



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 1391/2013

In the matter between:

TASILA MWANZA	1ST APPLICANT
THABO MWANZA	2ND APPLICANT
NONTSETSELELO MWANZA	3RD APPLICANT

AND

STEPHEN MWANZA	1ST RESPONDENT
MASTER OF THE HIGH COURT	2ND RESPONDENT
ATTORNEY GENERAL	3RD RESPONDENT

Neutral citation: Tasila Mwanza & 2 Others v. Stephen Mwanza & 2 Others (354/2014) [2014] SZHC199 (8th August 2014)

Coram	:	MBUSO E. SIMELANE, AJ
Heard	:	21ST July 2014
Delivered	:	8th August 2014

Summary

Administration of estates - co-executor has a claim against estate - removed - the co-executor ejected from the estate property.

JUDGMENT 8th AUGUST 2014

[1] The Applicants through a Notice of Motion seeks the following orders:

1. *That the 1st respondent be and is hereby removed as one of the Executors in Estate Late Sandram Andrias (EM 520/2003)*
2. *That the 1st respondent be and is hereby removed as the guardian to the 2nd and 3rd applicants.*
3. *That the 1st respondent be and is hereby ejected from the premises he occupies, being Lot 1050, Ngwane Part Extension, Manzini being property belonging to the applicants.*
4. *Costs of suit.*

[2] On the hearing of the matter on the 21st of July 2014 I **granted prayer 1 and 2** of the Notice of Motion removing the 1st respondent as an executor in the estate of the Late

Sandram Andrias EM 520/2003 and removed him as the guardian of 2nd and 3rd applicants.

- [3] It transpired that the 1st respondent has got a personal claim against the estate in relation to Lot 1050 Ngwane Park Extension, Manzini which is subject to prayer 3 hence it was improper for him to be executor and creditor at the same time.
- [4] The applicants argue that Lot 1050 belongs to the deceased who was the father of the applicants.
- [5] The 1st applicant is the co-executor in the estate.
- [6] The parties were all staying in the said plot in different houses but due to their differences the applicants moved out leaving the 1st Respondent.
- [7] The 1st respondent claims that the deceased bought the plot and they agreed that he may build his house on it and the deceased's brother built on the other portion.
- [8] At some stage the co-executors entered into an agreement which was to see the 1st respondent buying the whole property and then the proceeds to be shared equally by the applicants divesting them of any ownership they may have on the property.
- [9] The purchase price was not agreed upon.

- [10] The applicants are resiling from the agreement and want the 1st respondent ejected from the property claiming that their father's estate owns the piece of land.
- [11] The respondent argues that he has invested too much on the property but if the applicants want him off the property they must buy him out or he must buy them out.
- [12] I must at this juncture hold that the contract that the 1st respondent entered into with the deceased was of a personal nature which is not binding amongst the parties children.
- [13] For the agreement to be binding against the whole world it has to be notarially registered at the Deeds Office against the Title Deed.
- [14] The children of the deceased have sought to demand what belongs to them by virtue of the law of intestacy.
- [15] The 1st respondent signed an approved Distribution account which showed that the property belongs to the estate and he never made any claim against the estate.
- [16] I find that by demanding that the property should be sold and the proceeds be divided to be untenable.
- [17] He does not have a title deed to the land. He may however evaluate his house and file a claim against the estate.

[18] I am appreciative that the 1st respondent has stayed on the property since 1988 hence to simply evict him just like that would be unfair.

[19] In the premise I make the following orders:

- a) The 1st respondent is hereby ejected from the premises he occupies, being Lot 1050, Ngwane Park Extension, Manzini.
- b) Execution of the Order is stayed for one year from date of judgment.
- c) Costs.

MBUSO E. SIMELANE
ACTING JUDGE

For Applicants : **N. Sambo**
For 1st Respondent : **L. Malinga**