



IN THE HIGH COURT OF SWAZILAND

Case No: 133/2014

In the matter between:

CHIEF NDZIMANYE DLAMINI

APPLICANT

AND

**SIBHAKELA DANIEL DLAMINI
THE NATIONAL COMMISSIONER
OF POLICE**

**FIRST RESPONDENT
SECOND RESPONDENT**

Neutral citation:

*Chief Ndzimanye Dlamini v. Sibhakela Daniel Dlamini and
Another (133/2014) [2014] SZHC55 (13 February 2014)*

Coram:

M.C.B. MAPHALALA, J

Summary

Civil procedure – Final interdict – application for an interdict restraining the first respondent from burying the deceased in his chiefdom without authority – essential requirements of an interdict considered – held that the applicant has failed to establish that he has a clear right to institute the proceedings in the absence of evidence that he has jurisdiction over the area in dispute – application dismissed with costs.

**JUDGMENT
13 FEBRUARY 2014**

- [1] This is an urgent application brought on an ex parte basis interdicting and restraining the first respondent from burying the deceased at Mhlabubovu area in the Manzini region pending the reporting of the death and burial to the traditional authorities under whose jurisdiction the area is administered. *A rule nisi* was accordingly issued.
- [2] The applicant contends that he is the lawful chief of kaLamgabhi chiefdom in the Manzini region. The first respondent's homestead is situated at Mhlabubovu area between Kalamgabhi and Luyengweni Chiefdoms under Prince Lembelele. There is a dispute over Mhlabubovu area between Chief Lembelele Dlamini of Luyengweni area and Chief Ndzimanye Dlamini of Kalamgabhi, each claiming that the area falls under his jurisdiction.
- [3] The applicant contends that Swazi Law and Custom dictates that the death and burial of every person under his jurisdiction should be reported to him, and, that the first respondent has failed to report to the Umphakatsi the death of his mother. He further contends that he only learnt about the death and burial of the deceased from a radio announcement.
- [4] The applicant concedes the existence of the dispute; however, he alleges that the dispute was resolved by the iNqwenyama who sent his emissaries

to deliver the Ruling at a meeting held at Mhlabubovu on the 12th November 1991.

[5] The application is opposed by the first respondent. He contends that his homestead is situated at Mhlabubovu area, and, that his family has always been paying allegiance to Chief Lembelele of Luyengweni Chiefdom since time immemorial. He further contends that all his relatives who have died in the past have been reported to the Luyengweni Umphakatsi. According to the first respondent the dispute between the two chiefs over the area is still pending before iNgwenyama, and, that the applicant is fully aware of this fact.

[6] The Indvuna of Luyengweni Chiefdom has filed a confirmatory affidavit in support of the first respondent stating that the boundary dispute between the two chiefs over Mhlabubovu area is still pending before the iNgwenyama and that on the 31st July 2013, he appeared before the iNgwenyama over the same issue together with Chief Lembelele and his delegation.

[7] This Court has jurisdiction to determine this matter on the basis that it is not excluded by section 151 (8) of the Constitution of Swaziland Act No. 1 of 2005. This section provides the following:

“151. (8) Notwithstanding subsection (1), the High Court has no original or appellate jurisdiction in matters relating to the office of iNgwenyama; the office of iNdlovukazi (the Queen Mother); the authorisation of a person to perform the functions of Regent in terms of section 8; the appointment, revocation and suspension of a Chief; the composition of the Swazi National Council, the appointment and revocation of appointment of the Council and the procedure of the Council; and the Libutfo (regimental) system, which matters shall continue to be governed by Swazi law and Custom.”

[8] It is apparent from the evidence that the applicant has failed to prove that he has a clear right to the subject-matter of the dispute. The applicant has alleged that the dispute was resolved by iNgwenyama in 1991; however, he has failed to provide the Court with the Ruling. Similarly, he has failed to furnish the Court with an affidavit from the Ludzidzini Council to prove that the dispute was resolved as alleged. On the contrary the respondent has furnished the Court with annexure “MN1” being a letter written by King Sobhuza II in 1947 in which he advised the District Commissioner that the land in dispute does not fall under the jurisdiction of applicant’s chiefdom.

[9] In the absence of a clear right, the Court should dismiss this application without considering the other requirements of the remedy. In the case of *Maziya Ntombi v. Ndzimandze Thembinkosi* Civil Appeal Case No. 02/2012

at para 41 and 43, I had occasion to deal with a final interdict in the Supreme Court of Swaziland:

“41.

The leading case in this regard is the case of *Setlogelo v. Setlogelo* 1914 AD 221 at 227 where *Innes JA* stated the following:

‘The requisites for the right to claim an interdict are well-known; a clear right, injury actually committed or reasonably apprehended, and the absence of similar protection by any other ordinary remedy.’

43. I agree with the court *a quo* that the requirement of a clear right is the most important of the three requirements of a final interdict, and that the other two requirements are predicated on the presence of a clear right to the subject-matter of the dispute.”

[10] I wish to emphasize that this judgment is not intended to determine the boundary dispute between the warring chiefdoms over the jurisdiction of the land in dispute. Such power to determine land disputes vests in the iNgwenyama. According to section 233 of the Constitution, Chiefs are appointed by the iNgwenyama and in the Letters of Appointment, the iNgwenyama determines the areas under the jurisdiction of each Chief. In the event of a boundary dispute between Chiefs, the iNgwenyama has the

power to determine such a dispute. Once the dispute is reported to the iNgcwenyama, he directs the Ludzidzini Council to hear the matter and report to him their findings and recommendations before he makes a Ruling. Otherwise the Council is merely advisory to the iNdllovukazi and iNgcwenyama. The iNgcwenyama may also refer the dispute for deliberation to Likoqo, his Advisory Council, to hear the parties and make a report for his attention before making a Ruling.

[11] The issue before this Court is to determine whether the applicant is entitled to the final interdict sought for purposes of burying the deceased. In order to determine the issue, the applicant has to show that he has a clear right over the jurisdiction of the land in dispute by virtue of having been appointed by iNgcwenyama in terms of section 233 of the Constitution.

[12] Accordingly the following orders are made:

- (a) The rule nisi is hereby discharged and the application is dismissed.
- (b) The first respondent is granted leave to bury the deceased Bhacile Shabangu at Mhlabubovu area.

(c) No order as to costs.

M.C.B. MAPHALALA
JUDGE OF THE HIGH COURT

For Applicant

Crown Council Thulani Dlamini

For Respondents

Attorney Machawe Dlamini