

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

**Civil Case No. 2121/09
(B)**

In the matter between:

**NGANGENYONI DLAMINI
BEN GIMBILIZA DLAMINI**

**1st APPLICANT
2nd APPLICANT**

AND

**THEMBA DLAMINI
OBED HLATJWAYO
MCANJELWA DLAMINI
LOKHONJWA DLAMINI
MASIKWENI DLAMINI
THOBILE DLAMINI
MAKHOSIKHOSI DLAMINI
AYINI DLAMINI**

**1st RESPONDENT
2nd RESPONDENT
3rd RESPONDENT
4th RESPONDENT
5th RESPONDENT
6th RESPONDENT
7th RESPONDENT
8th RESPONDENT**

CORAM

MCB MAPHALALA, J

For Applicants

Mr. M. DLAMINI

For Respondents

Mr. S. GUMEDZE

Summary

Swazi Law and Custom - Selection and appointment of chiefs - Powers of the Family Council - Appeals to the Ingwenyama in cases of disputes in the Selection of a chief designate.

**JUDGMENT
10th MARCH 2011**

[1] An urgent application was brought on the 31st December 2010 for an order interdicting and restraining the First and Second Respondents from performing duties at Kaliba Chiefdom which ought to be performed by a Chief or Governor of the Chiefdom; they further sought

an order that all the Respondents be admitted to prison for contempt of a court order issued on the 19th June 2009 under High Court Civil Case No. 2121/09. They further sought an order that the Respondents should not interfere with the Second Applicant in the performance of his duties which ought to be performed by the chief of the area.

[2] It is common cause that the Kaliba Chiefdom has been without a chief for a long time. After the death of Chief Vezi Dlamini in 1964, Chief Tholo Dlamini was selected to succeed him. The Applicants argue that Chief Tholo died in 1992 before being formally installed as chief. This is denied by the Respondents who submit that he was installed in 1976; they have attached "Annexure Liba 1, signed by the Ingwenyama King Sobhuza II addressed to the District Commissioner of Nhlanguano and introducing Tholo Dlamini "as the heir and successor to the late Vezi Dlamini, who now assumes duties of his office."

[3] The Applicants allege that in 1993 the Second Applicant was nominated and introduced to the community as a chief designate; that since that time he has been acting chief of the area. This is denied by the Respondents; they argue that the Second Applicant whose other name is Mahagane was rejected by the Ludzidzini Royal Committee because he was the brother to the late Chief Tholo. The committee ruled correctly that in terms of Swazi Law and Custom Chief Tholo cannot be succeeded by his brother but by his son. When nominating the Second Applicant as chief designate, the Family Council was still united. The Third to the Eighth Respondents as members of the Family

Council supported the installation of the Second Applicant as Chief designate. The Applicants are also members of the Family Council.

[4] The split within the Family Council emerged after the decision of the Ludzidzini Royal Committee rejecting the Second Applicant as chief designate, the Committee advised the Family Council to select another person who was not a brother to Chief Tholo. The applicants appealed this decision to the Ingwenyama in terms of Swazi Law and Custom. The Family Council inclusive of the Third to the Eighth Respondents held a meeting and selected the First Respondent as chief designate; the applicants did not attend that meeting.

[5] On the 19th June 2000 the High Court issued an Order interdicting and restraining the Second, Third, Fourth, and Fifth Respondents from calling community meetings as well as meetings to select a chief designate pending the outcome of the appeal lodged with the Ingwenyama. In the present application the Applicants also seek an order for civil imprisonment of the Respondents for contempt of the Court order issued on the 19th June 2000 by the High Court. The First Applicant argues that as the Senior Prince of Kaliba, he has the right to select the chief designate; he accuses the Third to the Eighth Respondents of calling Community Meetings as well as selecting the chief designate without his consent and involvement. The Respondents deny that the First Applicant is the Senior Prince of Kaliba and argue that it is the Seventh Respondent who is the Senior Prince. This is

denied by the First Applicant on the basis that the Seventh Respondent is a brother to the Second Applicant, and, both are his brother's sons.

[6] It is common cause that in 2009 the First Applicant dismissed the Second Respondent as Governor and appointed one Vololo Shabangu as Governor. The Second Respondent is challenging his removal and has instituted legal proceedings against the Applicants and Vololo Shabangu at the High Court under Civil Trial No. 1257/2009. He argues that the First Applicant as Senior Prince does not have the power to dismiss him as the Governor of the Chieftdom; according to him, it is the Family Council which has the power to do so.

[7] The Respondents deny that they have been calling Community Meetings and Family Council meetings in defiance of the Court Order. They argue that they only called meetings after the Ludzidzini Royal Committee had rejected the Second Applicant and directed that they meet as the Family Council and select a chief designate. Annexures "RA1" and "RA2" have been presented as evidence of defiance by the Respondents of the Court Order. Annexure "RA1" is the application in which the Second Respondent challenged his removal as Governor; and annexure "RA2" is a Rule Nisi issued on the 2nd November 2009 interdicting the Respondents from calling Community meetings. No Court order has been annexed to the pleadings showing that the Rule was confirmed.

[8] On the 27th October 2010 Liqoqo heard the appeal lodged by the Applicants to the Ingwenyama. The Family Council inclusive of

Applicants as well as the First, Third to the Eighth Respondents attended the meeting. Liqoqo confirmed the decision of Ludzidzini Royal Committee that the Family Council cannot select the brother to the late chief Tholo; they were further directed to select another chief designate. The Regional Administrator for the Shiselweni Region as well as the Police Regional Commander for that region were in attendance; they were directed to convene a meeting of the Family Council where the chief designate would be selected. The Family Council was ordered to use the right channels after the selection of the chief designate, meaning that the person selected has to be taken to the Ludzidzini Royal Committee for registration, and, subsequently to the Ingwenyama for appointment as Chief.

[9] The Respondents further argued that the order of the 19th June 2009 lapsed on the 27th October 2010 when Liqoqo directed the Family Council to convene a meeting to select the chief designate. The Applicants on the other hand argued that the said order was still effective because they had appealed the decision of Liqoqo to the Ingwenyama through their emissary Tibiyo Vilakati. The latter is the Governor of Ngabezweni Royal Residence; he deposed to an Affidavit on behalf of the Applicants confirming that he attended the meeting convened by the Liqoqo on the 27th October 2010; and, that after the Ruling, the First Applicant was not satisfied with the outcome, hence, a second appeal to the Ingwenyama was lodged.

[10] The Respondents denied that there was a pending appeal to the Ingwenyama with regard to this matter; they argued that the meeting of Liqoqo on the 27th October 2010 was sanctioned by the Ingwenyama as an appeal from the decision of the Ludzidzini Royal Committee. It was submitted correctly on behalf of the Respondents that all appeals reported to the Ingwenyama are in turn referred to Liqoqo for deliberations. This is the correct position of the Swazi Law and Custom; it was confirmed by the Secretary of Liqoqo Mandla Dlamini who deposed to a confirmatory affidavit on behalf of the Respondents. He stated that Liqoqo heard the matter as an appeal body on the instructions of the Ingwenyama King Mswati III.

[11] The Respondents in their Opposing Affidavit further argued that after the Ruling of Liqoqo, the Regional Administrator invited the First Applicant twice to a meeting of the Family Council as directed by Liqoqo but he failed to honour the invitations. His refusal was based on the belief that an appeal was pending before the Ingwenyama. The dispute whether or not an appeal was pending before the Ingwenyama prompted the court to invite as its witnesses Tibiyo Vilakati, Mandla Dlamini, T.V. Mtsetfwa and the Regional Administrator Paul Dlamini to clarify that point. Mandla Dlamini who is the Secretary of Liqoqo confirmed the contents of his Confirmatory Affidavit. The Regional Administrator confirmed inviting the Family Council of Kaliba in terms of the Ruling of Liqoqo; and, that the Applicants did not attend the meetings. The Family Council proceeded and selected the First Respondent as Chief designate. Acting Governor of Ludzidzini Royal

Residence T.V. Mtsetfwa, confirmed the contents of his affidavit that the Respondents introduced the First Respondent to his Committee on the 1st February 2011 as the chief designate; and, that, the Committee accepted and registered him as the chief designate of Kaliba Chiefdom. He further confirmed that the Committee is now awaiting the appointment of the First Respondent by the Ingwenyama in due course.

[12] The Emissary of the Applicants Tibiyo Vilakati appeared in court and denied that there was another appeal pending before the Ingwenyama; he confirmed that as the Emissary of the Applicants, he has not lodged another appeal to the Ingwenyama. He further denied knowledge that the Ludzidzini Royal Committee has accepted and registered the First Respondent as chief designate of Kaliba. In the absence of a pending appeal before the Ingwenyama, the Respondents cannot be said to have defied the High Court Order issued on the 19th June 2009.

[13] The First Applicant has repeatedly submitted in the pleadings that he is the only one who can select the successor to the late chief of Kaliba by virtue of his position as the Senior Prince. He considers the involvement of the other members of the Family Council as interference with the exercise of his functions. Section 233 (3) of the Constitution states explicitly that:

"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."

[14] Similarly the First Applicant has asserted repeatedly in the pleadings that he is the Competent Authority of Kaliba. Section 10 bis (2) of the Swazi Administration (Amendment) Act No. 6 of 1979 defines a Competent Authority "as a person appointed by the Ingwenyama in Libandla for the purposes of administration in a Swazi Area and includes a chief or any person holding such office". It is apparent that the First Applicant is neither a chief nor a person holding such office. Swazi Law and Custom as well as the Constitution stipulate that after the death of a chief, his powers are exercised by the Family Council pending the appointment of a new chief. The Family Council may appoint a person from the Senior Royal Households to exercise the functions of a chief; this person is referred to as the Acting Chief but is answerable to the Family Council in the performance of his duties. The Family Council is the most powerful administrative institution within the Swazi Traditional Structure of a chiefdom. In terms of Section 233 (3) of the Constitution, it is not only responsible for the selection of the heir and successor to the late chief but it can also recommend to the Ingwenyama the removal of a substantive chief. On the death of a chief, it has power to appoint a Governor as well as the Inner Council; however, they can only appoint a Governor on the death of the one

appointed by the late chief or if the Governor is for any reasons unable to perform the functions of his office.

[15] It is apparent from the evidence before court that the First Applicant is not the Competent Authority of Kaliba; he is merely a Senior member of the Family Council. He cannot take a unilateral and independent decision to the exclusion of the other members of the Family Council. The Applicants have failed to prove that they are entitled to the order sought.

[16] In the circumstances, I make the following order:

(a) The application is dismissed with costs on the ordinary scale.

(b) The Family Council of Kaliba Chiefdom is the Competent Authority of the Area pending the appointment of a new chief by the Ingwenyama in terms of Section 233 (3) of the Constitution of the Kingdom of Swaziland Act No. 1 of 2005.

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

