



## **IN THE HIGH COURT OF ESWATINI**

### **JUDGMENT**

**HELD AT MBABANE**

**Case No.: 1050/2023**

**In the matter between:**

**ALLEXINAH ZIKALALA**

**1<sup>st</sup> Applicant**

**SIPHIWE DLAMINI**

**2<sup>nd</sup> Applicant**

**LINDIWE METHULA**

**3<sup>rd</sup> Applicant**

**And**

**STANDARD BANK ESWATINI**

**1<sup>st</sup> Respondent**

**NEDBANK ESWATINI LIMITED**

**2<sup>nd</sup> Respondent**

**RICHARD NGWENYA**

**3<sup>rd</sup> Respondent**

**VUSI MABUZA**

**4<sup>th</sup> Respondent**

**BUSISIWE BHEMBE**

**5<sup>th</sup> Respondent**

**GADLA TFWALA N.O.**

**6<sup>th</sup> Respondent**

**THE ATTORNEY GENERAL**

**7<sup>th</sup> Respondent**

**Coram:**

**K. MANZINI J**

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## **RULING ON COSTS**

**24/05/2023**

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**K. MANZINI – J:**

[1] The application herein was brought under a certificate of urgency, wherein the Applicant sought an order in the following terms:

1.1 That this Honourable Court dispense with the normal requirements relating to time limits, manner of service, form and procedure in application proceedings and deal with this matter as one of urgency in terms of the Rules of this Honourable Court.

[2] That pending the finalisation of this application, an interim order be issued in the following terms:

2.1 That the accounts of Bambanani Balimi Association held with Standard Bank Eswatini Limited be frozen until the present proceedings are finalized.

2.2 That the accounts of Bambanani Balimi Farmers Association held with Nedbank Eswatini Limited be frozen until the present proceedings are finalized.

[3] That prayers 2.1 and 2.2 above be granted to operate with immediate effect.

[4] Declaring the removal of Allexinah Zikalala, Sphiwe Dlamini and Lindiwe Methula as signatories in the account of Bambanani Balimi Farmers Association which account held with the Standard Bank Eswatini Limited to be null and void and of no effect. The accounts concerned are as follows:

a) 911 000 1027223

b) 911 000 5164322

c) 911 000 1154527

d) 911 000 2690031

[5] Declaring that signatories in the accounts of Bambanani Balimi Farmers Association account held with Standard Bank Eswatini Limited shall continue to be Allexinah Zikalala, Sphiwe Dlamini, and Lindiwe Methula as per the Royal Command issued by the Ingwenyama Mswati III as communicated to all shareholders of Bambanani Balimi Farmers Association by Mr. Gadla Tfwala N.O.

[6] Declaring the removal of Allexinah Zikalala, Sipiwe Dlamini and Lindiwe Methula as signatories in the account of Bambanani Balimi Farmers Association which account held with the Nedbank Eswatini Limited to be null and void and of no effect. The accounts concerned are as follows:

**a) 30000 400099**

**b) 30000 390198**

[7] Declaring that signatories in the accounts of Bambanani Balimi Farmers Association account held with the Nedbank Eswatini Limited shall continue to be Allexinah Zikalala, Sipiwe Dlamini and Lindiwe Methula as per the Royal Command issued by the Ingwenyama Mswati III as communicated to all shareholders of Bambanani Balimi Farmers Association by Mr. Gadla Tfwala N.O.

[8] That any of the Respondents who will oppose the Application be ordered to pay costs of this application at a scale of attorney – client.

[9] That the Applicant be granted any further and/or alternative relief which this Honourable Court may deem just in the circumstances.

[10] On the 17<sup>th</sup> of May, 2023, when the matter was called by Court Clerk, the Applicants' Attorney informed the Court that they had been served with an affidavit deposed to by the Attorney General, Mr. Sifiso M.M. Khumalo, himself in his official capacity. The gist of the affidavit was to the effect that disputes arising out of the Farm 704, Lubombo District fall outside of the jurisdiction of this Court in accordance with Section 151 (8) of the Constitution of the Kingdom of Eswatini, 2005. The Affidavit also detailed the following:

“5. *On the 12<sup>th</sup> March 2023, a Royal Command was issued to the effect that these matters should be referred to Traditional Structures as prescribed by the law.*

6. *It is upon this command that I make this affidavit in terms of section 11 of the Interpretation Act, 21 of 1970. By this affidavit I humbly confirm and signify where this may be necessary in the Court proceedings that this matter be referred to Traditional Structures as per the dictate of*

*Eswatini law and custom; the owner of the land; and brains behind the economic empowerment of Hlane Residents in sugar cane farming.*

7. *It is my humble advice that like all matters arising from Farm 704 Lubombo District be removed and be referred to Traditional Structures.”*

[11] On the basis of this advice, and the gravamen of the affidavit by the Attorney General, the Counsel for Applicant conceded that this Court has no jurisdiction over the matter. He did state that had it not been for this affidavit, submitted by Counsel for the 7<sup>th</sup> Respondent, he would have been ready to proceed with his arguments in furtherance of his client's case.

[12] On the other hand, whilst appreciating that the High Court does not have jurisdiction to hear the matter, it was the submission of Attorney for 3<sup>rd</sup> to 5<sup>th</sup> Respondent that he ought to be awarded costs at an attorney and own client scale. He stated that this is because, although the Applicants were aware of this Royal Command, they still proceeded to bring the matter to Court, and cited his clients in their personal capacities. He pointed out that

his clients had been put out of pocket because they had been forced to instruct their attorneys to oppose the present application.

[13] The Court herein, though cognisant of the fact that indeed, the 3<sup>rd</sup> to 5<sup>th</sup> Respondent has been put out of pocket, but it is clear to the Court that had it not been for the fact that the office of the Attorney General had submitted the affidavit, as deposed to by the Attorney General himself, they would have proceeded to argue their case. It is also clear to this Court that this is a matter which, (and all the Counsels herein do recognise and, duly agree ) most certainly does fall outside of the jurisdiction of this Court. That being the case, this Court cannot therefore mulct any of the parties herein by way of ordering costs, either in favour of, or against them.

[14] The Court having no jurisdiction at all over this matter, cannot deign to exercise any kind of discretion, and or jurisdiction, even over the issue of costs herein.

### **ORDER**

[15] The application by the Attorney for 3<sup>rd</sup> to 5<sup>th</sup> Respondent for costs at an attorney and own client scale is hereby dismissed.



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**K. MANZINI**  
**JUDGE OF THE HIGH COURT OF ESWATINI**

**Applicants Counsel:** MR. S. GUMEDZE (V.Z. DLAMINI ATTORNEYS)

**3<sup>rd</sup> to 5<sup>th</sup> Respondents Counsel:** MR. M. MAGAGULA (ZONKE MAGAGULA &  
CO. ATTORNEYS)

**7<sup>th</sup> Respondent Counsel:** MR. F. MHLANGA (ATTORNEY GENERAL'S  
CHAMBERS)