



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

CIVIL CASE NO: 628 /2016

In the matter between:

CHIEF SIBONGINKHOSI DLAMINI

APPLICANT

AND

SIGIDZI MDLULI

1ST RESPONDENT

**THE NATIONAL COMMISSIONER
OF POLICE**

2ND RESPONDENT

Neutral Citation:

*Chief Sibonginkhosi vs. Sigidzi Mdluli &
The National Commissioner of Police
(Case No. 628/16) [2016] SZHC (67)
(2016)*

Coram:

MLANGENI J.

Heard: 01/04/16

Delivered: 07/04/16

Summary: *Swazi Law and Custom - Authority of Chiefs over their subjects.*

Applicant approached court on grounds of urgency seeking to interdict respondent from conducting funeral, the reason being that respondent had failed to report the death of the deceased to the Chief per customary practice.

Real reason being that the respondent was disobedient to the Applicant.

Held: Chiefs have recognized procedures to enforce obedience; it is morally repugnant to haul a subject to court at a time when they are faced with the harsh realities of bereavement.

Application dismissed. No order for costs.

JUDGMENT

[1] The Applicant in this matter is Chief **SIBONGINKHOSI DLAMINI** of kaBhekinkhosi Chiefdom under Manzini Region. He is acting in his official capacity as Chief of the said Chiefdom.

[2] By application dated 1st April 2016 and set down for 2:00 pm on the said date, the Applicant seeks an order in the following terms:-

[1] -----

[2] -----

[3] Granting a rule nisi calling upon the 1st Respondent to show cause on a date to be determined by this Honourable Court why an order in the following terms should not be made final;

3.1 Interdicting and restraining the 1st Respondent and any other person acting on their behest from conducting a night vigil and burying the deceased Mvimbi Mdluli pending the reporting of his death to the relevant authorities being the Bhekinkhosi Umphakatsi.

3.2 Ordering and authorizing the 2nd Respondent or any member of the Royal Swaziland Police to ensure that the order is effectively executed and also assist in the service of the said order and application.

[4] ----

[5] ----

[3] In essence, the main order sought is to interdict the First Respondent from burying his deceased brother at Ngwazini, unless and until he reports the death at the Applicant's Umphakatsi. It is apparent that the reporting is regarded as a significant symbol of loyalty to the Applicant.

[4] The purpose of the application is to be gleaned from the wording of paragraph 7.3 of the founding affidavit of the applicant. It reads as follows:-

“7.3 May I state that it is a clear sign that the 1st Respondent who is a brother to the deceased and who is now responsible for the burial of the deceased is defying the authority of the kaBhekinkhosi Umphakatsi in that he has gone ahead and make [sic] preparations for the burial of his deceased brother without reporting such death to the relevant authorities as per the dictates of Swazi Law and Custom. This is a clear sign that the 1st Respondent is defying the authority of the kaBhekinkhosi Umphakatsi.”

[5] So clearly, the Applicant regards the First Respondent as being disobedient or defiant towards the Applicant's authority; that he is a subject who does not toe the line. That certainly appears to be the case. But why must the Applicant come to court to enforce his unquestionable authority? Why, especially, must he come to court

when the Respondent is down and out? We all know the emotional and financial drain that death brings about. Nothing is worse, I imagine, than being dragged to court at a time when one is trying to come to terms with the death of a loved one.

[6] But the real issue lies away from morality and emotionalism. The office of a Chief is recognized by the Constitution in paragraph 233. In the context of this matter the most relevant sub-paragraphs are (8) and (9). They provide as follows:-

“(8) The powers and functions of chiefs are in accordance with Swazi Law and Custom or conferred by Parliament or Ingwenyama from time to time.

(9) In the exercise of the functions and duties of his office a Chief enforces a custom, tradition or practice or usage which is just and not discriminatory.”

[7] In Swazi Law and Custom the subjects of a Chief are required to be loyal to their Chief. It is an obligation and by no means an option. In turn the Chief and his subjects are ultimately loyal to Ingwenyama. The Swazi Administration Order 1998 provides in different clauses that the Chief has authority over his subjects, including authority to try cases, civil and criminal, and impose appropriate sanctions. In terms

of Section 20 the Chief administers **“Customary law prevailing in Swaziland----”**.

[8] For as long as the Swazi people have been in existence, under King’s and Chief’s, subjects have been hauled before the Chief’s Council to answer for offences of different kinds. I would regard disloyalty to one’s Chief as a very serious matter and one that is competent to be instituted before the Chief’s court. Practice and procedure is in accordance with customary law (per Section 22) and no doubt the sanction must generally be in keeping with Swazi Law and Custom. It is common knowledge that Chiefs have the power to banish a subject who is guilty of a major offence, the most famous being witch-craft. As stated above, I regard disloyalty as being a major offence.

[9] I think that Chiefs have all the power and authority required in order to enforce their authority upon their subjects. A contrary conclusion would cause unwarranted alarm in a society with strong traditional institutions such as ours. It is, in my view, morally repugnant for a Chief to wait for someone to die in his Chiefdom, and then seek to assert his authority when the family is down. Where the defiant subject is head of the family his wrongs could easily be passed on to the survivors at a very bad time.

[10] It is on the basis of the above reasons that when the Application was before me on grounds of urgency on the 1st March 2016 I dismissed it and made no order as to costs. The order that I made does not suggest that Chiefs cannot approach the common law courts under any circumstances. It simply says that on the facts that were presented to me on that occasion, it would have been improper for me to grant the orders sought.



T.M. MLANGENI

JUDGE OF THE HIGH COURT

FOR THE APPLICANT:

MR. B. NKAMBULE

FOR THE FIRST RESPONDENT:

MR. L. M. SIMELANE