

**IN THE HIGH
COURT OF ESWATINI**

JUDGMENT

HELD AT MBABANE

Case No. 1367/2018

In the matter between:

PRINCE MACHAWE DLAMINI

And

ZAMINDLELA DLAMINI

Neutral citation: Prince Machawe Dlamini v. Zamindlela Dlamini & Others (1367/18) [2018] SZHC 268 (22 November 2018)

CORAM J.S MAGAGULA J

HEARD: 31 October 2018

DELIVERED: 22nd November 2018

[1] This application was brought under certificate of urgency. I heard the application on the 31st October, 2018 and issued an ex tempore judgment dismissing the application instantly. I have now been called upon to give reasons for my decision which I proceed to do hereunder.

[2] In the application the applicant sought substantive orders as follows:

“ 2.1 Restraining and interdicting the 1st Respondent from unlawfully expropriating applicant’s piece of land situate at Mphini area, next to Great Usuthu River pending final determination of the land dispute between the Applicant and 1st and 2nd Respondent by Mankayane Swazi National Court and/or pending determination of the action proceedings pending before the above Honourable court under case No. 1074/18.

2.2 Restraining and interdicting the 2nd Respondent from doing any construction works on the disputed piece of land pending determination of the land dispute by the Mankayane Swazi National Court and pending final determination of the action proceedings instituted by the Plaintiff under case No. 1074/18.

2.3 Directing the 1st and 2nd Respondent to replace the fencing of the Applicant's fields forthwith in compliance with the order of the Mankayane King's liaison officer dated 24th July 2018.

2.4 That prayers 2.1 to 2.3 above operate with immediate interim effect pending final determination of this application.

2.5 Costs of application.”

[3] Upon perusal of the papers I noted that there was annexure “ C” to the founding affidavit which was a ruling of the Mankayane King's Liaison Officer. The Liaison Officer ruled that the matter should be referred back to the Chief's kraal as it had not been deliberated upon and determined at that level.

The Liaison Officer further ordered that Applicant's fence which had been removed by members of the Chief's Inner Council be restored within a week. The said Officer further ordered that the Chief's kraal should finalize the matter within three weeks and that the 1st Respondent should then report back to him.

[4] Upon further perusal of the papers I noted that there is annexure “ CC” to the answering affidavit which is a detailed ruling by the chief's kraal on the matter. Importantly paragraph 6 (d) of the ruling provides:


“ Machawe Dlamini is to remove his structures built unlawfully and remove any fencing thereat and if the family is in agreement he can be allocated a piece of land on the new land given to the family.”

- [5] I also took particular note that the ruling of the Liaison Officer, although bearing a date stamp of the 13th August 2018, it is actually dated the 24th July 2018. On the other hand the ruling of the chief’s kraal is dated the 12th May 2018. This suggests to me that when the matter was heard by the Liaison Officer, the Chief’s kraal had long ruled on the matter. It would seem that the ruling of the Chief’s kraal was not brought to the attention of the Liaison officer. The applicant was supposed to take the matter to the Liaison officer as an appeal and not as though it was being heard for the first time.
- [6] Having considered the two rulings and their dates of issue it appeared to me that both traditional structures had heard the matter and it was not pending before any them. I accordingly found that there was no basis for granting the interim interdict sought.
- [7] Applicant also applied that the interdict should also be granted pending finalization of action proceedings instituted under case No. 1074/18. Firstly I was not furnished with proof that there were such proceedings pending before this court. In any event I could not grant the interdict without knowing the claims made under the said proceedings because in my view

claims over possession of Swazi nation land ought to be adjudicated upon by traditional structures and not this court. I therefore needed to know if those action proceedings were properly before this court before I could grant an interdict pending same.

[8] The respondents had raised several points in *limine* and one of them was that this court lacked original jurisdiction to hear a matter which had already been properly heard and determined by relevant traditional authorities. I found that there was merit in this point and I upheld it. In the result the following order was made and remains an order of this court:

- a) The point on lack of jurisdiction is upheld;
- b) The application is accordingly dismissed with costs.



J.S MAGAGULA J

For the Applicant: **V. Dlamini**

For the Respondents: **N.Mabuza**