



## IN THE HIGH COURT OF ESWATINI

**HELD AT MBABANE**

**CASE NO. 1547/2020**

In the matter between:

**CHIEF BHOZONGO SIMELANE N.O.**

Applicant

And

**KHESAYA DLAMINI (nee Ndlangamandla)**

1<sup>st</sup> Respondent

**SIKELELA DLAMINI**

2<sup>nd</sup> Respondent

**SIBONGUMUSA NHLABATSI**

3<sup>rd</sup> Respondent

**PRINCE VELEBANTFU DLAMINI**

4<sup>th</sup> Respondent

**FANA MAHHALA NHLABATSI**

5<sup>th</sup> Respondent

*IN RE*

**INKHOSATANE GELANE SIMELANE      N.O.**

And

**KHESAYA DLAMINI** (nee Ndlangamandla)

**And 10 Others**

**Neutral Citation:**      *Chief Bhozongo Simelane N.O. v Khesaya Dlamini (nee Ndlangamandla & 4 Others (1547/2020) [2023] SZHC 246 (01 September 2023)*

**CORAM:**

**N.M. MASEKO J**

**FOR THE APPLICANT: M. SIMELANE**  
**FOR THE RESPONDENTS: P.K. MSIBI**

**DATES HEARD: 04/08/2023, 17/08/2023, and 31/08/2023**

**DATE DELIVERED: 01/09/2023**

***Preamble:***

*Civil Proceedings – Contempt of Court – Deliberate and intentional refusal to comply with orders of this Court.*

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**JUDGMENT ON CONTEMPT PROCEEDINGS**

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**MASEKO J**

[1] On the 21<sup>st</sup> August 2020, the then Applicant Inkhosatane Gelane Simelane launched motion proceedings on urgency for an order in the following terms:-

1. Dispensing with the usual forms and manner of service prescribed by the Rules of this Honourable Court, condoning the Applicant's non-compliance with the said rules and directing that the matter be heard as one of urgency.
2. Restraining and interdicting the Respondents or anyone acting under their authority from continuing with the illegal construction of the hardware building structure or extension of any illegal building structure at the Lawuba Business Centre without the authority of the Mbangweni *Umphakatsi* under the Kontshingila Chiefdom

3. Restraining and interdicting the Respondents or anyone acting under their authority from continuing with the construction of a Filling Station or any other business currently taking place at the Lawuba Business Centre without the authority of the Mbangweni *Umphakatsi* under the KoNtshingila Chiefdom.
4. Restraining and interdicting the Respondents from unlawfully allocating land at Lawuba Business Centre or any other area under the jurisdiction of the KoNtshingila Chiefdom.
5. Restraining and interdicting the Fourth Respondent from operating a butchery business at Lawuba Business Centre.
6. Restraining and interdicting the Sixth Respondent from operating a butchery business and a liquor business at Lawuba Business Centre.
7. Granting an order for the removal and demolishing of any structures illegally constructed by Respondents at the Lawuba Business Centre or any other area under KoNtshingila Chiefdom.
8. Revoking the Certificates signed by the Ninth Respondent Zwakele Dlamini, the Shiselweni Regional Secretary or any official of the Shiselweni Regional Administration granting the Second Respondent authority to construct a Filling Station Business or any business at Lawuba Business Centre.
9. Revoking the authority granted by the Eighth Respondent authorizing the Second Respondent to construct a Filling Station Business at Lawuba Business Centre.
10. Interdicting and restraining the Respondents from allocating Winile Nhlabatsi land at Lawuba Business Centre.

11. Interdicting and restraining the Eleventh Respondent from granting and approving an application by the Tenth Respondent to operate a Restaurant and Sewing Business at Lawuba Business Centre or any business whatsoever.
12. Costs of the Application.
13. (i) A *rule nisi* do hereby issue with immediate effect as an interim order in terms of prayers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 pending the return date and failing which pending the decisions of the Ludzidzini Royal Council.  
  
(ii) Calling upon the Respondents to show cause on a date to be determined by the above Honourable Court why a final order in terms of the Notice of Motion should not be made final.
14. Further or alternative relief.

[2] The Applicant was represented by Mr. Bheki Tsabedze and the 1<sup>st</sup> – 7<sup>th</sup> and 10<sup>th</sup> Respondents were represented by Mr. P.K. Msibi. I must state at the very onset that a *rule nisi* operating with interim and immediate effect was issued with the consent of the parties in respect of prayers 1, 2, 3, 4 and 10.

[3] It is common cause that the rule nisi has been extended regularly pending finalization of the matter. The Respondents raised a number of objections and also launched an application for my recusal which application I dismissed on the 5<sup>th</sup> June 2023.

[4] It is common cause that Inkhosatana Gelane Simelane who was the acting Chief of Kontjingila area handed over the chieftaincy reins to Chief

Bhozongo Simelane, the incumbent Applicant who was blessed by the appointing authority into this position.

- [5] In fact on the 12<sup>th</sup> October 2022 Crown Counsel Henry Sibandze moved an application on urgency for contempt proceedings owing to the deliberate defiance of the interim order. In this interlocutory application the Inkhosatane Gelane Simelane cited Prince Velebantfu Dlamini and Sikelela Stanford Dlamini. These two were served personally with this interlocutory application owing to the fact that it concerned their personal liberty.
- [6] In the Founding Affidavit Inkhosatane Gelane Simelane states that Prince Velebantfu continues to allocate land to Sikelela Stanford Dlamini at KoNtshingila in defiance of the court order of the 21/08/2020. She states that Prince Velebantfu has wilfully and with impunity violated the Court order and is using Sikelela Stanford Dlamini to continue the violation of the Court. Phillip Mdluli Simelane and Absalom Ngwenya filed Confirmatory affidavits. Prince Velebantfu never opposed this application despite the fact that it was served on him on the 9<sup>th</sup> November 2022.
- [7] This is the confirmation of the contemptuous conduct of the Respondents as regards the violation of the interim order of the 21/08/2020. They have set out deliberately to frustrate the administration of justice through their wilful disregard and disobedience of the orders of this Court with impunity.

- [8] On the 31<sup>st</sup> July 2023, the learned Attorney General filed a Notice of Substitution of Applicant in terms of Rule 15 of the Rules of this Court which provides as follows:-

*15 (1) No proceedings shall terminate solely by reason of the death, marriage or other change of status of any party thereto unless the cause of such proceedings is thereby extinguished.*

*(2) Whenever by reason of an event referred to in sub-rule (i) it becomes necessary or proper to introduce a further person as a party in such proceedings (whether in addition to or in substitution for the party to whom such proceedings relate) any party thereto may forthwith by notice to such further person, to every other party and to the Registrar, add or substitute such further person as a party thereto, and subject to any order made under sub-rule (4), such proceedings shall thereupon continue in respect of the person thus added or substituted as if he had been a party from the commencement thereof and all steps validly taken before such addition or substitution shall continue of full force and effect.*

- [9] There was no objection to the filing of this notice of substitution by the Respondents whereby Inkhosatane Gelane Zwane was substituted with Chief Bhozongo, the incumbent applicant. I have referred to this Section simply to demonstrate that the substitution of Chief Bhozongo is in accordance with the Rules of Court, and therefore any objection to the aforesaid substitution is without merit.

- [10] On the 4<sup>th</sup> August 2023 the Applicant Chief Bhozongo Simelane launched proceedings for an order in the following terms:-

1. The Respondents be committed to prison for thirty (30) days for contempt of Court for having willfully disobeyed the Court Order granted on the 21<sup>st</sup> August 2020.
2. In the interim pending finalization of this matter the Respondents be ordered to comply with the Court Order of the 21<sup>st</sup> August 2020 as follows:
  - (a) The 1<sup>st</sup> Respondent close her wholesale business that came about through unlawful completion of the Lawuba business centre.
  - (b) The 2<sup>nd</sup> Respondent desist with construction of his home in the fields of Samuel Mvankeli Simelane where he was unlawfully allocated by the 4<sup>th</sup> Respondent and;
  - (c) 2<sup>nd</sup> Respondent close the bottle store from the premises that he was unlawfully allocated by the 4<sup>th</sup> Respondent to operate at Metfula area known as Mashayekhatsi;
  - (d) 2<sup>nd</sup> Respondent close the Bottle Store that he is operating under the lease granted unto him or under the unlawful authority of the 5<sup>th</sup> Respondent near Mbangweni Royal Kraal and;
  - (e) The 3<sup>rd</sup> Respondent halts the construction of the home near Etshendlovu Primary School near a tomb of Lashovu that had been allocated to him by the 4<sup>th</sup> Respondent through the Mtfongwa Royal Kraal.
  - (f) The 4<sup>th</sup> Respondent halt the construction of *Umphakatsi* at Mbabane in the Kontshingila Chiefdom and also remove his people from the construction site together with his building materials.

3. That the Respondents pay costs of this application at attorney and client scale.
4. Further and or alternative relief.

[11] The interlocutory application was heard before this Court on the 4<sup>th</sup> August 2023 and I issued a *rule nisi* that was returnable on the 17<sup>th</sup> August 2023 and calling upon the Respondents to show cause on the return date why the rule nisi should not be confirmed as a final order of this Court.

[12] On the 17<sup>th</sup> August 2023 both Mr. Simelane and Mr. Msibi were present before Court and the *rule nisi* was extended to the 31/08/2023 and Mr. Msibi made an undertaking to file his answering papers on or before the 22/08/2023.

[13] It is common cause that there is no answering affidavit that was filed by the Respondents on the 22/08/2023, and instead on the 21/08/2023, the Respondents purportedly filed a Notice of Appeal against the rule nisi issued by this Court on the 04/08/2023 and extended to the 17/08/2023 and 31/08/2023 respectively.

[14] On the 31/08/2023 the Applicant filed an affidavit to prove that the interim Court Order of the 04/08/2023 was not being complied with by the Respondents purportedly. When the matter was called in the morning hours Mr. Msibi was not before Court and I stood down the matter to enable Mr. Simelane to serve the Respondents with the said affidavit which



he did and when the matter was recalled at 1400hrs Mr. Msibi for the Respondents was present before Court.

### **Applicant's Case**

- [15] In the interlocutory application the Applicant Chief Bhozongo states that his predecessor Inkhosatane Gelane obtained an interim order on the 21/08/2020 against the Respondents which had been extended pending finalization of the main matter, however, when he was taken on a tour around Kontshingila in June 2023, he noted various liquor outlets, new construction works of homes in areas that had been left idle for some time and also noticed that the Lawuba business centre has a new wholesale and hardware outlet that were operating.
- [16] The Applicant states that this shocked him since he knew that there was a pending matter before this Court where these people had been interdicted from conducting these various activities pending the determination of the matter by the Court.
- [17] The Applicant states that he was informed that whilst the Respondents had filed recusal proceedings against the judge hearing the matter, they continued to proceed with their unlawful actions despite there being a Court Order in place and preventing them from doing so.
- [18] The Applicant states that the Respondents have continued to commit the following contemptuous transgressions:-

- (i) the 1<sup>st</sup> Respondent has continued to finish the complex at Lawuba Business Centre and started operating a wholesale

and hardware shop. Had she complied with the Court Order she would not have engaged in the business.

- (ii) the 2<sup>nd</sup> Respondent not being a party to the main application has been allocated land at Mashayekhatsi at Metfula area under the Kontjingila Chiefdom and is operating a bottle-store. His unlawful transgression does not end there because he has been allocated land in the fields of Samuel Mvankeli Simelane. He has been served with the Court Order. The 4<sup>th</sup> Respondent allocated him the two pieces of land.
- (iii) The 3<sup>rd</sup> Respondent is a son to the brother of the 5<sup>th</sup> Respondent and he is unlawfully running a bottle store given to him by the latter in the premises of Mkente John Nhlabatsi. The bottle store is inviting rowdy crowds and the Kontshingila Chiefdom has not consented to the grant of the liquor licence but it has transpired that the 4<sup>th</sup> Respondent consented to the grant of the liquor licence. Furthermore the 4<sup>th</sup> Respondent has allocated the 3<sup>rd</sup> Respondent land to build a home near the Etshendlovu Primary School, near a tomb belonging to the late LaShovu Maphalala.
- (iv) the 4<sup>th</sup> Respondent is relocating his Royal Kraal from Khamsile area into the Kontshingila chiefdom in a place known as Mbabane. The areas are separated by a ravine known as Duda. The 4<sup>th</sup> Respondent is building his Royal Kraal for purposes of dancing Sibhimbi celebrating his appointment as Chief of Velebantfu.
- (v) the 5<sup>th</sup> Respondent is busy allocating premises to his son, the 3<sup>rd</sup> Respondent to conduct a liquor business and exhibiting allegiance to the 4<sup>th</sup> Respondent.

- [19] The Applicant states that his *tindvuna* (headmen) and *tibondza* (community chairman) have tried to drum sense to the Respondents to stop defying the Court Order but that has not yielded any positive response as they continue to defy the said Court Order with impunity. The Applicant states further that the Respondents were served personally with the Court Order.
- [20] The Applicant states further that the Respondents are in wilful default of the aforesaid order of this Court, and that they have chosen to defy the aforesaid Court Order with impunity, thereby lowering the dignity of the Honourable Court, and that their action is a blatant attack on the rule of law.
- [21] It was on this basis that on the 04/08/2023 I granted the interim order which was extended to the 17/08/2023 and ultimately to the 31/08/2023. The Respondents have chosen not to file any opposing papers to these allegations by the Applicant.
- [22] I have no doubt in my mind that the Respondents have acted intentionally in their defiance of lawful orders of this Court. I must say they have acted with impunity and have abused the process of the Court by filing a purported appeal before the Supreme Court against an interim order which they have not even attempted to defend and have not even obtained or bothered to obtain leave of this Court to lodge such an appeal.
- [23] It is my view that a litigant cannot lodge an appeal against an interim order in place to maintain a status pending finalization of the matter. This being

an interlocutory application the Applicant is seeking to have these Respondents committed to goal for their continued and systematic defiance of the interim orders of this Court, and also to have them comply with the order of this Court, however, what they do is bizarre in the sense that instead of dealing with the merits as clearly articulated by Chief Bhozongo Simelane, they file what they call **“an appeal”** before the Supreme Court and then resume their contemptuous conduct of the Court Order.

[24] This is an extreme case of contempt of Court by the Respondents collectively and irrespective of the status of each of the said Respondents. It is more surprising and shocking where one of the Respondents is a Chief i.e. the 4<sup>th</sup> Respondent is the Chief of Velebantfu area, and by his position in society he is expected to ensure that the other Respondents who are supposedly his subjects obey lawful orders of this Court pending the determination of the main matter, however, that is not the case as he is actively involved in the continued contemptuous conduct and disobedience of the orders of this Court with impunity.

[25] It is common cause that this Court is not dealing with the Chieftaincy dispute, since those are the prerogative of the appropriate structures in accordance with Siswati law and custom, but where it is necessary that this Court issues interim orders to preserve peace and the rule of law pending the determination of those disputes, it is the duty of every chief and national citizen affected by the interim Court Order to observe and comply with the Court Order.

[26] It defeats logic how the Respondents expect this Court to condone their contemptuous conduct of the orders of this Court simply because they have **“filed an appeal”** before the Supreme Court. How can this Court condone such brazen and wilful disregard and disrespect of the order of this Court when they admit in open Court that they have defied the Court Order because the matter is now pending before the Supreme Court. In my view they are approaching the Supreme Court with dirty hands whilst at the same time seeking for the protection of the Court. Authority is legend that a litigant who approaches the courts for justice must do so with clean hands. The Respondents have demonstrated the highest level of contempt of Court in their contemptuous conduct and with impunity.

[27] They are continually disobeying the lawful orders of this Court intentionally and being fully aware that they are doing so under the pretext that there is a legal technicality that grants them immunity from such contempt of Court proceedings. They behave and conduct their contempt of the order of this Court as if no such Court Orders exist, yet whilst they do so they are in fact in possession of these Court Orders which were personally served on them on the respective dates which are not in dispute. This is contempt *ex facie curiae*, and **Herbstein and Van Winsen** in their book titled *THE CIVIL PRACTICE OF THE HIGH COURTS OF SOUTH AFRICA VOL. 2 Fifth Edition 2012 Juta* state the following at page 1098, and I quote:-

“Contempt of Court *ex facie curiae*, again broadly speaking, could be divided in two categories, firstly, contempt which solely relates to scandalizing of the Court such as words which tend or are calculated to bring the administration of justice into contempt or a statement or document which tends to prejudice or interfere with the administration of justice in a pending proceeding and secondly, contempt which relates to the failure to comply with an order of Court.

In **Fakie N.O. v CC11 Systems (Pty) Ltd 2006 (4) SA 326 (SCA) at 332**

Cameron JA stated:-

“It is a crime unlawfully and intentionally to disobey a Court Order. This type of Contempt of Court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute, or authority of the Court. The offence had, in general terms, received a constitutional stamp of approval since the rule of law a founding value of the Constitution requires that the dignity and authority of the courts as well as their capacity to carry out their functions should always be maintained.”

[28] At pages 1099-1101 the learned authors state as follows as regards interlocutory proceedings akin to the case *in casu*, and I quote:-

“When a litigant has obtained a Court Order requiring an opponent to do or not to do something (*ad factum praestandum*) and there is non-compliance, he can **approach the Court again** for a further order declaring the non-compliant party in contempt of Court and for the imposition of a sanction which usually, but not invariably, has the object of inducing the non-complier to fulfil the terms of the previous order. In **Laubscher v Laubscher 2004 (4) SA 350 (T) at 357** De Vos J stated:-

“It is also said that, where a judiciary cannot function properly, the rule of law must die. To protect this, special safeguards have been in existence for many centuries, one of these being civil contempt of Court.” (my emphasis)

Although an unlawful and intentional non-compliance with an order of Court in a civil matter is a criminal offence, the procedure whereby a litigant can induce a non-complier to adhere to the order has become known as the procedure for civil contempt. The procedure has been received into South African law from English law.

In the *Fakie (Supra)* matter, Cameron JA also said:-

“in the hands of a private party, the application for committal for contempt is a peculiar amalgam, for it is a civil proceeding that invoked a criminal sanction or its threat. And while the litigant seeking enforcement has a manifest private interest in securing compliance, the Court grants enforcement also because of the broader public interest in obedience to its orders, since disregard sullies the authority of courts and detracts from the rule of law.”

In the *Fakie* matter Cameron JA said that the offence is committed not by a mere disregard of a court’s order, but by the deliberate and intentional violation of the court’s dignity, repute or authority that this evinces. Although enforcement is the primary purpose of committal, it is nevertheless not imposed merely because the obligation has not been

observed but on the basis of criminal contempt of Court that is associated with it.

The penalty may take the form of committal to goal, a suspended sentence or the imposition of a fine.

As stated, civil proceedings for contempt of Court need not always have the object of compelling performance of the court's order but may be brought for the sole purpose of punishing the respondent.'

[29] The legal position as enunciated by Herbstein and Vinsen is in my view in line with the particular circumstances in this case. The Applicant has applied for direct committal to goal of the Respondents because they have continuously and intentionally and openly defied these Court Orders with impunity.

[30] The Respondents were granted ample opportunity to oppose the order of the 04/08/2023 but they chose not to do so, instead they continued to violate these Court Orders to date. This cannot be allowed as their contemptuous conduct of the orders of this Court are a direct attack on the authority, repute and dignity of this Court. I must state that this is not the type of contempt of Court where the non-compliant party may be afforded an opportunity to purge their contempt, instead the circumstances of this case call for direct committal to goal because the allegation made by the Applicant remain unopposed coupled with the brazen, deliberate and intentional defiance of the orders of this Court.

[31] Counsel Msibi addressed me on the provisions of Section 147 (1) (a) of the Constitution, which reads as follows:-


“147 (1) An appeal shall lie to the Supreme Court from a judgment, decree or order of the High Court –

(a) as of right in a civil or criminal cause or matter from a judgment of the High Court in the exercise of its original jurisdiction; or.” (my emphasis)

[32] I hereby state that on the 04/08/2023 I never delivered a judgment but I issued an interim order pending filing of further pleadings and then the matter would have been argued and a ruling or judgment delivered. This argument by Mr. Msibi has no merit. The Respondents have no right at law to file an appeal merely from an interim order issued to maintain the status quo pending the finalization of the main matter. It is an abuse of the process of this Court to attempt to file an appeal in order to continue defiance of the orders of this Court.

[33] In the circumstances, I hereby grant an order in terms of:-

- I. The *rule nisi* herein issued on the 04/08/2023 in respect of prayer 1 is hereby confirmed as a final order of this Court.
- II. The rule nisi herein issued on the 04/08/2023 in respect of prayers 2 (a), (b), (c), (d), (e) and (f) is hereby confirmed as a final order of this Court.
- III. An order is hereby granted in terms of prayer 3.
- IV. The 12<sup>th</sup> Respondent NATCOM is ordered and directed to execute his mandate in so far as enforcement of these orders is concerned.

  
**N.M. MASEKO**  
**JUDGE**