



## IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 1340/2019

In the matter between:

**NOMBULELO NHLENGETHWA**

Applicant

and

**THE MASTER OF THE HIGH COURT**

1<sup>st</sup> Respondent

**LINDIWE MARY NHLENGETHWA**

2<sup>nd</sup> Respondent

**DOUGLAS SAMUEL SUKATI**

3<sup>rd</sup> Respondent

**THE ATTORNEY GENERAL**

4<sup>th</sup> Respondent

Neutral Citation : Nombulelo Nhlengethwa v The Master of the High Court and 3 Others (1340/2019) [2020] SZHC 65  
(28 April 2020)

Coram : MABUZA – PJ

Heard : 12 November 2019

Delivered : 28 April 2020

## SUMMARY

*Civil Law: Administration of Estates – Applicant seeks to review a decision ostensibly made by the Master of the High Court. There is no such decision of the 20/06/19 nor of 20/07/19.*

*Interdicts – Application seeks to interdict Master from distributing assets of the Estate. Master does not distribute assets, the Executor (trix) does. Interdict fails*

*Compromise between the Executor and a creditor – Legally binding until set aside by order of Court – no prayer to this effect.*

*Held: Application dismissed with costs.*

## **JUDGMENT**

### **MABUZA –PJ**

[1] The Applicant seeks an order in the following terms:

1. Dispensing with the usual time limits, procedures and manner of service provided for in the Rules of the above Honourable Court and hearing this matter as one of urgency.
2. Condoning the Applicant for non-compliance with the said Rule.
3. A Rule nisi hereby issue calling upon the Respondents to show cause why the following orders should not be granted and be made final on a return date to be determined by the Honourable Court:
  - 3.1 Interdicting the 1<sup>st</sup> Respondent from distributing or alienating any assets and or the 12 twelve herd of cattle to the 3<sup>rd</sup>

Respondent under Estate Late Mhlaliseni Hezekiel Nhlengethwa File No. EM10/2018.

3.2 Directing the 1<sup>st</sup> Respondent to furnish the Applicant with the minutes of next of kin meeting held at the 1<sup>st</sup> Respondent office on the 20<sup>th</sup> June 2019 under Estate Late Mhlaliseni Hezekiel Nhlengethwa File No. EM10/2018.

4. Reviewing and setting aside the decision of the 1<sup>st</sup> Respondent issued on the 20<sup>th</sup> July 2019 and substituting it with an order that this Court will deem appropriate.
5. Pending finalization of the matter prayers 3.1 and 3.2 above operate with immediate effect.
6. Further and/or alternative relief.

[2] The Application is opposed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

[3] On the 21<sup>st</sup> October 2019 the parties appeared before me and by agreement between them, I ordered that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents or any member of their families be and are hereby interdicted and restrained from alienating any of the cattle in kraal No. 33 under Ncabaneni Dip Tank belonging to

Estate Late Hezekial Nhlengethwa No. EM10/2018 pending finalization of this matter.

- [4] The Applicant is an adult female of Ncabaneni arear in the Manzini District. She is the biological daughter of Lindiwe Mary Nhlengethwa (2<sup>nd</sup> Respondent) and the late Mhlaliseni Hezekial Nhlengethwa (the deceased).
- [5] The 1<sup>st</sup> Respondent is the Master of the High Court cited herein as the custodian of all estates in the Kingdom of Eswatini, whose principal place of business is at Mbabane in the District of Hhohho represented herein by the office of Attorney General.
- [6] The 2<sup>nd</sup> Respondent is Lindiwe Mary Nhlengethwa an adult female Liswati of Ncabaneni area in the Manzini district cited herein these proceedings in her capacity as the Executrix of the Estate Late Mhlaliseni Hezekiel Nhlengethwa File No. EM 10/2018.
- [7] The 3<sup>rd</sup> Respondent is Douglas Samuel Sukati an adult male Liswati of Nkamazi area in the Manzini District.

- [8] The 4<sup>th</sup> Respondent is the Attorney General cited in these proceedings in his official capacity as the legal representative of all Government departments in Eswatini. They have their official place of business situated at 4<sup>th</sup> floor, Ministry of Justice building, Usuthu Link Road Mbabane.
- [9] Mhlaliseni Hezekiel Nhlengethwa (the deceased) was married to Lindiwe Mary Nhlengethwa (the Executrix). After the deceased died his estate was reported on 11 January 2018 and assigned the number EM 10/2018.
- [10] The 3<sup>rd</sup> Respondent filed a claim with the Master of the High Court against the estate, claiming 19 herd of cattle on the basis of the kusisa custom. He claimed that he sised his cattle to the deceased pursuant to such an agreement between him and the deceased. The agreement came about because the deceased and himself were work colleagues at His Majesty's Correctional Services. And because the area where the deceased came from had good pastures for grazing cattle.
- [11] The 3<sup>rd</sup> Respondent says that he dispatched the cattle in three different herds. The first herd of 9 cattle was dispatched on or about 21 February 2005. The second herd of 3 cattle was dispatched on or about the 11 July 2005. These

cattle all came from his kraal (No. 58) under Zombodze dip tank (No. 438). The third herd of 7 cattle was dispatched on the 29 November 2006 from Msuthu dip tank (106), making the total number 19. The 3<sup>rd</sup> Respondent says that most of these cattle were female cows.

[12] On the 20 June 2019 a meeting of the next of kin was held at the office of the Master in Manzini. At this meeting the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were in attendance. It was agreed as a compromise that the 3<sup>rd</sup> Respondent be given twelve (12) herd of cattle from the deceased's estate. The 2<sup>nd</sup> Respondent was a party to this compromise agreement.

[13] The Applicant seeks to have that compromise agreement reviewed and set aside. And that having set it aside substitute my decision therefore.

[14] Pursuant to that compromise agreement the 2<sup>nd</sup> Respondent deposed to an affidavit wherein she consented that 12 herd of cattle be given to the 2<sup>nd</sup> Respondent from the estate.

[15] The affidavit was deposed to and signed on the 20 June 2019. In it she asked the Master's office to note this and assist where needed. The contents thereof are reproduced hereunder:

“AFFIDAVIT

*I, the undersigned*

*NHLENGETHWA LINDIWE MARY ID NO: 6109271100037*

*Do make the oath and say that:*

*1.*

*I am a female of Ncabaneni area in the Manzini Region, under Chief Mandanda Mtsetfwa and Indvuna Matikweni Nkambule.*

*2.*

*The facts hereto deposed are to our personal knowledge true and correct.*

*3.*

*I solemnly swear and declare under oath that I the above mentioned of Ncabaneni area declare and report that I am the legal wife to the late Nhlengethwa Mhlaliseni Hezekiel ID No. 5612256100030 who had 12 herd of cattle.*

*I further declare and agree that the 12 herd of cattle shall be transferred to Sukati Douglas Samuel ID No. 4303206100012.*

*We request the Master' office concerned to note this and assist us  
Where needed this regard.*

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*DEPONENT*

*THUS SIGNED AND SWORN TO BEFORE ME AT Manzini ON  
THIS DAY.....20.....OF .....June.....2019 DEPONENT  
HAVING ACKNOWLEDGED THAT SHE KNOWS AND  
UNDERSTAND THE CONTENTS OF THIS AFFIDAVIT*

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*”*

[16] The 1<sup>st</sup> Respondent endorsed the decision captured therein.

[17] The Applicant's grounds of review are set out in paragraph 11 of her Founding Affidavit namely:

- (a) That the decision of the Master of the High Court is grossly irregular in that the decision was irregularly issued in the Applicant's absence as a beneficiary and on the basis that she had not been informed of the



next of kin meeting of the 20 June 2019. Hence she was denied her right to be heard prior to a decision being arrived at by the Master

(b) That the decision of the Master was grossly irregular in that in arriving or in the decision making process the Master never verified the facts of registration of the cattle which were subject of the deliberation from the veterinary office premised at Mankayane, hence the irrational awarding of the herd of cattle to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

(c) The Master herself is not alive to the identification at least by ear-tag numbers of the cattle which were subject matter of her unreasoned decision, leaving a lot to be desired as to which of the cattle from the estate in particular will form the 12 which she had decided will be transferred to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

[18] It is the Applicant's complaint that the decision of the Master of the 20<sup>th</sup> June 2019 was arrived at grossly irregular (sic) and without any just cause hence the need to review and set it aside.

[19] The Applicant attached to her Founding Affidavit an affidavit deposed to by the 2<sup>nd</sup> Respondent on the 27<sup>th</sup> November 2018 (**Annexure “A”**) in which it is stated as follows:

“EM10/2018

AFFIDAVIT

*I, the undersigned:*

*NHLENGETHWA LINDIWE MARY ID NO: 6109271100037*

*Do make oath and say that:*

2.

*I am an adult female of Ncabaneni, under the subject Chief Mandanda Mtsetfwa Indvuna Matikweni in the Manzini Region.*

3.

*I solemnly swear and declare under oaths that I, the above mentioned adult of Ncabaneni. I declare that I am an official wife to the late MHLALISENI HEZEKIEL NHLENGETHWA of Ncabaneni hereby declare that I do not have any clue or idea pertaining the twenty herd of cattle that the so called Mr. Sukati that he claims from my late husband. I further state that I first saw him the time ngiphuma endlini, Mr. Sukati was also called to show us his cattle but he failed and above all what confuses me is that, all the cattle*

*that my late husband left I know their origins since he bought them with his Pension.*

*I further declare that all the above mentioned herd of cattle is under kraal no: 33, Ncabaneni dip tank no: 494 and humbly request Master to please take note of this and assist me where possible.*

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*DEPONENT*

*DEPONENT HAVING ACKNOWLEDGED THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT. THUS SIGNED AND SWORN TO BEFORE ME AT Manzini ON THIS THE 27<sup>TH</sup> DAY OF NOVEMBER, 2018*

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*COMMISSIONER OF OATHS”*

[20] Then follows the affidavit that the 2<sup>nd</sup> Respondent deposed to referred to above in paragraph 15 *supra*.

[21] Finally the 2<sup>nd</sup> Respondent deposed to an Answering Affidavit dated 11 October 2019. It is filed on her behalf by Bhembe attorneys. This is what she says at paragraph 5:-

*“I state that as far as I know the 3<sup>rd</sup> Respondent does not own any cattle in my late husband’s kraal. My late husband, in his life time, did not introduce the 3<sup>rd</sup> Respondent to me or make mention that 3<sup>rd</sup> Respondent had gave him some herd of cattle to look after, I admit that I did depose to an affidavit where my position in the matter was clear, that the 3<sup>rd</sup> Respondent did not own cattle and is not entitled to receive any cattle. (I humbly refer the Honourable Court to Annexure “A” being the copy of the affidavit”*

at paragraph 6:-

*“On the 20<sup>th</sup> June 2019 a meeting was held at the 1<sup>st</sup> Respondent’s offices. After deliberations without any positive outcome, a decision was taken by the 1<sup>st</sup> Respondent that twelve (12) herd of cattle should be transferred to the 3<sup>rd</sup> Respondent from the deceased’s estate.”*

[22] The shifting positions of the 2<sup>nd</sup> Respondent is extremely confusing. She entered into the compromise agreement as the Executrix of the deceased’s

estate. It is to be noted that neither she nor the Applicant have applied to have that agreement set aside. In my view it is binding between the signatories.

[23] The 1<sup>st</sup> Respondent filed her report which is stamped 29 August 2019. I reproduce her report hereinunder:-

*“MASTER’S REPORT*

1.

*I acknowledge receipt of certificate of urgency notice of motion and annexures attached hereto.*

2.

*I confirm that*

- (i) The estate of the deceased was reported to the 1<sup>st</sup> Respondent in accordance with section 2 (i) of the Administration of Estate Act on the 11<sup>th</sup> May 2018 and was allocated estate number EM 10/2018.*
- (ii) The 2<sup>nd</sup> Respondent was appointed as an Executrix on the 15<sup>th</sup> August 2018.*
- (iii) The inventory reflected that the deceased had 40 herd of cattle.*

3.

*On the 9<sup>th</sup> March 2019, the Respondent received a claim against the estate from on Koba Douglas Samuel Sukati. In his affidavit Mr. Sukati alleged, he gave the deceased some cattle to keep on, on his behalf (kusisa). He further attached a letter from Mankayane Veterinary office to substantiate his claim. Attached herein is the affidavit and letter from the Veterinary office marked “MHC1”.*

*The claim was then referred to the Executrix Dative for consideration and verification. The Executrix reported to the 1<sup>st</sup> Respondent that although she is aware that there were cattle that was kept on behalf of Mr. Sukati, she was against the number (20) that was being claimed by Mr. Sukati.*

*The 1<sup>st</sup> Respondent called a next of kin meeting on 11<sup>th</sup> June 2019 to address the issue of the claim. The said meeting was attended by Nombulelo Nhlengethwa herein the Applicant, the Executrix Dative Lindiwe Mary Nhlengethwa herein the 2<sup>nd</sup> Respondent, Douglas Samuel Sukati herein the 3<sup>rd</sup> Respondent, and other family members. In the said meeting the only dispute was the number of cattle being claimed by Mr. Sukati. The 1<sup>st</sup> Respondent advised that the Executrix Dative and Mr. Sukati must go to Mankayane Veterinary office to trace the cattle to ascertain the number of cattle that belongs to the claimants attached herein is the copy of the said meeting “MHC2”.*

*The family then returned and reported to the Master that the Veterinary officer has failed to trace the cattle as Mr. Sukati's cattle were brought before the introduction of ear tags. During the introduction of ear tags all the cattle that were in the deceased kraal were registered in the deceased name.*

*After considering all these fact, we advised the family to go and sit down and negotiate with Mr. Sukati on the number of cattle. They were further advised to report to the 1<sup>st</sup> Respondent about the outcome.*

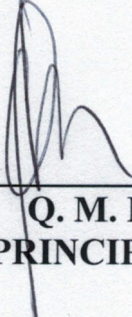
*The family came back to the office to report that they had discussed and agreed that Mr. Sukati will be given 12 cattle. All the concerned parties were present during the meeting. The 2<sup>nd</sup> Respondent submitted an affidavit as the Executor of the estate to acknowledge same and the claimant, Mr. Sukati also submitted an affidavit to confirm that indeed they have reached an agreement Annexure herein marked "MHX3" are the affidavits.*

*I have no further information to lay before the Honourable Court and I shall abide by the decisions of this Honourable Court."*

- [24] Notably she attached the 2<sup>nd</sup> Respondent's affidavit (Annexure A). I have already set out the contents of the 2<sup>nd</sup> Respondent's affidavit (Annexure A above)
- [25] In my view there was no decision that was made by the 1<sup>st</sup> Respondent on the 20/06/2018 for me to order prayer 3.2 of the notice of motion. This prayer fails.
- [26] Prayer 4 refers to a decision made on the 20<sup>th</sup> July 2019. I have not been able to find this decision in the papers before me. Consequently this prayer too fails.
- [27] Equally I cannot order prayer 3.1. Distribution of accounts are carried out by a duly appointed Executor (trix). In this case it would be the 2<sup>nd</sup> Respondent who in my view has to honour the agreement that she entered into with the 3<sup>rd</sup> Respondent.
- [27] In the circumstances I find that no case has been made out against the 1<sup>st</sup> Respondent and the application is refused and dismissed with costs.



[28] Having concluded this matter, the order made by me on the 21<sup>st</sup> October 2019 is hereby discharged.



Q. M. MABUZA  
PRINCIPAL JUDGE

For the Applicant : Mr. MLK Ndlangamandla

For the 2<sup>nd</sup> Respondent : Mr. S. Jele

For the 3<sup>rd</sup> Respondent : Mr. Phakathi