



**IN THE HIGH COURT OF SWAZILAND**

Case No: 2049/2013

In the matter between:

**INDVUNA IZWE MASIKA NO**

**APPLICANT**

**AND**

**MGADI MDLULI**

**FIRST RESPONDENT**

**MUSA MDLULI**

**SECOND RESPONDENT**

**SIPHO MDLULI**

**THIRD RESPONDENT**

**CETHEZA MDLULI**

**FOURTH RESPONDENT**

Neutral citation:

*Indvuna Izwe Masika NO v. Mgadi Mdluli and Three Others (2049/2013) [2014] SZHC56 (2014) 3<sup>rd</sup> April 2014*

**Coram:**

**M.C.B. MAPHALALA, J**

**Summary**

Civil Procedure – Final Interdict – application interdicting and restraining respondents from erecting a fence on land allegedly belonging to Bhekinkhosi Royal Kraal – the requisites of a final interdict considered – held that the applicant has failed to establish a clear right on the subject-matter of the proceedings that the land falls under his jurisdiction – application dismissed with costs.

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**JUDGMENT  
3 APRIL 2014**

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[1] An urgent application was lodged before this Court for an order interdicting and restraining the respondents from erecting a fence on a piece of land belonging to Bhekinkhosi Royal Kraal. The applicant further sought an order interdicting and restraining the respondents or anyone under their authority from harassing, threatening with violence, assaulting and obstructing residents from proceeding to their homes through the land on which they are constructing the fence. A *rule nisi* was subsequently issued by the Court in this regard.

[2] The applicant is the Indvuna of Bhekinkhosi Chiefdom and he has instituted the application in that capacity. He alleges that the respondents are residents of the area but they refuse to pay allegiance to the Bhekinkhosi Royal Kraal. He contends that the respondents have been summoned to appear before the Royal Kraal on many occasions but they have refused alleging that they are not residents of that chiefdom.

[3] The applicant contends that the respondents have extended their land onto land belonging to the Royal Kraal and erecting a fence. According to the applicant, the land encroached upon is also used by the residents as a pathway to their homesteads; hence, the residents are prevented from reaching their homesteads by the fence erected on the land. He further contends that the respondents have been warned to stop erecting the fence

but to no avail. The Royal Kraal removed the fence on the 1<sup>st</sup> December 2012; however, the respondents decided to erect the fence again in defiance of the Royal Kraal.

[4] The applicant also contends that the respondents have on the previous occasions assaulted residents of the area trying to cross over the fence to their homesteads; and, that one resident had to be hospitalised due to the injuries sustained. He argues that other residents have previously been harassed and threatened with violence by the respondents.

[5] On the other hand the applicant states that he has a clear right to institute the present proceedings on the basis that he is the Indvuna of the area and that he is entrusted with the responsibility of overseeing the area, and, maintain order and good governance. He argues that the conduct of the respondents is highly prejudicial as it has the effect of breeding anarchy in the areas and further undermining the authority of the Umphakatsi. He further argues that there is no alternative remedy available to him other than the interdict sought. A member of the Chief's Inner Council Nelson Makhosini Dlamini has filed a confirmatory affidavit in support of the application.

[6] The Chairman of the King's Advisory Council Prince Logcogco as well as the Secretary of the Council have both filed confirmatory affidavits in support of this application. They have filed the Ruling by the iNgwenyama on the status of Ngwazini. However, the said Ruling does not support the applicant's case that the respondents are residents of Bhekinkhosi Chiefdom. It is not in dispute that the respondents reside at Ngwazini area, and, in terms of the Ruling of the iNgwenyama, the area of Ngwazini, does not fall under the jurisdiction of Bhekinkhosi Chiefdom.

[7] It is the applicant's case that Ngwazini no longer exists as a separate chiefdom by virtue of the Ruling of iNgwenyama. The applicant contends that the iNgwenyama divided Ngwazini area into three chiefdoms, namely, Nyakeni, Nkiliji and Bhekinkhosi. However, in terms of the Ruling Ngwazini forms part of Nyakeni, and, it does not exist as a separate independent chiefdom. Similarly, it is not extinct or is it divided into three chiefdoms as alleged by the applicant.

[8] The Ruling by iNgwenyama was addressed to three Chiefdoms, namely, Nyakeni, Nkiliji and Bhekinkhosi; and it was signed by Prince Tfohlongwane, the Chairman of the King's Advisory Council at the time; and, it was copied to the Regional Administrator of the Manzini Region as well as the Police Regional Commander. The Ruling states as follows:

**“King’s Ruling on the Status of Ngwazini**

**I have been commanded to confirm to you all, in writing, that His Majesty King Mswati III ruled on the matter of the status of the area known as Ngwazini. The said King’s Ruling was made and delivered to all parties concerned in the year 1997.**

**In His judgment, the King-in-Council ruled that Ngwazini has always been and so remains a part of Nyakeni. The long established and well-known boundaries between areas concerned are as follows:**

- (a) Between Nyakeni and Bhekinkhosi the boundary is the river Mahosha.**
- (b) Between Nkiliji, Nyakeni and Bhekinkhosi, the boundary is Ndlelakayomi.**

**His Majesty King Mswati III, in His Ruling confirmed the above boundaries.”**

[9] The respondents do not deny erecting the fence but contend that the fence runs through their own land; and, that the fence is only intended to protect their crops. To that extent they deny that the land in dispute belongs to the Bhekinkhosi Royal Kraal.

[10] The applicant has failed to show that he is entitled to the final interdict sought, in particular that the land in dispute falls under his jurisdiction. It is apparent from the Ruling of iNgwenyama that Ngwazini area falls under Nyakeni chieftdom and not Bhekinkhosi as alleged. Accordingly, the

applicant has failed to establish a clear right to the subject-matter of the proceedings, that he has jurisdiction over Ngwazini area. In the circumstances, it is not necessary to deal with the other requisites of the remedy.

[11] In the case of *Ntombi Maziya v. Ndzamandze Thembinkhosi* Civil Appeal Case No. 02/2012 at para 41 and 43, I had occasion to deal with the requisites of a final interdict, and, I stated the following:

**“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. ... 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.”**

[12] Accordingly the application is dismissed with costs on the ordinary scale.

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**M.C.B. MAPHALALA**  
**JUDGE OF THE HIGH COURT**  
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For Applicant  
For Respondents

Senior Crown Council V. Kunene  
Attorney Luke Simelane