



IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO. 1369/2023

In the matter between:

CHIEF GCOKOMA DLAMINI

Applicant

And

INDVUNA THEMBA GININDZA

1st Respondent

DUMA LUKHELE

2nd Respondent

JABULILE GININDZA

3rd Respondent

ESWATINI ROYAL POLICE

4th Respondent

THE ATTORNEY GENERAL

5th Respondent

Neutral Citation: *Chief Gcokoma Dlamini v Indvuna Themba Ginindza & 4 Others (1369/2023) [2023] SZHC 271 (03 October 2023)*

CORAM:

N.M. MASEKO J

FOR THE APPLICANT:

MR. MLINZI PHINDA MTHETHWA

FOR THE RESPONDENTS:

MR. B. NKAMBULE

DATE HEARD: 20 JULY 2023

DATE DELIVERED: 03 OCTOBER 2023

Preamble: Civil Law – Interim Interdict – points *in limine* on jurisdiction and foreseeable disputes of facts – Dispute of land situate on Eswatini Nation Land – Farm 949 is situate at Mbelebeleni area in the Manzini District and is held by Ingwenyama in trust for Emaswati – Dispute currently pending before the Ludzidzini traditional structures – Interim interdict granted to preserve the status quo pending the determination of the matter by the traditional structures – Relevant legal authorities discussed.

JUDGMENT

MASEKO J

[1] On the 28th June 2023, the Applicant launched motion proceedings on urgency for an order in the following terms:-

- (1) Condoning the non-observance on forms, service and time limits of the Rules of the Honourable Court and having the matter heard as one of urgency.
- (2) Directing and ordering the First Respondent and Second Respondent to stop kukhontisa inside Farm 949 and lastly ordering and directing Third Respondent to stop putting pegs markings around Farm 949 situate at Mbelebeleni Umphakatsi pending the finalization of the matter at the Ludzidzini Residence.
- (3) Ordering the Fifth Respondent to execute the Court Orders accordingly.
- (4) That First, Second and Third Respondent pays the costs of this application in the event of any opposition.

- [2] The Founding Affidavit of the Applicant and Annexures thereto is used in support of this affidavit, and on the other hand the Answering Affidavit of the 1st Respondent is used in opposition to the Applicant's prayers.

Applicant's case

- [3] The Applicant is Chief Gcokoma Dlamini, a Chief of Mbelebeleni area in the Manzini Region. He states that Farm 949 is situate within his chiefdom at Mbelebeleni and therefore the Umphakatsi of Mbelebeleni is the custodian of Farm 949. Chief Gcokoma states further that since Farm 949 falls within his chiefdom, he is the appropriate authority to oversee the administration of the chiefdom as well as fix anything that has to be fixed within his chiefdom.
- [4] As regards the authority that he exercises over Farm 949 which is situate in and within his chiefdom, Chief Gcokoma refers to Annexure A, a letter from Dr. A.T. Dlamini, the Managing Director of Tibiyo Taka Ngwane dated the 23rd May 2023. For ease of reference, I shall reproduce the letter in its entirety herein below as follows:-

"23 May 2023

TO WHOM IT MAY CONCERN

RE: FARM 949 MANZINI BOUGHT FROM ESTATE LATE ALVIT DLAMINI
HELD BY INGWENYAMA IN TRUST THROUGH DEED OF TRANSFER NO.
366/98

1. On the 1st June 1998, Tibiyo Taka Ngwane received a mandate to assist the community of Mbelebeleni under Chief Gcokoma to purchase Farm 949 Manzini from the Executors of the Estate Late Alvit Dlamini.
2. On the 3rd June 1998, Tibiyo representatives met Chief Gcokoma who was accompanied by members of the Mbelebeleni community which included Joseph Ncongwane and Mekhuto Dlamini and their lincusa Prince Gubhaphanzi.
3. The meeting was to discuss the details concerning purchase of the Farm and to relay to them the mandate received by Tibiyo. At this

meeting the community representatives were informed that the Farm would be purchased on their behalf as per the mandate, but that ownership of the Farm would vest in the name of Ingwenyama as is the norm with such purchase.

4. In execution of the mandate, a Deed of Sale for the amount of E912 000 (Nine Hundred and Twelve Thousand Emalangen) was signed between Tibiyo Taka Ngwane, representing Ingwenyama In Trust and the joint Executors of Estate Late Alvit Dlamini, being Qinisile M. Mabuza and Siboniso C. Dlamini.
5. Transfer of the Farm to Ingwenyama in Trust for Emaswati was effected by the Deeds Registry on the 31st August 1998.

Yours faithfully

(signed)
DR. A.T. DLAMINI
MANAGING DIRECTOR"

- [5] I have quoted the letter in full to appraise the reader of this judgment the position of Tibiyo Taka Ngwane concerning Farm 949 Manzini situate within the Mbelebeleni chiefdom under Chief Gcokoma.
- [6] Chief Gcokoma states further that the 1st, 2nd and 3rd Respondents are not residents of Mbelebeleni nor persons of authority at Mbelebeleni yet they continue allocating land in Farm 949 to people in complete disregard of the fact that the aforesaid Farm 949 falls within and under his jurisdiction. The 1st and 2nd Respondents continue to allocate (*kukhontisa*) land to strangers to build homesteads whilst the 3rd Respondent continues to place pegs marking boundaries which is an indication that there is an intention to have a structure erected on the aforesaid Farm 949.
- [7] Chief Gcokoma states that the Respondents are conducting these unlawful activities without the consent and authority of Mbelebeleni Umphakatsi. He states further that he has been duly advised that this is a matter that falls to be adjudicated upon in terms of Siswati law and custom by the relevant traditional structures.

- [8] Chief Gcokoma states that he fears that by the time the matter is adjudicated upon by the relevant traditional structures the whole of Farm 949 would have been allocated by the Respondents to the prejudice of the Mbelebeleni community. It is on these basis that he is of the view that it would be justified for this Court to issue an interim interdict to maintain the status quo pending the determination of the matter by the relevant structures in terms of Siswati law and custom.
- [9] Chief Gcokoma states that the matter has already been submitted and or reported before the Ludzidzini authorities and that it is therefore now pending before the relevant traditional customary structures. Prince Phuzukuwela Dlamini has filed a Confirmatory Affidavit in that regard, and it is herein marked Annexure B.
- [10] Chief Gcokoma further states he has met the requirements for this Court to grant an interim interdict pending the adjudication of the matter by the Ludzidzini authorities under the chairmanship of Mdlaka Gamedze. He states that he has a *prima facie* case because he is the chief of Mbelebeleni area wherein Farm 949 is situate, and therefore he has the prima facie right and duty to institute these proceedings to prevent further harm being occasioned by the Respondents collectively pending the adjudication of the matter by the relevant authorities as aforementioned above herein. He states further that he has no other alternative remedy other than to approach this Honourable Court in this matter, and that the balance of convenience favours him because he is the Chief of the area and therefore it would be in the best interest of justice for this Court to grant the interlocutory interdict pending the adjudication of the matter by the relevant traditional structures by interdicting and restraining the Respondents from allocating land for new homes and or structures in Farm 949, and also interdicting and restraining the Respondents from erecting or placing pegs within the farm, which is an indication that a

certain portion of land within Farm 949 is being identified for purposes of building a structure or structures.

- [11] Chief Gcokoma states further that the matter is urgent, because if it were to be dealt in the normal course, many homes or structures would have been erected or built in Farm 949 much to the prejudice of the Mbelebeleni Umphakatsi, and therefore the community of Mbelebeleni would suffer irreparable harm.

THE RESPONDENTS' CASE

- [12] The 1st Respondent in opposition to the Applicant's prayers states that he is the Acting Indvuna of Ludzidzini and the Chief of Madlolo Royal Kraal.

- [13] He has raised points *in limine* as follows:-

- (i) that there are foreseeable disputes of facts in this matter which cannot be resolved on papers alone and therefore this Honourable Court cannot in these circumstances grant an interim interdict.
- (ii) that this Court does not have jurisdiction to hear and determine this matter because this matter involves Eswatini Nation Land which falls within the mandate of traditional structures.

- [14] On the merits the 1st Respondent denies that the Mbelebeleni Umphakatsi is the custodian of the aforesaid Farm 949 held by Ingwenyama in Trust for the Swati Nation. He states further that the land wherein Farm 949 is situate was initiated by the late Chief Bulawako Ginindza of Madlolo from one white farmer who was keeping sheep in the farm on or around 1970 after the farm was handed back to His Majesty King Sobhuza II.

- [15] The 1st Respondent states further that the purchase of the farm was initiated by the Madlolo community who prepared cattle to purchase the Farm 949, however, the cattle were not enough and around 1996 the process was abandoned. The farm was later purchased by the late Alvit Dlamini, wherein upon Alvit's demise, the Madlolo community then entrusted the Applicant and one Joseph Ncongwane to facilitate the purchase of the farm. 1st Respondent states that the Madlolo community had initially instructed Applicant's father to negotiate for the sale of the farm to the Madlolo community, and when Applicant's father passed on, the Applicant was then appointed Lincusa together with the said Joseph Ncongwane and the process of purchasing the farm was left to them.
- [16] The 1st Respondent states further that the Farm 949 falls within the jurisdiction of Madlolo chiefdom and therefore as chief of the area he has all the powers to allocate land.
- [17] The 1st Respondent admits that the matter is pending before the traditional structures. He states further that an interim interdict will not be in the best interest of the Madlolo Community because it would disrupt community development projects. 1st Respondent further denies that the matter is urgent and that the Applicant has met the requirements for this Court to grant an interim interdict.

ANALYSIS OF THE MATTER AND THE LAW APPLICABLE

- [18] I must state that the manner in which the 1st Respondent has approached this matter is as if the Applicant is asking this Court to adjudicate on the dispute between the parties concerning the land situate on Eswatini Nation Land, whereas that is not the position.
- [19] If Chief Gcokoma is seeking the adjudication of the dispute in question between the parties before or by this Court, then I would have no problem

to uphold the points *in limine* on jurisdiction and disputes of facts, however, that is not the relief which Chief Gcokoma is seeking before this Court, Mr. M. Mthethwa was at pains trying to explain that Chief Gcokoma only seeks an interim interdict to preserve the status quo in Farm 949 pending the determination of the dispute by the relevant traditional authorities wherein the matter is currently pending. I agree entirely with Counsel Mthethwa, and even the 1st Respondent himself at page 21 paragraph 19 of the Book of Pleadings, himself admits and clearly and unequivocally states that the matter is pending before the traditional structures. It is on this basis that I find that the points *in limine* have no merit and stands to be dismissed, because –

- (i) this Court has jurisdiction to grant (or to refuse to grant) an interim interdict to preserve the status quo in matters that are pending or are about to be instituted before any relevant traditional structures in the country;
- (ii) this Court has not been asked by Chief Gcokoma to deal with the merits of the matter, and he states clearly at page 8 paras 9.2 and 9.3 that matters of the nature are dealt with by traditional structures in accordance with Siswati Law and Custom, and that this Court can only deal with this matter only on review or on appeal.

[20] In the premises the issue of jurisdiction as well as the existence of foreseeable disputes of facts do not arise, and thus the points *in limine* are dismissed.

[21] In his Answering Affidavit, the 1st Respondent has outlined a long history of the supposed acquisition or purchase of the Farm 949 by the Madlolo chieftdom. I have deliberately outlined the aforesaid history in this judgment simply to demonstrate that the 1st to 3rd Respondents do not appreciate the approach adopted by the Applicant wherein he is seeking

that the allocation of the land on Farm 949 by the Respondents be halted temporarily or in the interim pending the hearing and determination of the matter by the Ludzidzini Council. Nowhere in the pleadings does Chief Gcokoma ever pray before this Court to deal with the merits of this case.

[22] Authority is legend in this jurisdiction that matters pertaining to disputes of land situate on Eswatini Nation Land are the prerogative of relevant traditional structures, the Swati National Court and its designated appellate structures as clearly defined and created by the Swazi Courts Act No. 80 of 1950. A matter of this nature can only be heard by this Court either on review or on appeal. This Court can never be a Court of first instance in matters involving a dispute on land situate on Eswatini Nation Land. The Supreme Court has in numerous decisions clearly articulated this principle.

[23] In the case **of Maziya Ntombi v Ndzimandze Thembinkosi (02/12) [2012] SZSC 23 (31 May 2012)** MCB Maphalala JA (as he then was) stated as follows at paragraphs 15-17 and I quote:

- [15] The *court a quo* was correct in holding that the parties reside in a “**Swazi area**”. The definition section of the Swazi Administration Amendment Act No. 6 of 1979 defines a Swazi Area as any area of land so defined in the definition of Swazi Areas Act No. 41 of 1916 or any area of land held by the Ingwenyama in trust for the Swazi Nation. Section 2 of the definition section of Swazi Areas Act No. 41 of 1916 defines a Swazi Area as one which has been set aside for the sole and exclusive use and occupation of the Swazi Nation.
- [16] A Swazi area is governed by a competent authority, and the Swazi Administration Amendment Act No. 6 of 1979 defines a competent authority as a person appointed by Ingwenyama in Libandla for the purpose of administration in a Swazi Area and includes a Chief or any person holding such office.
- [17] The Court *a quo* correctly found that the land dispute properly falls within the Customary Adjudicatory Structures established in the areas where the parties reside; and, that these structures have the competence to adjudicate upon and settle disputes arising within that area in terms of Swazi Law and Custom.”

[24] *In casu* it is common cause that both parties acknowledge that Farm 949 is held by the Ingwenyama in trust for the Emaswati nation. His Lordship MCB Maphalala JA (as he then was) referred to the relevant and historic legislation dating back to 1916 to demonstrate that Siswati customary matters have always been dealt with by the relevant Customary Adjudicatory Structures in accordance with the definition of a **“Swazi Area”**.

[25] I must state that the Roman Dutch Common Law fully recognized the customary values and practices of the Eswatini nation and that disputes concerning land situate on Eswatini nation land were and are, by law i.e. by an **‘act of parliament’** to be dealt with in accordance with the customary and traditional adjudicatory structures. This means that even private farms currently held by the Ingwenyama in trust for Emaswati, where there are disputes in these farms, as is the case *in casu*, such disputes fall squarely within the jurisdiction of the relevant and appropriate structures and cannot be dealt with by this Court at this stage, but can only be dealt with by this Court either on review or on appeal. This is the view that Chief Gcokoma is asking the Court to adopt and in my view based on the authorities referred to, he is correct. This Court has the jurisdiction to hear and determine the interim interdictory relief which Chief Gcokoma is seeking pending the determination of the matter as it is pending before the Ludzidzini authorities.

[26] I must state that the letter written by Dr. A.T. Dlamini herein referred to above hereby fortifies Chief Gcokoma’s testimony that he has satisfied the requirements mandating this Court to grant him the interim interdict he is seeking. I will not deal with the contents of the letter because that aforesaid documentary as well will be dealt with by the Ludzidzini authorities who are seized with this matter.

[27] I must point out though that Tibiyo Taka Ngwane is the appropriate authority exercising direct instruction from the Ingwenyama to purchase private farms from their owners and have these farms registered in the Ingwenyama in trust for Emaswati and these farms are always availed to the community where they are situate, however, as Dr. A.T. Dlamini has emphasized in his letter, these farms vest in the name of the Ingwenyama in trust for Emaswati.

[28] The Constitution of the Kingdom of Eswatini Act No. 001 of 2005 has cemented and complimented previous legislations, such as the Swazi Areas Act No. 6 of 1916, the Swazi Areas Act No. 6 of 1916, the Swazi Courts Act No. 80 of 1950 and the Swazi Administration Amendment Act No. 6 of 1979 in its recognition of how matters pertaining to disputes of Eswatini customs are to be dealt with. At paragraph 19 of the **Maziya Ntombi** (*supra*) judgment His Lordship MCB Maphalala JA (as he then was) states as follows at paragraph 19 when he dealt with the recognition of Siswati Law and Custom by the Constitution, and I quote:-

[19] The *Court a quo* was correct in holding that Traditional Structures in Swaziland apply Swazi Law and Custom; and, that such law is recognized by Section 252 of the Constitution which provides as follows:-

“252(1) Subject to the provisions of this Constitution or any other written law, the principles and rules that formed immediately before the 6th September 1968 (Independence Day), the principles and rules of the Roman-Dutch Common Law as applicable to Swaziland since 22nd February 1907 are confirmed and shall be applied and enforced as the Common Law of Swaziland except where and to the extent that those principles or rules are inconsistent with this Constitution.

(2) Subject to the provisions of this Constitution, the principles of Swazi Law and Custom are hereby recognized and adopted and shall be applied and enforced as part of the law of Swaziland.

(3) the provisions of subsection (2) do not apply in respect of any custom that is, and to the extent that it is, or repugnant to natural justice or morality or general principles of humanity.

(4) Parliament may –

- (a) provide for the proof and pleading of the rules of custom for any purpose;
- (b) regulate the matter in which or the purpose of which customs may be recognized, applied or enforced; and
- (c) provide for the resolution of conflicts of customs or conflicts of personal law.”

[29] The matter *in casu* attracts both the Eswatini Customary Law and the Civil Law, in the sense that the subject matter being Farm 949 concerns a dispute between two chiefdoms which falls within the jurisdiction of the Ludzidzini panel, whereas the civil law aspect manifest itself in the interim interdictory relief being sought by Chief Gcokoma. I have indicated above herein that the letter of Dr. A.T. Dlamini clearly establish the requisite *prima facie* right for purposes of satisfying the requirements for the grant of the interim interdictory relief pending the determination of the matter by the Ludzidzini traditional structures where it is currently pending. For purposes of these proceedings, the letter from Dr. A.T. Dlamini clearly establishes a *prima facie* right for Chief Gcokoma to be granted the interim relief which he seeks.

[30] Chief Gcokoma has also sufficiently and on a balance of probabilities proven that if the interim interdict is not granted then the Mbelebeleni Umphakatsi will suffer irreparable harm in that the 1st to 3rd Respondents will continue to unlawfully allocate land on Farm 949, and that in these circumstances Chief Gcokoma has no other satisfactory remedy other than to approach this Court for the interim interdict. Further, Chief Gcokoma has proven that the balance of convenience favours him to be granted the interim interdict because of the contents of the letter of Dr. A.T. Dlamini

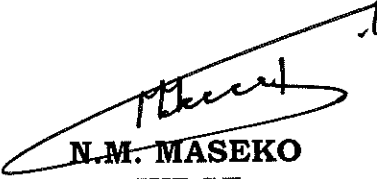
which, for purposes of these proceedings, clearly supports the allegations made by Chief Gcokoma in his Founding Affidavit, Replying Affidavit and Annexures thereto.

[31] It is my considered view that no harm would be occasioned on the 1st to 3rd Respondents if I grant the interim interdict restraining and interdicting the aforesaid 1st to 3rd Respondents from allocating land on Farm 949 pending the full determination of the matter by the Ludzidzini traditional structures.

[32] Having considered the matter in its entirety I hereby hand down the following judgment:-

1. The points *in limine* are all dismissed;
2. The 1st, 2nd and 3rd Respondents are hereby interdicted and restrained from allocating land and erecting pegs in Farm 949 situate within Mbelebeleni Umphakatsi pending the determination of the matter by the Ludzidzini traditional structures, and or any other traditional structure or structures exercising Eswatini Law and Custom.
3. The 1st, 2nd and 3rd Respondents are ordered to pay costs of this application on the ordinary scale, the one paying the other(s) to be absolved.

So ordered.


N.M. MASEKO
JUDGE