

IN THE HIGH COURT OF SWAZILAND

JUDGMENT

HELD AT MBABANE

Case No. 1339/23

In the matter between:



INDVUNA MASOKA MATSENJWA

APPLICANT

AND

NJABULISO BANDA

1ST APPLICANT

THE NATIONAL COMMISSIONER

OF POLICE

2ND RESPONDENT

Neutral Citation : Indvuna Masoka Matsenjwa vs Njabuliso Banda and
Another (1339/23)[2023] SZHC235 August 2023)

CORAM : J.S MAGAGULA J

DATE HEARD : 26/10/23

DELIVERED : 21/08/23

Summary: Applicant seeks an order interdicting 1st Respondent from interfering with a community Project on Eswatini Nation Land; first respondent maintains that the land belongs to his family and cannot be used for the project.

Held: Eswatini Nation Land cannot be owned by any person since it vests in the iNgwenyama by virtue of section 211 (1) of the constitution.

- [1] In this matter the applicant seeks an order interdicting and restraining heavy plant machinery from clearing land earmarked for sugar cane farming and a solar panel installation project. He also seeks an order that members of the Police Service assist in the service and execution of the order.

BACK GROUND

- [2] In his founding affidavit the applicant alleges inter alia that he is the Indvuna of Matsenjwa Royal Kraal under the late Chief Mbekwane Matsenjwa and he is the overseer of the Gamula area. He goes on to state that during 2018 the Matsenjwa Royal Kraal allocated land to the community of Gamula to start a sugar cane farming project through the formation of an association. The association was duly formed and the Eswatini Water and Agricultural Enterprise (ESWADE) was to assist with all farming activities required for the project. The Eswatini Government is funding the project.
- [3] Part of the project on the land is the installation of a solar panel to assist in the generation of electricity for use on the

project. To this extent land has also been allocated for the solar panel. An organisation known as Volitalia SA Incorporated has been engaged to assist on the solar installation project. When the Royal Kraal allocated land for these projects the 1st Respondent was present and did not raise any objection.

- [4] Clearing of the land started some time in June 2023. It is at this time that the 1st respondent approached the people clearing the land and told them to stop what they were doing and vacate the land. He maintained that the land belonged to his family. There was heavy plant machinery which had started clearing the land at that time.

THE PRESENT APPLICATION

- [5] The matter was reported to the applicant who reported it to the station commander at Lubulini Police Station. The said Station Commander tried to reason with 1st respondent to desist from his conduct as Government was losing a lot of money with the machinery lying idle on the site. The 1st respondent would hear none of that. The Inner Council of the Matsenjwa Royal Kraal summoned the 1st respondent to appear at the Umphakatsi so that the matter may be discussed but the 1st respondent did not respond to such summons. The Royal Kraal then decided to approach this court for assistance in the form of the interdict sought herein.
- [6] The 1st respondent is opposing the application and has filed an answering affidavit in this regard. In the answering affidavit

the 1st respondent starts by raising four (4) points of law in *limine*. These are lack of *locus standi in judicio*; disputes of fact lack of jurisdiction and failure to satisfy interdict requirements.

- [7] I did not find merit on the points raised in *limine* and I dismissed them as such. The applicant stated that he was the Indvuna of the area whose chief passed away. He was therefore authorised to act on behalf of the Royal Kraal. He was indeed assisted by the office of the Attorney General in launching the application which is the institution empowered by the constitution to act on behalf of chiefs. The 1st respondent made a mere allegation that the applicant was not the Indvuna and maintained that, the Indvuna is the late Joseph Matsenjwa. Clearly an Indvuna should be amongst the living and not the dead. The 1st respondent also maintained that the Attorney General could not represent the applicant as the constitution empowers him to represent only chiefs. I am unable to accede to this contention. In my opinion the power to represent chiefs does not attach to the chief as a person. The Attorney General's power extends to matters involving the Chief's Kraal. As long as an Indvuna is acting for and on behalf of the Chief's kraal as in *casu*, he has a right to approach the Attorney General for assistance. In any event, as I see it, the Attorney General has a right of audience in this court and as such he can represent anyone.

- [9] On disputes of fact the 1st respondent maintains that there is a dispute regarding who owns the land between his family and the Royal Kraal. In my view this is not a question of fact but one of law. Section 211 (1) of the constitution provides;

“ From the date of commencement of this constitution, all land including any existing concessions in Swaziland , save privately held title – deed land, shall continue to vest in iNgwenyama in trust for the Swazi Nation as it vested on the 12th April, 1973.”

In return the iNgwenyama administers the land through Chiefs and princes who are appointed by him for the very same purse. The point on disputes of fact therefore lacks merit and must fail as such.

- [10] On the question of jurisdiction section 151 (3) (b) provides:

“ (3) Notwithstanding the provisions of sub – section (1), the High court:

(a).....

(b) has no original but review and appellate jurisdiction in matters in which a Swazi Court or Court Martial has jurisdiction under any law for the time being in force.”

- [11] In *casu*, there is no dispute to be determined by a Swazi Court. It is clear that in terms of the constitution of this country, no private individual or entity can own any piece of Swazi Nation Land. There is also no doubt that, the Umphakatsi, as the only structure responsible for the allocation of land in its Chieftdom, has the final say regarding

who was allocated land in its chiefdom. These proceedings do not therefore constitute a dispute over Swazi Nation Land. The applicant is merely seeking an order interdicting the 1st respondent from interfering with its work. This court has the necessary jurisdiction to hear and determine his application.

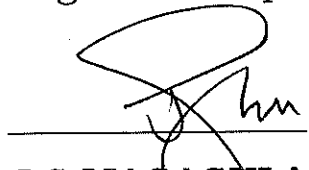
- [12] Regarding failure to meet the requirements of an interdict it is abundantly manifest that the applicant has a clear right to the order sought as the Royal Kraal for which he is acting, is the administrator of the chiefdom. It is also clear to all and sundry that if the interdict is not granted, irreparable harm shall result as huge losses of money shall be suffered and residents of the chiefdom shall lose projects which were going to improve their lives economically. The Umphakasi also has no other remedy save to stop the respondent from interfering with the projects.
- [13] For the foregoing reasons I find no merit in the points in *limine* and they are accordingly dismissed.
- [14] On the merits I have already demonstrated that Swazi Nation Land cannot be owned by any private individual or entity. Neither the applicant nor his family are owners of the land in question. Swazi Nation Land is allocated to individuals and families for use and not for ownership. Should the land in question not be used or cease to be used it automatically reverts to the umphakatsi for further allocation or use as the umphakatsi deems fit. During the hearing of this matter I enquired from counsel if the 1st respondent was in occupation

of the land or utilising it in any matter. It became clear that neither the applicant nor any member of his family for that matter was using the in land in any manner.

In asking the question I was mindful of the provisions of the constitution that a person cannot be deprived of land without due process. Since the land in question is vacant I was satisfied that it has since reverted to the Royal Kraal for use by it as it deems appropriate.

[15] I am accordingly satisfied that the applicant has made out a case for the relief sought.

15.1 The application is granted as prayed.



J.S MAGAGULA
JUDGE OF THE HIGH COURT

For the Applicant : D. Nkambule

For the 1st Respondent : B. Xaba

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