IN THE HIGH COURT OF SWAZILAND

RULING

Case No. 1144/2014

In the matter between

MATATAZELA ALPHEOUS SHONGWE	**1st Applicant**
NKOSINATHI SHONGWE	**2nd Applicant**

and

THABISILE JELE	**1st Respondent**
MASUNDVWINI INNER COUNCIL	**2nd Respondent**

Neutral citation:	*Matatazela Alpheous Shongwe & Another v Thabsile Jele & Another* (1144/2014) [2014] SZHC 204 (21 August 2014)
Coram:	**MAMBA J**
Heard:	**20 August, 2014**
Delivered:	**21 August, 2014**

[1] This application centres around the occupation of a house or homestead situate on Swazi Nation Land. It is common cause that the house in question was erected by the late Albert Matsamo Shongwe (hereinafter referred to as the deceased).

[2] After the death of the deceased, his demise was reported to the office of the Master of the High Court. Subsequent to that, his brother, the first applicant, was appointed the Executor of his estate. He has filed this application in that capacity.

[3] The first applicant avers herein that before the deceased died, he advised him (the first applicant) on how to distribute his assets. Amongst such disposition was the home in question herein which he decreed that it should be occupied by his eldest son the second applicant, and utilized for his own benefit and the benefit of his other siblings. The first applicant carried out this wish by the deceased by giving occupation of the said house to the second applicant.

[4] It is also clear from the papers before me that the first respondent, who was a lover of the deceased during his lifetime also wanted occupation of the said

house to the exclusion of the second applicant. It is this stand off between the two that culminated in the matter being heard by the second respondent, the Masundvwini Royal house Inner Council, allegedly headed by one Mabharethe Dlamini. This Council is described by the applicants as '…a traditional tribunal set up in terms of Swazi Law and Custom, responsible for resolving disputes amongst the community members of the Logoba area' (wherein the house in question is situate or located).

[5] After deliberating on the issue on 13 August, 2014, just a week and a day ago, the second respondent (Council) issued an order that the second applicant should vacate the house in question within five days of its order. The applicants are not satisfied with this order and have thus filed this application wherein they seek *inter alia*, for an order that

> '…a rule nisi be issued with immediate and interim effect calling upon the respondents to show cause on a date to be appointed by this Honourable Court why an order in the following terms should not be made final:
>
> (a) That this Honourable Court set aside the eviction order issued by the [second respondent] on 13 August 2014 against the second applicant, and

(b) that the first respondent be ordered to leave the piece of land acquired by the second respondent's father …'

[6] This application was filed as an urgent one on the basis *inter alia* that the order by the second respondent evicting the second applicant from the relevant house has to be complied with within 5 days of the order. Both applicants also complain that the proceedings before the second respondent were procedurally unfair, grossly irregular and iniquitous inasmuch they were not afforded the opportunity to be heard on the matter whilst they had been called to appear before the second respondent. They aver that the second respondent only heard the version or complaint by the first respondent and then finalized the matter without hearing their side of the story. They complain further that the second respondent failed to observe a basic and elementary rule of natural justice which requires a tribunal such as the second respondent to hear both sides to a complaint or issue before making a decision thereon.

[7] I do not think that it is necessary for me to go into the merits of this application and I raised this with Counsel for the applicants at the beginning of the arguments herein. Because of the very nature of the dispute herein;

namely that it pertains to land that is situate on Swazi Nation Land, that all the parties herein are citizens of Swaziland and are all Africans, that the land in question is governed or regulated by Swazi Law and Custom or Swazi Customary Law, and lastly, that the second respondent was suitably or competently constituted to hear the matter; this is a matter that ought not to be, at this stage, adjudicated upon by this Court. To my mind, Swazi Law and Custom has within itself the right mechanism or structure to handle or deal with this case.

[8] For instance, where a party is not happy or satisfied with a decision made by his Umphakatsi or Inner Council, it is open to him or her to approach the relevant Swazi National Court for redress. From there, the matter may go to the Swazi Court of Appeal, Swazi Higher Court of Appeal, the Judicial Commissioner and finally to this Court, if and whenever necessary. All these Courts preceding this Court are specialized Courts on matters of Swazi Law and Custom. For this reason, they are readily better placed than this Court to hear and determine such matters. Having said that though, this Court is alive to the fact that the complaint herein centres around the observance of the rules of natural justice and these issues are germane to both Swazi Customary law and the Common law that is observed in this

Court. That, however, is not sufficient justification in my view, to hear this application that has its origins under the appropriate forum provided under Swazi Customary Law. The matter ought to be prosecuted under those structures or fora. To do otherwise would bring chaos into the judicial system; where litigants would be moving their disputes from one legal system or forum to the other.

[9] For the above reasons, it is my ruling that this matter is not properly before this Court. It is a matter that has to be adjudicated upon before the appropriate structures provided under Swazi Customary law. That the Constitution and the High Court Act confers unlimited civil jurisdiction on all matters not specifically excluded from its jurisdiction, does not, in my view permit this Court to deal with matters whatsoever their origin. Had the matter been originally heard in another forum, perhaps this Court would be entitled to entertain it. This one originates from a recognized structure within Swazi Customary Law. It should continue under those structures.

[10] The Court also notes that, although there was apparent service of this application on the second respondent, through Mr Mabharethe Dlamini, there is no indication that there was such service on the first respondent.

The latter is of course the person in whose favour the judgment of the second respondent operates. She clearly has a real, direct and substantial interest in this application. The failure to serve her with this application has not been explained by the applicants. This is a huge hurdle in their way or path.

[11] In the result, this application is refused. No order for costs is made herein.

MAMBA J

For the applicants	**:**	**Ms. L. Simelane**
For 2nd Respondent	**:**	**Ms. P. Simelane (abiding decision of the Court)**