

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO. 1526/24

In the matter between:

SWANE MLUNGISI DLAMINI

Applicant

And

MENZI SHONGWE

1st Respondent

MONGI MFANA DLAMINI

2nd Respondent

NOMSA DLAMINI

3rd Respondent

THE CHIEF OF MACETJENI AREA N.O

4rd Respondent

THE ATTORNEY GENERAL

5th Respondent

THE NATIONAL COMMISSIONER OF POLICE

6th Respondent

Neutral Citation: *Swane Mlungisi Dlamini vs Menzi Shongwe & 5 others (1526/24) [2024] SZHC 200 (22nd August 2024)*

CORAM : J.S MAGAGULA J

DATE HEARD : 06/08/24

DELIVERED : 22/08/24

JUDGMENT

[1] This is an application in which the applicant seeks an order in the following terms:

- “ 1. Dispensing with the rules as to service, forms time limits and that this matter be heard as of urgency.*
- 2. Interdicting restraining 1st Respondent, his agents or assigns from entering the property of Applicant’s family situated at Macetjeni opposite Gilgal School and effecting or continuing with construction works on the said property.*
- 3. Ejecting/evicting 1st Respondent from the property with immediate effect and permanently.*
- 4. Ordering that 2nd, 3rd and 4th Respondents be responsible for the restitution of 1st Respondent if 1st*

Respondent be found to be a bona fide purchaser for value.

5. *That orders 2 and 3 above operate with immediate effect as an interim relief pending finalization of the matter and any other auxiliary matters that may rise out of the application.*
6. *That a rule nisi do issue returnable on a date to be appointed by the above honorable court calling upon Respondents to show cause why the orders prayed herein above should not be made final.*
7. *Costs."*

[2] The background facts of the matter can briefly be stated as follows :

- 2.1 The 1st Respondent has been allocated a piece of land within the parental homestead of the applicant.
- 2.2 The land was allocated by the 4th Respondent on the request of the 2nd and 3rd Respondents who are elder siblings of the applicant.
- 2.3 The applicant maintains that the 2nd and 3rd respondents had no right to alienate the land without involving him and obtaining his input and approval.

2.4 In the same vein applicant maintains that the 4th respondent had no right to bless the transfer of the land to the 1st respondent.

2.5 In approaching this court the applicant alleges that he approached the 4th respondent who could not assist him.

2.6 It is common cause that the applicant spends most of his time in the Republic of South Africa where he is employed. He rarely comes home.

2.7 The 1st to 5th respondents have filed papers in opposition of the matter. The 4th to 5th respondents have inter alia raised points in *limine*. Amongst such points are the following:

2.7.1 Lack of urgency.

On this point the said respondents maintain that the alleged urgency is self created as the cause of complainant arose on the 11th April 2024 when the 4th respondent formally allocated the land to the 1st respondent. The applicant launched this application only on the 4th July 2024. There is no plausible explanation of this time lapse.

2.7.2. Amongst the points raised the 4th to 5th respondents also raise the point of *lis pendens*.

They maintain that the matter is pending before the 4th respondent. It cannot be adjudicated upon in two forums.

I note that in paragraph 16 of the founding affidavit applicant alludes to this as he states that the matter was being allocated dates of hearing before the 4th Respondent save that the dates given thus far proved to be not suitable. This shows that the matter is receiving attention of the 4th respondent.

- [3] It seems to me that there is merit in these two points raised in *limine* and the application must fail.
- [4] In any event the 1st to 3rd respondents state in paragraph 8 of their answering affidavit the circumstances leading to the allocation of the land to the 1st respondent. They maintain that all the siblings agreed to the alienation of the land including the applicant himself. They specifically state the following in paragraph 8.2.

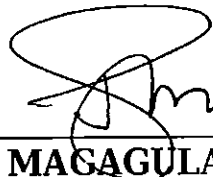
“ We then telephoned the applicant to tell him of the idea. He agreed with the idea.”

- [5] I note that this is a point on the merits of the matter which is pending before the 4th respondent. This court should not make a ruling based on such. I just observe that this statement which is not denied by the applicant has a damaging effect on

his case. On this basis the application was not going to see the light of day in this court anyway as the applicant does not refute this allegation.

[6] For the reason that the matter is not urgent and that it is common cause that the matter is pending before the traditional structures I find no merit in the application before this court.

6.1 The application is accordingly dismissed with costs.



J.S MAGAGULA J
JUDGE OF THE HIGH COURT

For the Applicant : P.D Msibi
For 1st to 3rd Respondent : M. NKOMONDZE
For 4th and 5th Respondents : S. Dlamini