANZINI

Swaziland

Your Ref

OurRef

Dear Sir / Madam

*With the evidence emanating from Embikwakhe Royal Kraal, I am satisfied that **Mr Thembinkosi Ndzimandze** paid up all the money loaned to him by **Mr Phineas Maziya.***

This money was for purposes of securing his land from Mr. ***Phineas Maziya.*** *As a result the land should be returned to it's owner who is Mr.* ***Thembinkosi Ndzimandze.***

Yours faithfully

District Commissioner (Manzini) "

[35] It is thus beyond any peradventure, from the conspectus of the foregoing, that the question of the ownership of the land in dispute and as rightly alleged by the Applicant, has been deliberated upon and settled by these traditional structures. This question is thus res judicata as between the Applicant and the 1st Respondent who is the successor in title of **Phineas Maziya** (deceased), and can only be re opened as between them by way of an appeal or review lodged before a competent appellate or reviewing traditional structure.

The amount was E10, 000.00 but he ended up paying El4, 000.00 inclusive of interest. He paid it in two (2) installments.

[36] The above verdict of the Ndabazabantu, District Commissioner of Manzini, has not been appealed against reviewed, varied or rescinded. It is subsisting and binding upon the parties thereto. The contentions of the 1st Respondent that this court should disregard the said verdict of the Ndabazabantu of Manzini and hold that she is the owner of the land in dispute, on the grounds as contended by her in paragraph 10 of her Answering Affidavit, to be found on page 14 of the book of pleadings, that, *"the land is no longer being held as security. My husband khontaed and the land now belongs to me since my husband is deceased",* is misconceived. I agree entirely with **Mr S.P Mamba** that whether **Phineas Maziya** had *khontaed* on the said land or not or whether he paid a fee of E2, 000 to *khonta* on the said land as alleged by the 1st respondent, are matters the 1st Respondent ought properly to place before the Nkhanini Offices to the Judicial Commissioner and further to the Ludzidzini Royal Committee,

which are the proper appellate or reviewing structures, vested with the powers to set aside, vary or review the said verdict of the Ndabazabantu of Manzini. In any event, I have taken the liberty of closely perusing the alleged *khonta* fee receipt of E2000.00, which appears on page 18 of the book of pleadings, and there is nothing on it to suggest that it is a receipt for the *khonta* fee for the said land or that the applicant accompanied **Phineas** (deceased) to pay the said fee as is alleged by the 1st respondent. All that the receipt demonstrates is that **Phineas Maziya** paid the sum of E2,000 to the Kwaluseni Royal Kraal, as a fine.

[37] Before I draw the curtain on the question of the clear right of the applicant to the said land, I want to visit one last contention raised, not by the 1st respondent, but by her counsel **Mr. Juma,** in oral argument. It was contended by **Mr. Juma** that his instructions are that **Phineas** passed away on the 7th of July 2008, therefore the allegation that the money was repaid to **Phineas** on the 8 of October 2008, is false, since by that date **Phineas** had already passed away. I must point out straightaway here, that this allegation

of fact is not contained in any of the affidavits serving before court. I hold the firm view that such allegation of fact cannot be conveyed to court via oral embellishments of counsel's submissions from the bar, but must be contained in an affidavit serving before court. This whole scenario is in my view compounded by the fact that **Mr. Juma** in the wake of these allegations, informed the court that he is not in possession of any document certifying the death of **Phineas** on the alleged date. I have no wish at this juncture to further pursue this proposition, other than to reiterate my earlier posture, that all these matters raised are issues that ought properly be raised before a competent appellate or reviewing court, in the face of the binding verdict of the Ndabazabantu. I must in the same vien point out that the allegation that the said land belongs to the Ndzimandze family and not to the Applicant, cannot defeat this application in the face of the verdict of the Ndabazabantu.

[38] As the case lies, in the absence of an appeal or review of the verdict of the Ndabazabantu of Manzini, on this subject matter, the question of the

ownership of the said land cannot be reopened as is urged. In the final analysis, since the verdict of the Ndabazabantu of Manzini is that the Applicant owns the land and that the land be returned to the Applicant, I therefore hold that the Applicant has demonstrated a clear right to the said land which is the subject matter of the interdict sought.

2. An injury actually committed or reasonably apprehended.

[39] In the case **of Minister of Law and Order v Committee of the church (supra) at page 98, Friedman AJP^** enunciated the guiding principles under this head in the following terms ;-

> *"The phraseology "injury" means a breach or infraction of the right which has been shown or demonstrated and the prejudice that has resulted therefrom. It has also been held that prejudice is not equivalent to damages. It will suffice to establish potential prejudice'[1]"*

See Prince Mahlaba Dlamini v Mhlatsi 1)1 a mini and 2 others Civil Case No. 252/1998.

[40] In casu, the applicant contends that he has suffered prejudice in that the 1st Respondent has allocated the said land to the 2nd Respondent, a Pastor, for the purposes of running his church, thereby depriving Applicant and his family the use of the land. The allegation of the allocation of the land to the 2nd Respondent which is contained in paragraph 11 of the founding affidavit is admitted by the Is Respondent. It is thus obvious to me that the activities of the 1st Respondent in allocating the said land to the 2nd Respondent, thus foreclosing It's right of usage and enjoyment by the Applicant, is prejudicial to the Applicant's right of ownership. There is also the possible prejudice that will be occasioned by the likelihood of the 2nd Respondent proceeding to erect structures or carry out any other developments on the land, probably defacing it from any other original purpose to which the Applicant may have desired to put the said land to.

3. No alternative remedy or irreparable damage.

[41] On this question, CB prest, Interlocutory Interdicts states as follows in pages 49-52:

> *"A final interdict is a drastic remedy and (probably largely for that reason) in the court's discretion. The court will not, in general, grant an interdict when the applicant can obtain ordinary relief. An applicant for a permanent interdict must allege and establish, on a balance of probability, that he has*
>
> *no alternative legal remedy............it has been held, correctly it*
>
> *is submitted, that the discretion of the court, apart from the position relating to the grant of interlocutory interdicts, where considerations of prejudice and convenience are important, is bound up with the question whether the rights of the party complaining can be protected by any other ordinary remedy "*

[42] I have no wish to engage in any long drawn out analysis of this issue in the face of the facts stated, which demonstrate beyond dispute litigation

before the Inner Council of the Royal Kraal of Kwaluseni , as well as the Ndabazabantu of Manzini. The record demonstrates that this matter has been extensively deliberated upon and settled by these traditional adjudicatory structures, culminating in the verdicts as contained in TD1 and TD2, which I have hereinbefore reproduced in extenso. It is obvious to me that the Applicant has exhausted his right of redress before these traditional structures. I see no other option open to him, in the face of the flagrant disobedience and disregard of the verdicts of those traditional structures, displayed by the 1st Respondent, and I must say with impunity and opprobrium, than to approach this court for redress by way of an interdict to enforce the orders of the traditional structures, and none is urged in these proceedings.

[43] In the light of the totality of the foregoing, I hold that this application has merits. It succeeds. I make the following orders on these premises.

1. That the Respondents and / or anyone under their instructions be and are hereby interdicted and restrained from utilizing, setting their foot on the

land and effecting any development in the form of any building or structures on the land situated at Kwaluseni area next to Dinner Time Shopping Complex Matsapha in the Manzini District, lawfully belonging to the Applicant.

2. That the members of the royal Swaziland Police Matsapha be and are hereby ordered to assist in effecting this order.

3. 1st Respondent is to pay the costs of this application on the ordinary scale.

DELIVERED IN OPEN COURT IN MBABANE ON THIS THE 17th ....DAY OF June 2011

OTA J.
JUDGE OF THE HIGH COURT