



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

In the matter between:

Case No. 1989/2013

**SIBONGILE NGWENYA**

**Applicant**

And

**ANDREW RUGONGO**

**1<sup>st</sup> Respondent**

**NDABAZABANTU - MANZINI**

**2<sup>nd</sup> Respondent**

**LOGOBA ROYAL KRAAL**

**3<sup>rd</sup> Respondent**

**Neutral citation:** *SibongileNgwenya v Andrew RugongoAnd 2 Others (1989/2013)*  
*[2015] SZHC 199(10<sup>th</sup>November 2015)*

**Coram:** **M. Dlamini J.**

**Heard:** **21<sup>st</sup> October 2015**

**Delivered:** **10<sup>th</sup>November, 2015**

Summary: The applicant lodged contempt proceedings against respondents following an interim order of the court interdicting and restraining respondents from interfering with the homestead where applicant was residing, pending finalization of the applicant's appeal lodged at Ludzidzini. Respondents filed a counter-application for a discharge of the interim order on the basis that there was no appeal pending at Ludzidzini.

### Parties' contention

[1] The applicant deposed:-

- “4. On or about the 19<sup>th</sup> December 2013, I obtained an order against the 1<sup>st</sup> Respondent not to interfere with the status quo at the disputed homestead at Logoba area pending finalization of the appeal to the Ludzidzini Royal Kraal (**I beg leave to refer to the order annexed as “A”**)
6. Despite such knowledge of the court order, the Respondents have with impunity continued to defy the court order in that on the 15<sup>th</sup> December 2014, the Respondents came to my homestead and broke doors and took out all my belonging and with them to a place unknown to me.
8. I humbly apply before this Honourable Court that the Respondents be ordered to return all my items and property back to my house at Logoba at their costs.
10. I therefore humbly apply before this Honourable Court for an order committing Respondents to prison for thirty (30) days or such other period as may seem in order before the eyes of this Honourable Court.”

[2] Respondents contested:

- “3. On 25<sup>th</sup> November 2014, Masundwini Royal Kraal Inner Council including myself, First Respondent and Logoba Royal Kraal Council went to Nkhanini to the Ludzidzini Royal Kraal Council. Our mission was to enquire why the Applicant's appeal had not been heard as it was allegedly filed in December 2013. The whole Council was present and the notable people included its Chairman Indvuna Timothy

*VelaboMtsetfwa, Prince Masitsela, Princess Dlalisile, Chief Dambuzalukhele, MnguniSimelane, Reverend Absalom Dlamini, Litchfield who was preciously protocol officer.*

4. *The Ludzidzini Royal Council advised us that there was no such appeal pending before it. This was a formal advice by an appropriate authority, which is tasked with hearing appeal from Imiphakatsi and Ndabazabantu from the appropriate districts.*
5. *After such advice then on 6<sup>th</sup> December 2014Ndabazabantu called in Applicant and her younger father to a hearing. The matter was finalized by an order by consent where in Applicant and her younger father consented to vacating the premises within seven days which meant that latest day was 13<sup>th</sup> December 2014. This did not happen hence the Ndabazabantu ordered the eviction on 15<sup>th</sup> December 2014 which was carried out.”*

In reply applicant asserted:

*“I therefore humbly submit that the appeal was properly lodged. I deny that I agreed to vacate my homestead and put Respondents to strict proof thereof. In actual fact, I was called by Ndabazabantu and told to vacate the said homestead. I was further asked as to why was I defying their order, to which I responded by saying that I lodged an appeal which was pending with the Ludzidzini Royal Council. Mr. T. V. Mthetfwa told me that Ndabazabantu should be the one bringing the appeal and the other documents. I submit that instead of bringing the documents before the Ludzidzini Royal Council, Ndabazabantu ordered me to vacate. Even after my attorneys wrote him a letter, he nevertheless, with impunity proceeded with eviction.”*

### Adjudication

- [3] When the matter appeared before, I pointed out to Counsel for all the parties that following the deposition by applicant that she gave a correspondence (copy attached) containing contents of her appeal to His Excellency T. V. Mtsetfwa, the traditional Prime Minister and Chair of Ludzidzini Council and an affidavit deposed by his Excellency T. V. Mtsetfwa that there was no appeal pending, his Excellency should appear in

person in order for the court to ascertain the prevailing status on the said appeal.

[4] On the return date, Counsel from Attorney General reported that His Excellency was indisposed owing to ill health. It was agreed that among the parties that an affidavit from his Excellency would suffice. Indeed an affidavit attested to by His Excellency T. V. Mtsetfwa was subsequently filed together with an affidavit by the Secretary of Ludzidzini Council. His Excellency's affidavit reads:

*"I hereby wish to expand on the affidavit that I signed on the 5<sup>th</sup> March 2015, where I stated under oath that the Royal Council at Ludzidzini has not received nor heard any matter from SibongileNgwenya of kaBhekinkhosi.*

3.

*I hereby wish to state under oath that I was misinformed therein and the reason is that when I was made to sign the said affidavit, I was not properly informed that the said SibongileNgwenya of kaBhekinkhosi referred to is the one who has a dispute over a homestead with one Rugongo.*

4.

*I hereby wish to state that the Ludzidzini Royal Council is aware of the matter between SibongileNgwenya and Andrew Rugongo. The Royal Council got to know of the matter through the relevant umphakatsi being the Logoba Royal Council, Masundvwini Royal Council and Ndabazabantu – Manzini who were dealing with this matter.*

5.

*I hereby wish to state that there is no appeal pending before the Royal Council regarding this matter. I further wish to deny directing the said SibongileNgwenya to leave the letter of appeal with the Receptionist. The procedure is that Appeals and complaints to the Royal Council are reported orally and not through a letter.*

6.

*Further appeals and complaints to the council are reported to the Liaison Officer (Mahlalesangweni) who then reports it to the Council and not through a Receptionist.*

7.

*May I state further that in this matter there is no appeal pending before the Council as the Council referred the matter to be dealt with by the relevant structures namely: Masundvwini Royal Council and Ndabazabantu.”*

[3] The Secretary’s affidavit reads:

*“I have read the affidavit of the Chairman of the Council and wish to confirm its contents in as far as it relates to the matter of SibongileNgwenya.*

3.

*In particular, I confirm that there is no appeal pending before the Council and further confirm that the Council got to know of the matter through the LogobaUmphakatsi, Masundvwini Royal Kraal and Ndabazabantu who were all dealing with the matter of SibongileNgwenya and Andrew Rugongo.*

4.

*I further confirm that the Council do have a person who’s duty is to be a Liaison Officer (Mahlalesangweni) of the Council in that he receives and registers all complaints and appeals that are to be dealt with by the Council. The name of the person is SifisoFakudze of Elangeni area. I further confirm that the appeals to the Council are not submitted in a form of a letter through the Receptionist. Complainants and appeals to the Council are done orally.”*

[5] From the two depositions, it became clear that there was no appeal pending. No reason was advanced on behalf of applicant as to why she failed to file “another” appeal after discovering that there was no appeal pending as the

affidavit were filed long before the matter was set for arguments, if at all her main intention was to appeal the decision of Logoba traditional authority. Nevertheless, it is still open for applicant to file her appeal. For now her application stands to fall.

The following orders are entered:

1. Applicant's application is dismissed;
2. The interim order granted on 19<sup>th</sup> December 2013 is hereby discharged;
3. No order as to costs.

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**M. DLAMINI**  
**JUDGE**

**For Applicant: O. Nzima of Nzima & Associates**

**For Respondents: B. J. Simelane of Ben J. Simelane & Associates**