



**IN THE HIGH COURT OF SWAZILAND**  
**JUDGMENT**

In the matter between:

**1. Case No. 1447//2011**

**SABELO DLAMINI**

**Applicant**

and

**SWAZILAND RAILWAY**

**Respondent**

**JEREMIAH MAGAGULA**

**2. Case No. 1448/2011**

**Applicant**

and

**SWAZILAND RAILWAY**

**Respondent**

**3. Case No. 1449/2011**

**SIYABONGISANA DLAMINI**

**Applicant**

and

**SWAZILAND RAILWAY**

**Respondent**

Neutral citation:

Sabelo Dlamini, Jeremiah Dlamini, v Swaziland Railway  
(1447/2011, 1448/2011) [2011] SZHC 13 (10 February  
2012)

Coram:

Mabuza J

Delivered:

10 February 2012

[1] The Applicants brought an application against the Respondent by way of urgency in which the Applicants sought *inter alia*:

(a) A spoliation order in respect of electricity and water in respect of different houses leased by the Applicants from the Respondents.

(b) A *rule nisi* returnable on a date to be determined by this Honourable Court.

(b) Costs on the attorney and client scale.

[2] The Respondent defended the matter.

[3] The Respondent owns houses at Sidvokodvo in the Manzini District. The rent is reasonably priced which makes them attractive to a lot of people. The Respondent supplies its own water from the nearby Usuthu River. It also sells electricity to its tenants sourcing this electricity from Swaziland Electricity Company, a company which is a parastatal and which supplies the whole country with electricity. The houses referred to above are fitted with prepaid meters. The

Applicants and the Respondent entered into a lease agreement to lease certain houses at Sidvokodvo Railway Station.

[4] The respective leases were to commence on the 1<sup>st</sup> April 2010 and to terminate on the 31<sup>st</sup> March 2011 otherwise terminable on one (1) month's notice from either party to the other.

[5] It appeared from the background hereto that the Respondent on the 1<sup>st</sup> September 2010 gave the Applicants notice of termination which was effective from the 1<sup>st</sup> September 2010. The Applicants were notified to vacate the premises by 31<sup>st</sup> December 2010. They failed to vacate the premises and the Respondent instituted action in the Magistrates Court Manzini during February 2011 for their eviction. The Respondent withdrew the action instituted in the Magistrates case on the 18<sup>th</sup> April, 2011.

[6] After the Respondent withdrew the matter from the Magistrates court, it decided to force the Applicants to leave their accommodation by refusing to sell electricity to them. They switched off their water

supply as well because they could, as they had the power and means to do so.

[7] Instead of vacating their accommodation the Applicants moved the present application before this Court. The procedure the Applicants used is very unusual for such an action. The Applicants used the procedure of *mandamant van spolie* claiming that they had been despoiled of water and electricity which they argued was a basic need.

[8] At the hearing the argument advanced by Mr. Dlamini for the Applicants was that they were in peaceful and undisturbed possession of water and electricity until the Respondent cut off the water supply and refused to sell them electricity.

[9] I enquired of Mr. Dlamini why he did not approach the court for an order ordering the Respondent to sell the Applicants electricity and to restore the water and he responded that he would have had to prove lawful occupation, which his clients no longer had. Another classical case of abuse of court process.

[10] Mr. Ngcamphalala presented a strong argument that the procedure used was wrong and advocated for the dismissal of the matter.

[11] Even though I was in agreement with Mr. Ngcamphalala, I had difficulty in dismissing the matter out of hand because of the interests of the minor children who were caught in the cross fire. The cross fire being a powerful and rich landlord and irresponsible and stubborn parents. I say irresponsible because they should have long looked for alternative accommodation before the lease agreement came to an end.

[12] I indicated to Mr. Ngcamphalala my concerns that the children were not represented and that I could not in all honesty throw them out into the streets as it was winter and they would catch their death with cold. Furthermore the children had a constitutional right to shelter. They also had a right to freedom from torture and torment.

[13] As providence would have it the children were saved from eviction because there was a boycott of the courts by lawyers and I could not

deliver my judgment. I do so now. The application is dismissed with costs and the *rule nisi* granted herein is hereby discharged.

Mabuza J

Judge of the High Court of Swaziland

For Applicant:

Mr. Dlamini

For Respondent

Mr. Ngcamphalala