



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

**Civil Case No: 785/14**

**In the matter between**

**SIMON VILANE**

**1<sup>ST</sup> APPLICANT**

**MANDLLENKHOSI VILANE N.O.**

**2<sup>ND</sup> APPLICANT**

**And**

**LIPHNEY INVESTMENTS (PTY) LTD**

**1<sup>ST</sup> RESPONDENT**

**THE REGISTRAR OF DEEDS**

**2<sup>ND</sup> RESPONDENT**

**THE MASTER OF THE HIGH COURT**

**3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL**

**4<sup>TH</sup> RESPONDENT**

**In re:**

**SIMON VILANE N.O.**

**1<sup>ST</sup> APPLICANT**

**MANDLENKHOSI VILANE N.O.**

**2<sup>ND</sup> APPLICANT**

**And**

**LIPNEY INVESTMENTS (PTY) LTD**

**RESPONDENT**

Neutral citation: *Simon Vilane N.O & Another v Lipney Investments (Pty) Ltd & 3 Others (785/14)* [2014]SZHC 168 (25 July 2014)

**Coram:** M. S. SIMELANE J

**Heard:** 20 June 2014

**Delivered:** 25 July 2014

**Summary:** Civil Procedure – interdict from transferring immoveable property pending final determination of review proceedings before the Supreme Court – jurisdiction – matter pending before Supreme Court – Section 148 (2) of the Constitution.

### Judgment

**SIMELANE J**

[1] The Application herein came by way of urgency for an order in the following terms:-

- “1.1 Dispensing with the usual provisions of the Rules of the above Honourable Court relating to form, service, procedure and time limits and hearing this matter as an urgent one.**
- 1.2 Condoning the Applicant’s non-compliance with the said procedures and time limits relating to the institution of motion proceedings and allowing this matter to be enrolled as urgent application.**
- 1.3 That a rule nisi do hereby issue calling upon the Respondents to show cause on a date to be determined by the above Honourable Court why a final Order should not be made in the following terms.**
- 1.3.1 The 1<sup>st</sup> and 2<sup>nd</sup> Respondents be and are hereby interdicted and restrained from transferring the Remaining Extent of Portion 1 of Farm No. 28 situate in the Lubombo District, Swaziland to any person, pending the final determination of review proceedings instituted by the Applicant in the Supreme Court of Swaziland under case number 78/2013 (SIMON VILANE N.O. 1<sup>st</sup> Applicant, MANDLENKHOSI VILANE N.O., 2<sup>nd</sup> Applicant and LIPNEY INVESTMENTS (PTY) LTD, Respondent.**
- 1.4 That the above operate with immediate and interim effect pending finalization of the matter.**
- 1.5 Costs of suit in the event that the application is opposed.**
- 1.6 Such further and or alternative relief.”**
2. The Respondents’ oppose the application and raised the following points of law.

**“2.1 That the above Honourable Court has no jurisdiction to hear the above matter as the Supreme Court has finally determined the matter under Supreme Court case no. 78/2013.**

**Alternatively**

**The Applicant ought to have moved the application in the Supreme Court which is seized with the matter.**

**2.2 It is further submitted by the Respondents that one of the main issues the Applicants have to prove is success in the main application and he can only be so in the Supreme Court. High Court cannot decide this point.”**

[2] The Respondents’ further contention is that the application lacks the necessary averments to sustain a review application. In fact this is an appeal that is disguised as a review application. The Respondents argue that all the issues raised in the review application were argued on appeal.

[3] The Respondents’ further submission *in limine* is that there is non-joinder of Umfomoti Investment (Pty) Ltd which has bought the property in question and has a direct and substantial interest in the matter.

[4] According to the Respondents the Applicants came to Court with dirty hands as they allegedly sold the 200 hectares to Umfomoti Investments (Pty) Ltd which they now seek. They have not cancelled the Deed of Sale with Umfomoti.

- [5] Lastly, the Respondents argue that the Applicants even unlawfully procured a Deed of Transfer by misleading the Registrar of the High Court that the property belongs to the estate of the late Ben Jacob Vilane.
- [6] The Respondents prayed that the application be dismissed with costs.
- [7] Having carefully considered the written and oral submissions before this Court, I am inclined to agree with the Respondents that this is in effect an appeal disguised as a review. Mr. Manzini for the Applicant had difficulty responding when this Court asked him if the issues raised before this Court were not raised before the Supreme Court. I am of the considered view that all the issues raised *ante* were raised before the Supreme Court as argued by Mr. Bhembe for the Respondents.
- [8] This matter was finalized before the Supreme Court under Case No. 73/13. Consequently, this Court has no jurisdiction to deal with this matter. If there are other issues outstanding, I find that it would be prudent and procedural for those issues to be raised before the very Court that dealt with the matter, that is the Supreme Court.
- [9] Only the Supreme Court can review its own decision. This is the position of our law as enshrined in Section 148 (2) of the Constitution, which provides as follows:-

**“The Supreme Court may review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by an Act of Parliament or rules of court.”**

[10] I accordingly find that this application is unmeritorious and is consequently dismissed with costs.

**M. S. SIMELANE  
JUDGE OF THE HIGH COURT**

**For the Applicants : Mr. M.J. Manzini**

**For the Respondents : Mr. S. Bhembe**