

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE No. 1788/2021

In Matter between :

**ESWATINI NORTH NAZARENE DISTRICT
CHURCH OF THE NAZARENE**

APPLICANT

And

ABUNDANTLY HOUSE MINISTRY

1ST RESPONDENT

PASTOR MPENDULO MAGAGULA

2ND RESPONDENT

JABULILE NGOMANE (NEE MAKHATHULELA)

3RD RESPONDENT

EKUKHULUMENI ROYAL KRAAL

4TH RESPONDENT

INDVUNA MVUTJANA MASEKO

5TH RESPONDENT

THE NATIONAL COMMISSONER OF POLICE

6TH RESPONDENT

THE ATTORNEY GENERAL

7TH RESPONDENT

Neutral citation:

*Eswatini North Nazarene District Church
of The Nazarene v Abundantly House Ministry*

*and 6 Others. (1788/2021) SZHC 235 [2019]
(28th October 2022)*

CORUM: Z. Magagula J

Dates heard: 12.07.22

Date delivered: 28.10.2022

REASONS FOR JUDGMENT

Summary: Civil Procedure – applicant seeking interdictory. Relief – Respondent raising points in limine, inter alia v 1 applicant lacks Locus Standi to institute proceedings.

The applicant sought a number of interdicts against respondents – including the eviction of respondents from a farm – farm registered in the name of a third party not a party to the proceedings; Applicants failed to demonstrate that they have a legally enforceable right

Application dismissed with costs.

[1] On the 12th day July 2022, I heard arguments in this matter and I delivered an ex tempore ruling.

These are the reasons for my ruling.

By notice of motion, the applicant, Eswatini north Nazarene District Church of the Nazarene, made application to this court seeking the following interdictory relief;

1. Interdicting and restraining the 1st to 3rd Respondents or anyone acting on their behalf and/or authority from

constructing, erecting any structures, plowing and engaging in any activity on the property described as **Farm 356 situate at Bhalekane area.**

2. Interdicting and restraining the 1st to 5th Respondents or anyone acting on their behalf and/or authority from interfering in any way with the Applicant's right of ownership over the property described in prayer or Order 1 above.
3. That the 1st to 3rd Respondents or anyone acting on their behalf and/or authority is directed to vacate and/or be ejected forthwith from the Applicant's property described above.
4. That the 1st Respondents are ordered to demolish and/or remove all movables and immovable property either temporary or permanent on the Applicant's property described above, within Fourteen (14) days of receipt of the Court Order.
5. **Alternatively**, that the Applicant be authorized to demolished and/or remove all movables and immovable property either temporary or permanent on the Applicant's property described above, and costs thereto be borne by the 1st to 3rd Respondents.
6. Interdicting and restraining the 4th and 5th Respondents or anyone acting on their behalf and/or authority from allocating land forming part of the Applicant's property.
7. That the 6th Respondent through the station Commander of the nearest police station be ordered to provide security for the Applicant in carrying out the demolition and removal of the properties referred to in prayer 4 and 5 above for purposes of maintaining peace and order.
8. Costs of suit in the event of unsuccessful opposition.

[2] From the founding affidavit, one can surmise that the purpose of the application is to seek the removal of the first to third Respondents from the occupation of farm no 356 situate at Bhalekane area. According to the founding affidavit, the first to fifth respondents are further interdicted and/or restrained from interfering with **applicant's right of ownership**

and unlawfully allocating land farming part of applicant's property. *[my underlining]*

The first respondent is a church known as Abundantly House Ministry which has unlawfully constructed a structure and continues to erect immovable structures on the farm. The second respondent is an adult liSwati male who is the leader and founder of the church.

[3] The third respondent is an adult female liSwati who is unlawfully ploughing land within the farm without the consent of the applicant. The fourth respondent- is the Ekukhulumeni Royal Kraal which is unlawfully allocating land within the farm and the fifth respondent is the Indvuna of the fourth respondent. The National Commissioner of Police and the Attorney-General have also been cited. These are allegations in the founding affidavit.

[4] There are no allegations in the founding or even in the replying affidavit to show that the applicant holds title over the farm. It was not alleged that the applicant purchased the farm from the original or any subsequent title holder, or that there is any relationship recognized at law between the applicant and the title holder, such as that of land lord and tenant or agent.

[5] The application was supported by the founding affidavit deposed to by Revered Philemon Patrick Dlamini (Rev. Dlamini) Rev. Dlamini described the applicant the ESwatini North Nazarene District church of the Nazarene, an association not for gain duly registered and incorporated in accordance with the company laws of the Kingdom of ESwatini.

The first to third respondents, in an affidavit deposed by Mpendulo Magagula raised a number of preliminary points I deal with those points herein below.

- (i) *That the applicant lacks the requirements of an interdict in that it was no clear right to the property. The respondent's contended that the land in dispute was a land conclusion which reverted to the Ingwenyama in trust for the Swazi nation at the inception of the constitution.*

[6] This point is clearly ill-advised. The piece of land in issue in these proceedings is a farm, having been transferred to the title holder, **The General Board of Foreign Missions of the church of the Nazarene** by way of Crown grant. A concession in the context of a land concession, I believe, to be an agreement between the Government and a particular person which gives rights to control and use a particular piece of land for a specified period of time. In Part iv, Section 13 of the Concession Act 3 of 1904, a concession is defined as "...any grant of land or the use thereof for Agricultural, mining or grazing purposes or any grant of minerals or mineral products or timber made by or behalf of the King or Paramount Chief of Swaziland, and confirmed either by the late Chief Court of Swaziland or the High Commissioner under Part 111 of this Act" ("verbatim")

[7] A Crown grant, on the hand is a means by which the government disposes off or alienates land in terms of the Crown land's Disposal Act 13 of 1911 to the grantee or its successors in title in perpetuity.

There is clearly no merit to this points, and it is dismissed

(ii) *That the matter was marred by serious disputes of fact, in that the applicant alleges the land was a farm while first to third respondents believed it was now Swazi nation land.*

[8] In view of the conclusion I have come to on the first point, there is no value in repetition. The idea that the land in issue in these proceedings in Swazi Nation land is clearly unfounded. The third point is that of non-joinder in that the offices of the *Ndabazabantu* and the *Regional Administrator* ought to have been joined, apparently because they were at some point involved in attempts at revolving the matter. The fourth point is that the applicant chose the wrong forum. That having involved the traditional structures at some point; the applicant then should not have instituted these proceedings in this court.

[9] These points are moot they were only raised, in my opinion, to "*muddy the waters*" and in the process waste the courts time. There is not an iota of merit in these contentions, and had respondents counsel or whoever assisted the respondents draft their papers, applied their mind it would have been apparent.

The fourth and fifth respondents raised similar points but then added a further point, that of **Locus Standi**: the contention being that the fourth respondent, the **Ekukhulumeni Royal Kraal** is not a legal person therefore cannot be sued or sue in its own name. on this point I find for the respondents. The Royal Kraal is, I would say the Chief's residence or where a chief holds court and there is clearly no cause for citing it in legal proceedings. The proper practice would be to cite the chief the who has an interest in a particular matter, a who has jurisdiction over the piece of land in issue.

[10] In the heads of argument, and in argument before me, Mr Hlatshwayo who appeared for 1st to 3rd respondents urged at paragraph 3.2 thereof, that;

"[3.2] But before a party can assert his rights in a court of law, that party must established that it has the necessary Locus Standi to institute the claim"

Herein below I examine the merits of this point argument.

In paragraph 11 of the founding affidavit Rev. Dlamini states;

"[11] as a preliminary point, the applicant is the registered owner of the immovable property described as Farm 356 situate at Bhalekane area, Kingdom of ESwatini. The property was acquired by way of crown grant no 4 of 1923 in favor of the applicant"

Annexed to the founding affidavit is a copy of Crown grant no 4/1923. The vesting clause in this deed reads;

"Now therefore I the High commissioner for South Africa, herby grant, cede and transfer unto the said

THE GENERAL BOARD OF FOREIGN MISSIONS OF THE CHURCH OF THE NAZARENE"

[11] Clearly the piece of land in issue in these proceedings is registered in the name of the "**The General board of foreign missions of the church of the Nazarene**". The applicant on the other hand is the Eswatini north Nazarene district church of the Nazarene " which is described by Revered

Philemon Patric Dlamini, as “an association not for gain duly registered and incorporated in accordance with the company laws of the Kingdom of ESwatini with its Principal place of business at Pigg’s peak in the Hhohho district kingdom of ESwatini”

[12] It is trite, in all cases, the person who institutes proceeding must allege facts to indicate that he has the necessary *Locus Standi* to institute the proceedings and he must show a direct and substantial interests in the relief sought and this interest must be based on a legally enforceable right or even that the general board of the Foreign Mission of the church of the Nazarene changed its name or transferred its assets to the applicant.

[13] In **Dairymple and others v Colonial Treasurer 1910 TS 372 at 390** Wessels J stated that;

“ a person who sues must have an interest in the subject matter of the suit, and that interest must be a direct interest ”

Also quoted with approval by Sey J. (as she then was) in **Mpini Comfort Dlamini and others v Willis Shabangu and others (266/2012) [2012] SZHC 28.**

In **Rooderport Maraisburg Town Council v Easter properties (Prop) LTD 1933 AD 87 at 101, Wessels J.** again stated, of the requirements that a plaintiff has to show a direct and substantial interest in the matter in issue


“...By our law any person can bring an action to vindicate a right which he possesses whatever the right may be and whether he suffers special damages or not, provided he can show that he has a direct interest in the matter and not merely an interest which all citizen have...”

[14] As general a rule, a person, who claims relief from the court in respect of any matter must establish that he has a direct and substantial interest in the matter in order to establish *Locus Standi* to seek the relief sought.

See, the authors **Herbstein and Van Winsen** “the civil practice of the High Courts of South Africa” 5th edition Juta (2009) at page 85 and the cases cited thereat.

[15] The applicant has failed to demonstrate or even to make averments in the founding affidavit to indicate that it has a direct interest in the subject matter. The farm is registered in the name of different entity that, at least, on the face of it, has no relationship with the applicant

For that reason I dismissed the application with costs. The applicant having failed at the first handle, I did not see the need of deciding the merits of the application.

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Z. Magagula
Judge of the High Court

Appearances:

For the applicant:	Mr B. Gama
For the 1 st to 3 rd Respondents:	Mr A Hlatswayo
For the 4 th to 7 th Respondents:	Ms Magagula