

COURT OF ESWATINI
IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CIVIL CASE NO. 873/2020

In the matter between

DUMISANI MNDZEBELE

APPLICANT

And

MALAWI MNDZEBELE

RESPONDENT

Neutral citation: *Dumisani Mndzebele v Malawi Mndzebele (873/20) SZHC 111 [2020} (09/06/2020).*

Coram : Tshabalala J

Heard :

15/05/2020 Delivered :

09/06/2020

Summary: *Interdict requirements - Application for permanent interdict against the respondent from preventing the applicant constructing his house on family land situated on Swazi Nation land. Applicant claims ownership, alleging that the land was given to him by his father.*

Held: Application dismissed for failure to meet requirements for interdict.

Permanent interdict order not competent on a claim based on Swazi Nation land.

JUDGMENT

[1] This application came before Court as an urgent matter on the 15 May 2020. The Applicant's prayers are framed in the following terms.

1. *Dispensing with the rules in relation to manner of service, time limits in terms of Notice and manner of service of proceedings and dealing with the matter as one of urgency;*
2. *Condoning the Applicant's non-compliance with the said Rules of Court;*
3. *Rule nisi issued against Respondent to show cause why the aforesaid Court order should not be made final returnable on a date to be determined by this Honourable Court.*
4. *Interdicting against Respondent from destructing the Applicant from constructing his house at the homestead and on the land which was allocated to him (Applicant) by his father.*
5. *Interdicting the Respondent from harassing and being violent against the Applicant and from acting as the owner of the homestead which the Applicant also have a right to reside at.*
6. *Costs of the application.*
7. *Further and I or alternative relief*

- [2] The Applicant and Respondent are brothers from the same father but different mothers. The Applicant states in his founding affidavit that in January 2020 he started a process of constructing a house for himself at the parental homestead that he shared with the Respondent and other siblings at Mahlanya in the Manzini Region. His project was interrupted by the Respondent who ordered him to stop.
- [3] The Applicant states that he reported the matter to the *Indvuna* of his chief and that the matter is pending for deliberations before traditional authorities of his area. The Respondent concedes that he stopped the Applicant from building as alleged. However, he denies the assertion that there is a dispute pending before traditional structure concerning the matter. The Respondent avers that local traditional authorities long dealt with the issue of where the Applicant should construct a house for himself and his family which is at a place other than their common parental homestead.
- [4] The Applicant also makes harassment allegations against the Respondent and seeks an interdict order against him. In support of bringing the matter under urgency the Applicant states that he has *"entered into a building contract with a certain person. If this matter is not treated with utmost urgency, I will be in breach of the building contract. I have building material which is deteriorating in value and quality. I will also lose money which is fixed (sic) for the building of the house. "*
- [5] The Applicant submits that he has a clear right over the land where is building, having acquired it from his late father, and that the Respondent has powers or authority to prevent him from building there.

- [6] The Applicant argues that he will suffer irreparable harm if the order is not granted, in that his building material will deteriorate. He finally submits that the balance of convenience favours that he be granted the interdict, "*as the land in dispute was given me by my late father.* "
- [7] The Respondents case is that the homestead belongs to their late father and all the siblings have a right over it and to live there as they currently do. He avers that the Applicant has no right to construct a house for himself on the family property. He gives a background that the Applicant was given land away from the family home by *Umphakatsi* to build a home for his family and that indeed his son constructed a house on that land. Further that the Applicant also apportioned part of the land to a certain Mkhumane family.
- [8] The Respondent denies allegations of violence against the Applicant and asserts that in fact it was the Applicant who was aggressive.

Urgency

- [9] The Applicant has failed to establish urgency of this application. The alleged interruption by the Respondent took place in January 2020, 5 months before the application was lodged in May 2020. The matter cannot be urgent after lapse of such a period since the conduct complained of. He has given no good explanation what now renders the matter the urgent.

Interdict

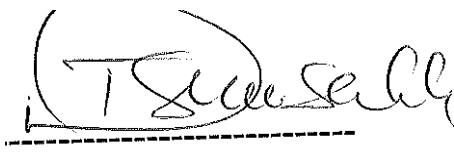
- [10] To be able to successfully invoke relief for interdict the Applicant must establish a clear right over the land to the satisfaction of the court. He has failed to do so in the absence of any confirmatory evidence of his title to it. Such evidence could be in in the form of an affidavit from *Umphakatsi* recognising his claim that the land was given to him by his father. His claim

of ownership is vehemently disputed by the Respondent such that before this court there is the word of one against the other. The onus is on the Applicant to prove title and this is one of the requirements for granting of an interdict.

[11] The Applicant alleges that the dispute on his title to the land where he was stopped from building is pending before traditional authorities. However, he claims a permanent interdict against the applicant. See Prayers 4 and 5 of the Notice of Motion. It is not competent for this court to grant an order for permanent claimed, concerning a dispute over Swazi Nation land.

[12] The above cited deficiencies are fatal to the application for interdict. The application is therefore dismissed.

[13] There is no order as to costs. Each party to bear its own costs.

A handwritten signature in black ink, appearing to read 'D Tshabalala', is written over a horizontal dashed line. The signature is cursive and somewhat stylized.

D Tshabalala
Judge

For the Applicant: Mr Leo Dlamini

For the Respondent: In person