

IN THE HIGH COURT OF ESWATINI
JUDGMENT

HELD AT MBABANE

Case No.: 1300/21

In the matter between:

TEBESUTFU LOMKHOSI NKAMBULE

1st Plaintiff

SIMISO SIKHUMBUZO DLAMINI

2nd Plaintiff

and

SANDILE GININDZA

1st Defendant

MUZI GININDZA

2nd Defendant

Neutral Citation: *Tebesutfu Lomkhosi Nkambule and Another vs Sandile Ginindza and Another* (1300/21) [2024] SZHC 100 (16/05/2024)

Coram: **J.M. MAVUSO J**

Date Heard: 13 May, 2021.

Date Delivered: 16 May, 2024.

SUMMARY : *Civil proceedings, Summary Judgment – Defendants to be evicted from immovable property – Property registered in Plaintiffs’ name – Defendants said to be in unlawful occupation of the immovable property – Defendants resisting summary judgment – Basis of resisting is that the immovable property belongs to the estate of their late mother and that their father, fraudulently sold the immovable property to the Plaintiffs who now seek to evict them from the property – Court finds that there is no triable issue, if property was fraudulently sold, Defendants should have approached Court and had the sale and subsequent transfer set aside – Summary Judgment granted, Defendants jointly and severally ordered to pay costs.*

JUDGMENT

M.J. MAVUSO - J:

- [1] (i) A synopsis of the facts of this case is that Plaintiffs are registered owners of Lot 626 situate in Ngwane Park Township, District of Manzini, Eswatini. They hold title in equal and undivided shares under Deed of Transfer No. 350.

- (ii) In the interpretation section of the Deed Registry Act, 1968, 'owner' in relation to immovable property means a:

"...person registered in the Deeds Registry as the owner or holder thereof and includes the trustee in an insolvent estate, the liquidator of a company which is an owner and the representative recognized by law of any owner who has died, or is a minor, or is of unsound mind or is otherwise under disability – where such trustee, liquidator or legal representative is acting within the authority conferred on him by law."

- (iii) The basis of Plaintiffs' action is that Defendants are in unlawful occupation of the property and despite demand, they refuse to vacate same.

[2] Defendants oppose the action and Plaintiffs have lodged a summary judgment application, which Defendants resist. The basis of the resistance as set out in their affidavit opposing summary judgment, is as follows:

(i) They alleged that their biological father, Mkhosi Ginindza, who sold the immovable property, unlawfully sold same to the Plaintiffs in one or more of the following ways:

a) he sold same fraudulently to the Plaintiffs, in order to defeat their rights as beneficiaries in the estate of their late mother Jane Ginindza.

b) he proceeded to dispose of the property notwithstanding the fact that the estate of the late Jane Ginindza, estate number EH80/2014 had not been distributed.

For the above reasons, Defendants submit that the granting of summary judgment in the circumstances would be inappropriate. Further, to the foregoing Defendants contend that, Mkhosi Ginindza ought to have been joined in the proceedings.

[3] The Court finds it unnecessary in this matter to deal with the argument and counter-arguments by the parties on the ownership of the immovable property. This is so because the Deeds Registry Act, as cited above defines the meaning of “owner” in relation to immovable property.

[4] After the immovable property was transferred to the Plaintiffs and immediately, Defendants became aware of this, they should have immediately approached this Court to have the transfer set aside. The ‘*actio pauliana*’ under Roman Dutch law, would have been the appropriate remedy for Defendants.

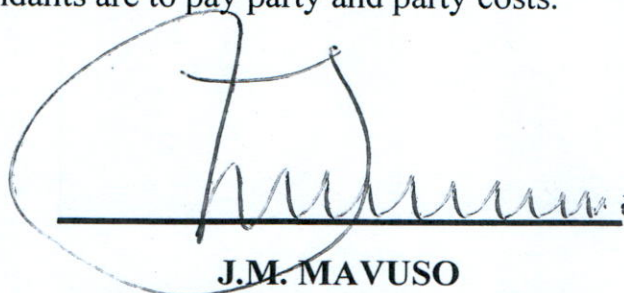
[5] Rule 32 of the High Court Rules as amended provides that where a summons has been issued and a notice of intention to defend filed, a Plaintiff may on the ground that the Defendant has no defence to a claim included in the summons, or to a particular part of such claim, apply to the Court for summary judgment against that defendant. Subsection (2d) of the rules lists ejectment as one of those causes of action in which the Court may grant summary judgment.

[6] The Court finds that there is no triable issue in this matter nor any need to join Mkhosi Ginindza in these proceedings. With the immovable property being registered in Plaintiffs' name, there is no legal basis upon which their right of ownership can be curtailed.

[7] Accordingly, the following order is hereby issued.

(i) Summary Judgment is hereby entered for the ejectment of the Defendants from Lot 626 situate at Ngwane Park Township, District of Manzini.

(ii) Defendants are to pay party and party costs.

A handwritten signature in black ink, appearing to be 'J.M. MAVUSO', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a series of smaller loops or 'u' shapes for the rest of the name.

J.M. MAVUSO
JUDGE OF THE HIGH COURT OF
THE KINGDOM OF ESWATINI

For the Plaintiffs:

S. MABILA ATTORNEYS IN ASSOCIATION
WITH T.L. DLAMINI & CO.

For the Defendants:

MAGAGULA & HLOPHE ATTORNEYS
Ref. B. Nkonyane |FKM| 107-257.