



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No: 52/15

In the matter between:

HAPPY MSITSINI

APPLICANT

and

SIBONGILE SIFUNDZA NEE VILAKAZI

RESPONDENT

Neutral Citation : Happy Msitsini v Sibongile Sifundza (Nee Vilakazi)
(52/15) [2016] SZHC 102 (08 JULY 2016)

Coram : Q.M. MABUZA J

Delivered : 8 JULY 2016

SUMMARY

Practice – Pleadings – Dispute over perimeters of sugar cane fields – Complaint that Respondent encroaching on Applicant’s field – Applicant failed to file surveyor’s affidavit – Application dismissed with costs.

JUDGMENT

MABUZA –J

[1] The Applicant seeks the following reliefs:

1. That an order be and is hereby issued dispensing with the normal forms in respect to time limits and service and hearing this matter as on urgent basis.
2. That an order be and is hereby issued interdicting and restraining the Respondent from ploughing and planting cane sugar within the five metre no man's land between the litigant's fields as demarcated by surveyors.
3. That an order be and is hereby issued allowing the Applicant to dig a trench in the middle of the five metre no man's land to direct the run off irrigation water from entering his fields.
4. That an order be and is hereby issued directing the Respondent to remove her cane crop within the five metre no man's land.
5. Prayers 1 – 4 above to operate with immediate and interim relief returnable on a date to be determined by the above Honourable Court for the Respondent to show cause why they not be made final.
6. Cost of application.
7. Further and/or alternative relief.

- [2] The application is opposed by the Respondent. Before responding on the merits Respondent raised the following points *in limine*: urgency (that it was self-created); serious material disputes of fact; and lack of jurisdiction by this Court to hear this matter.
- [3] It would appear from the pleadings that the parties own adjacent land within the Vuvulane Irrigated Farms. The Applicant took over the said piece of land from his late father and the Respondent who is a widow took over from her late husband.
- [4] The Respondent has challenged the issue of urgency and raised it as a point *in limine*. The point has in my view been overtaken by events. Consequently, I shall not deal with it herein.
- [5] The matter was argued holistically, being both on the merits and points of law. Because the facts and the points of law were interwoven it was decided by counsel to argue the entire application. Consequently, I shall deal with both the evidence as deposed to in the affidavits and the points of law.

Disputes of Facts

- [6] The Applicant in his affidavit says that the parties are owners of fields measuring four hectares each which have a five metre no man's land forming a boundary between them.
- [7] The Respondent denies that there is a five metre demarcation island between the farms. She says that the demarcation between the farms varies from person to person.
- [8] The Applicant has further stated that:

“The parties were shown where the five metre no man's land starts at the end of each field and the purposes for same explained which are, inter alia, as follows:

- 5.1 To allow farm equipment, to turn easily when used in the fields without destroying a neighbouring farmer's crop;**
- 5.2 To prevent run off irrigation water from entering neighbouring farmer's field thus destroying the crop; and**
- 5.3 To guard against a neighbouring farmer's crop catching fire when the other farmer is burning their in preparing for cutting and harvesting.”**

[9] The Respondent has denied these averments and has challenged the Applicant's evidence as being hearsay and inadmissible that the parties were shown the boundaries of the farm.

[10] In addition the Respondent says that the Applicant has already dug a trench in the passage way at the end of her sugar cane. The Applicant's response is to deny this allegation and says that it is the Respondent who destroyed the passage way.

[11] The Applicant says that the Respondent has encroached unto the no man's land and has planted her cane crop up to my field resulting with the purpose of the no man's land becoming a nullity.

[12] The respondent's response is as follows:

"11.1 The contents thereof are vehemently denied and the Applicant is put to the strict proof thereof. I deny that there is any sugarcane planted in the demarcation island as all my crops are on my portion of land.

[13] The Applicant further states:

"I have engaged the Respondent in an endeavor to stop her from this to no avail. One of such attempts was on the 9th January, 2015 where a fresh

survey was conducted but the Respondent claimed that the land belonged to her late husband.”

[14] The Respondent’s answer is that:

“...the Applicant never engaged me but only accused me and also reported me at RSSC who then instructed their surveyors to do a fact-finding (not a fresh survey as alleged). The surveyors found in my favour, hence the Applicant then decided to rush to court.”

[15] The Applicant further stated that his crop was now being destroyed as run off irrigation water from the Respondent’s field gets into his field rendering his field water logged.

[16] The Respondent’s response is that there is no run-off water from her field into the Applicant’s field. She says that it is the Applicant’s own employees who leave water sprinkling on the farm all day long.

[17] The Applicant has further stated that he is apprehensive that his field may be burned once the Respondent burns hers as hers was planted earlier than his.

[18] Her response is as follows:

“I humbly submit that the sugarcane complained of has been there for decades in its current but it has never happened that my fire crosses over to

Applicant's filed. There are other demarcation islands far smaller than that between my field and Applicant's but since time immemorial we have not experienced any such incidents".

[19] The Applicant has further stated that he is failing to use farm equipment in his field as there is no place where a tractor can turn as the Respondent had planted her crop next to his field and as such he is failing to adequately attend to his crop.

[20] In response the Respondent says:

"The contents thereof are pure perjury. If this Honourable Court would have an opportunity to go on site, it will readily find out that there is ample passage space between the two fields. Tractors have been using that same passageways between other farms are far smaller than the one complained of but still tractors are using them without complaining. The Applicant is rather unnecessarily finicky in this regard."

[21] It is my finding that the matter is fraught with serious material disputes of fact as set out hereinabove from paragraph 6 to 21 and cannot be conclusively decided on the papers before me.

Jurisdiction

[22] I disagree with the Respondent that this Court lacks jurisdiction in *casu* on the ground that the land in dispute is not title deed property. This Court's jurisdiction is derived from the High Court Act and the Constitution of Swaziland in respect of any matter arising in the Kingdom of Swaziland.

[23] Unfortunately the Applicant did not file any affidavits from the surveyors of the Royal Swaziland Sugar Corporation. They are the only ones in my view who are in a position to help end this impasse as they know the perimeters and pegs of the fields belonging to the parties and the Applicant ought to have been aware of this.

[24] For the foregoing the application is dismissed with costs.

JUDGE Q.M. MABUZA
JUDGE OF THE HIGH COURT

For the Applicant : Mr. Manana
For the Respondent : Mr. Mavuso

