



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Civil Case No: 1155/14

In the matter between

SWAZILAND GOVERNMENT

APPLICANT

And

**JABULANE DLAMINI
DLAMINI LENOS
DLAMINI LOMGCIBELO
MAKE DLAMINI
DLAMINI MFANASIBILI
DLAMINI MOI MOI
DLAMINI THOKO
FAKUDZE OBED
JABILEE FIKILE
LIZALLI MANASSA
LUKHELE HUSBAND TO LAVILAKATI
MAGONGO VUSI
MHLANGA JOHANNES
MKOKO MUZI
MOTSA MATSAMANE
NDLANGAMANDLA SIFISO
SHONGWE JANET (NEE MASINA)
SHONGWE MFANASIBILI
SHONGWE MSOMBULUKO
THE COMMISSIONER OF POLICE**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT
7TH RESPONDENT
8TH RESPONDENT
9TH RESPONDENT
10TH RESPONDENT
11TH RESPONDENT
12TH RESPONDENT
13TH RESPONDENT
14TH RESPONDENT
15TH RESPONDENT
16TH RESPONDENT
17TH RESPONDENT
18TH RESPONDENT
19TH RESPONDENT
20TH RESPONDENT**

Neutral citation: *Swaziland Government v Jabulane Dlamini & 19 Others*
(1155/14) [2014] SZHC401 (5December 2014)

Coram: M. S. SIMELANE J

Heard: 22 August 2014

Delivered: 5 December 2014

Summary: Civil law – urgency – eviction of illegal occupants of a farm – *locus standi* – application granted.

Judgment

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

1. That this Honourable Court dispense with the normal requirements relating to time limits and manner of service, forms and procedures in applications provided for in the rules of this Honourable Court and deal with the matter as one of urgency in terms of Rule 6 (25) (a) and (b) of the High Court Rules.
2. That this Honourable Court condones Applicant's non-compliance with the rules of this Honourable Court.

3. An order ejecting/evicting the First to Nineteenth Respondents and all those claiming occupation through them on Farm 692 Nokwane at Mbanana.
4. An order demolishing all and every illegal structure erected on Farm 692 Nokwane at Mbanana.
5. That the National Commissioner or his deputies and subordinates ensures compliance with this order and assist in the service of this application and order.
6. Costs of suit.
7. Further and/or alternative relief.

[2] The Respondents opposed the application and raised the following points of law.

1. Applicant alleges ownership of Farm 692 at Nokwane/Mbanana area in the Manzini District and sues for removal of the Respondents therefrom. This court has no jurisdiction over the *causa* as ousted by Section 9 of the Farm Dwellers Control Act 12/1982.
2. The said farm no longer vests in the Applicant who has divested its ownership and transferred title to the Ingwenyama in trust for the Swazi nation, in terms of annexure SG1 of the Founding

Affidavit. Consequently, Applicant has no title to sue *in casu*. She has no substantially vested interest in the affected property.

3. At paragraph 3 of the Founding Affidavit, the Respondents (other than the Police Commissioner) have been cited as “people who are unlawfully and wrongfully occupying ... Applicants’ (sic!) property”. Applicant has woefully failed to establish the Respondent’s *locus standi in judicio*.
4. The matter is not urgent merely because of the financial loss imminent upon Applicant. Alternatively, the urgency is self created by Applicant who admits that the cause of action arose in 2006 (paragraph 6 of the Founding Affidavit).
5. The founding affidavit of Sikelela F. Dlamini is fatally defective. Deponent thereto alleges to be “an adult male Swazi” yet the deponent who swore thereto before the Commissioner of Oaths was a “she”, i.e a woman. In the very same peril is the confirmatory affidavit of Magindane Dlamini.

[3] Having carefully considered the written and oral submissions before this Court, I am of the considered view that the Respondents are merely clutching at straws in that they dismally failed to adduce any evidence on how they got to occupy the farm in issue. Mr. Dlamini for the Respondents had difficulty responding when this Court asked him to produce his clients’ title over the property. The Respondents woefully failed to state before Court the circumstances under which they got to

occupy the farm. The Respondents have no authority over the farm and I find that they are illegal squatters.

[4] It is pertinent for me to note here, as I hereby do, that the Applicant did the best she could to relocate the squatters. This, she did, by negotiating with the neighbouring *umphakatsi* to allocate the squatters land to give way for the construction of the Royal Science and Technology Park. The Respondents as per Swazi Law and Custom were expected to follow the procedure for acquiring Swazi National Land through *kukhonta*. The Respondents refused to relocate inspite of this effort by the Applicant. This is confirmed by the affidavits of Clifford Mamba, the Principal Secretary in the Ministry of Housing and Urban Development and that of Magindane Dlamini, the Indvuna or Headman of the Inner Council under Lobamba Lomdzala chieftdom. I find that the Respondents are the architects of their fate and have no one to blame.

[5] On the contrary there is overwhelming evidence that the Applicant is the holder of the title deed of the farm in issue as is clearly reflected under Title Deed Number 176/2005 marked in the book of pleadings as SG1. It is evident that ownership of the property is vested in the Ingwenyama in trust for the Swazi Nation and that His Majesty has allocated the land to the Applicant through the Ministry of Information Communication and Technology for the construction of the Royal Bio-Technology Park.

[6] On the question of jurisdiction, I find that this Court has jurisdiction to deal with this matter. This, I say because, Section 2 (1) of the High Court Act of 1954 provides as follows:-

“The High Court shall be a Superior Court of record and in addition to any other jurisdiction conferred by the Constitution, this or any other law, the High Court shall within the limits of and subject to this or any other laws possess and exercise all the jurisdiction, power and authority vested in the Supreme Court of South Africa.”

[7] The Respondents made heavy weather on the urgency of the matter, their contention being that the urgency is self-created by the Applicant. I am inclined to agree with the Applicant that the matter is urgent. This, I say because, it is not in issue that there is a contractor on site already and the construction process is not progressing smoothly due to the Respondents’ refusal to vacate the farm. It is further evident from annexure SG6 that the Applicant is losing a lot of money due to the Respondents’ refusal to vacate the farm as the contractor is charging the Applicant for the delays in the construction process.

[8] The said loss is clearly evident from Annexure SG6 which reads as follows:-

“8 August 2014

Ref No: SD/212/VM-012

**Ministry of Information,
Communications and Technology
P. O. Box 642
Mbabane**

Att: Mr R. Tsai

Dear Sir,

Contract Number: 140 OF 2011/2012-The Biotechnology Park Infrastructure Development Lot 2 CLAIMS – DELAYS AT PLATFORM C.

As required under the terms of General Conditions of Contract 2004 Edition 1, Clause 48, and with reference to our letter dated 22 July 2014 (Ref No: SD212/VM-011), we hereby reserve our rights to submit a claim as per the attached breakdown based on production loss and time due to the delays at Platform C.

The calculation period is from the 24 July 2014 – 06 August 2014, as per our programme, the planned production over this period is 99 000 m3 of cut to fill but due to the delays the site only managed to produce 60495 m3 and the balance which is 38505 m3 quantified as a loss.

The total net effect on the above excluding vat is E951 073 50 and the time lost is 4.3 days.

We trust that you find the above in order and hold ourselves available should you require further information.

Yours faithfully

For S & B Civils Roads (Pty) Ltd

Velaphi Mabila”.

- [9] It is evident that the Applicant has engaged S & B Civils Roads (Pty) Ltd under contract no. 140 of 2012. The contractor has already begun the construction of the park, but is failing and delayed by the illegal structures occupied by the Respondents. This evidence remains

uncontroverted, it therefore stands and I consequently find that the matter is urgent.

[10] Further to the above, there is the uncontroverted evidence that the Applicant has referred to a Memorandum of Understanding which the Swaziland Government has with the Taiwanese Government for financial assistance regarding the construction of the Royal Park. It was submitted by the Applicant that a further delay on the construction may force the Taiwanese government to pull out of the agreement. This would be an untenable situation and a huge loss to the Swaziland Government and the nation at large, which cannot be countenanced. That the Applicant is losing this much was not challenged by the Respondents. This Court cannot turn a blind eye to this. The project is of national importance and the Court cannot allow a situation where the project would fail just because of illegal squatters. The Applicant as the owner of the property has a right to utilize the property in any manner she deems appropriate.

[11] On the usage of the word “she” instead of “he” on the founding affidavit of Sikelela F. Dlamini and the confirmatory affidavit of Magindane Dlamini. I find that these are mere technicalities and typographical errors, these do not go to the roots of the matter. I condone this as it does not go to the merits of the case before Court. The Respondents have suffered no prejudice by reason of the error. It is now trite law that in the absence of prejudice, the Courts should not allow less than perfect technical objections to interfere in the decision of the real issues in a matter on the merits. Authority for this proposition is the case of **Shell**

**Oil Swaziland (Pty) Ltd v Motor World (Pty) Ltd t/a Sir Motors:
Appeal case No. 23/2006.**

[12] It was for the above stated reasons that I granted the orders sought.

[13] **COURT ORDER**

1. The Respondents and all those claiming occupation through them at Farm 692 Nokwane at Mbanana be and are hereby ejected.
2. All and every illegal structure erected on Farm 692 Nokwane at Mbanana should be demolished.
3. That the National Commissioner of Police or his deputies and subordinates be and are hereby ordered to ensure compliance with this order.
4. The Respondents to pay the costs of this application.

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

For the Applicant: Mr. V. Kunene
For the Respondents: Mr. N. Dlamini