



**IN THE HIGH COURT OF SWAZILAND**

Civil case No: 892/2013

In the matter between:

**THE PEACE OF GOD CHURCH**

**APPLICANT**

**AND**

**NGENAPHI COLLETTE NKWANYANE**

**(NEE MAVIMBELA)**

**FIRST RESPONDENT**

**LOGOBA KINGS COUNCIL**

**SECOND RESPONDENT**

**THE ATTORNEY GENERAL**

**THIRD RESPONDENT**

Neutral citation: *The Peace of God Church v. Ngenaphi Collette Nkwanyane (Nee Mavimbela) and Two Others (892/2013) [2014] SZHC182 (7<sup>th</sup> August 2014)*

**Coram:**

**M.E. SIMELANE, AJ**

Heard :

01 July 2014

Delivered :

7<sup>th</sup> August 2014

**PREAMBLE**

Sale of building on Swazi nation land – applicant claiming that transaction done on his behalf – no evidence to support the applicant’s assertion – evidence showing the deponent in affidavit as having a right to the land – *stipulatio alteri – locus standii*.

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**JUDGMENT**  
**7<sup>th</sup> AUGUST 2014**

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- [1] 1. The applicant instituted an application for an order in the following terms:
- 1.1 That first respondent be and is hereby evicted from the Swazi nation land situate a Sizakele Grocery (tuck-shop) at Sicelwini, in the Manzini District upon applicant refunding first respondent the sum of E35 500.00 (thirty five thousand five hundred emalangeni) paid for the purchase of the land.
- 1.2 Costs of suit.
- 1.3 Further and/or alternative relief.
- [2] In support of the application it was alleged *inter alia* that during the year 1999 applicant sought and was given land by the second respondent through the Swazi custom of kukhonta for the purpose of constructing a church, tuckshop and a crèche or pre-school at Logoba and went on to build the church, tuckshop and crèche.
- [3] The applicant goes on to state that at about 9 September 1999 it sold the tuck-shop named Sizakele Grocery (the tuck-shop) to the first respondent for E35 500.00 (thirty five thousand five hundred emalangeni). It eventually received E35 000.00 (thirty five thousand emalangeni). Nothing is said about the outstanding E500 (five hundred emalangeni).
- [4] The deponent to the affidavit is MEFIKAMUVA MENTAI MDLULI who also signed and was mentioned to be the seller of the property in the Deed of Sale.

- [5] However, the applicant contends that MEFIKAMUVA M. MDLULI was acting on behalf of it.
- [6] The applicant further, contends that when it went to introduce the first respondent to the Logoba Royal Kraal so that she may utilise and “legally own” the piece of land where the tuckshop is situate the second respondent refused to accept her as it held in October 2011 that the applicant cannot sell any structure without getting permission.
- [7] Both counsel conceded that land under Swazi nation land is incapable of ownership as same vests in the Ngwenyama who hold it in trust for the entire Swazi nation. A citizen has a right to use such land for his benefit.
- [8] In support that the first respondent was refused permission to use the land where the tuckshop is situate, the applicant attached “PG 2” which is a Ruling of 2<sup>nd</sup> respondent.
- [9] The Ruling reads as follows:

**“RE: CASE BETWEEN MENTAI MDLULI VS NGENAPI NKWANYANE (LAND DISPUTE AT MAKHOLWENI)”**

**The Logoba Inner Council presided over the matter involving the above named. The Libandla ruled that the land was given to Mr. Mdluli, where**

**he had applied to construct a church tuckshop and crèche. Libandla tied the knot for Mr. Mdluli and he paid out a beast to the Umphakatsi as per the Swazi law and custom. His lincusa to the Umphakatsi was Logoba Zwane (late).**

**The Logoba Umphakatsi doesn't know Ngenaphi Nkwanyana whom Mr. Mdluli claims that he sold the tuckshop to her. Mr Mdluli had no right to sell the tuckshop having not notified the Umphakatsi. He was supposed to seek permission from Libandla, Swazi Commercial Amadoda and has a King's consent.**

**SIBUSISO SIMELANE – SECRETARY”**

[10] *Au contra* the first respondent joined issue and filed an answering affidavit where he vehemently deny that she entered into a Deep of Sale with the applicant but the said transaction is between herself and the deponent MEFIKAMUVA MENTAI MDLULI who in terms of all documents in her possession he is the “owner” of the piece of land.

[11] During arguments lawyer Dlamini argued that the first respondent is being harassed by this application.

[12] The respondent raised 4 points *in limine* which were argued together with the merits namely:

- (a) Lack of *locus standii*.
- (b) Lack of legal personality.
- (c) That there are material disputes of facts.

(d) Failure to disclose material facts that the 2<sup>nd</sup> respondent eventually ruled in favour of first respondent whereafter she paid the customary cow. The applicant thereafter appealed to the Mbekelweni Royal Kraal where he was dismissed.

[13] In relation to lack of *locus standii*, it was argued on behalf of the first respondent that it is impossible for the applicant to own the structures because per “PG 2” it was ruled the piece of land in issue was given to the said MEFIKAMUVA MENTAI MDLULI.

#### LOCUS STANDII AND LEGAL PERSONALITY

[14] The respondent further annexed a Trading Licence of the tuckshop which was registered in the name of the said Mr. Mdluli.

[15] It was argued that the applicant cannot therefore parachute itself into the agreement between the parties. The second respondent also found that the emissary of the said MDLULI was one Logoba Zwane.

[16] It was further argued that even if the court were to come to the conclusion that the said Mr. Mdluli was acting on behalf of an undisclosed principal the applicant does not exist in law because the CONSTITUTION it has attached as proof of its existence refers to a CHURCH OF THE PEACE OF GOD OF

PROPHECY IN THE WORLD yet the applicant is THE PEACE OF GOD CHURCH.

[17] It was contended that the name used by the applicant is not even suggested to be an alias or trading name hence the said Mr. Mdluli is just on a mission to mislead the honourable court by creating a non existing principal.

[18] Further the first respondent argues that the said Mr. Mdluli has not annexed any mandate that he possessed on behalf of the applicant when he allegedly sought the land and thereafter built the tuckshop.

[19] No proof is put forth that the applicant adopted or ratified the Deed of Sale entered into between the said Mr. Mdluli and the first respondent.

#### COURT'S ANALYSIS

[20] In analysing the argument of the first respondent I wish to agree with it.

[21] The applicant bases his claim on a *stipulatio alteri* (stipulation for another) which embraces both the contract in favour of a third person and the contract concluded by an agent on behalf of a principal (LAW SA (Vol. 1) First Reissue at para. 102)

[22] The Deed of Sale embraces the selling of Sizakele Grocery Building and not the land by MEFIKAMUVA M. MDLULI to the 1<sup>st</sup> respondent.

[23] The preamble of the Deed of Sale reads thus:

**“That the seller hereby sells to the purchaser who hereby buys the aforementioned property SIZAKELE GROCERY BUILDING measured 41.83 square metres, fenced.”**

[24] Paragraph 3 and 5 of the Deed of Sale reads as follows:

**“(3) The subject will not be introduced to the chief’s council until she finishes the balance of E15 500.00 (fifteen thousand five hundred emalangeneni only)**

....

**(5) It is agreed that the balance which is the sum of E15 500.00 (fifteen thousand five hundred emalangeneni) will be paid at a later stage in full and the subject be introduced to the chief’s council Logoba Royal Kraal and the purchaser shall pay the Kukhonta fees if so needed and other dues and also take some orders thereto or instructions from the said Bandlancane of the area.”**

[25] It is clear from this paragraph that in order for the first respondent to be vested with a right to the land she had to be introduced to the Logoba Kraal. However, the said Mr. Mdluli was divested of ownership of the tuckshop (grocery).

[26] The person to introduce the first respondent to the Logoba Royal Kraal was supposed to be the said Mr. Mdluli and not the applicant.

[27] The applicant is not the same entity as it appears in the Constitution provided by the said Mdluli.

[28] All the emissaries from the Logoba Royal Kraal do not talk about the applicant. In any event there is an agreement in place amongst MEFIKAMUVA MENTAI MDLULI and the first respondent which is in place such that the applicant ought to have dealt with first before coming to court.

[28] In the premise I need not deal with the other points *in limine* as the foregoing point in relation to *locus standii* and legal personality succeed.

[29] Wherefore I order as follows:

a) The application is dismissed with costs.

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**MBUSO SIMELANE**  
**ACTING JUDGE**

For Applicant : M. Mthethwa  
For First Respondent : M. Dlamini