



**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

**NATIONAL COMMISSIONER OF POLICE**

5<sup>th</sup> Respondent

**Neutral Citation:** *Chief Bhozongo Simelane N.O. v Khesaya Dlamini (nee Ndlangamandla & 4 Others (1547/2020) [2024] SZHC 09 (19 February 2024)*

**CORAM:** **N.M. MASEKO J**

**FOR THE APPLICANT:** **S. HLAWÉ**

**FOR 1<sup>ST</sup> TO 4<sup>TH</sup> RESPONDENTS:** **P.K. MSIBI**

**DATE HEARD:** **03/01/2024**

**DATE DELIVERED:** **19/02/2024**

**Preamble:** Civil Procedure – Application for leave to execute an order pending the determination of the appeal – Applicant has established special circumstances which justifies the grant of the leave to execute the order pending the determination of the appeal

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## JUDGMENT

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### MASEKO J

- [1] On the 22<sup>nd</sup> November 2023, the Applicant launched interlocutory proceedings for the execution of the order issued on the 4<sup>th</sup> August 2023. At the instance of the Applicant, the application was dealt with on two phases, the first phase being prayers 3 to 5 and this phase being in respect of prayer 2.
- [2] The history of this matter is common cause, and these interlocutory proceedings are meant to have the order of the 4<sup>th</sup> August 2023 which has been appealed against by the 1<sup>st</sup> to 4<sup>th</sup> Respondents executed pending the determination of the said appeal by the Supreme Court.
- [3] During oral arguments of this matter, Counsel for the 1<sup>st</sup> to 4<sup>th</sup> Respondents abandoned the points *in limine*, since they are relevant in the main matter which is pending before the Supreme Court.
- [4] The issue for determination *in casu* is whether the Applicant has made out a case for leave to execute the order pending the determination of the appeal.

## SUMMARY OF THE FACTS

[5] On the 21<sup>st</sup> August 2020, the then Applicant (Inkhosatana Gelane Simelane) launched urgent motion proceedings in the nominee officio as Acting Chief of koNtshingila Chiefdom for interim interdictory relief against the following respondents:-

- |        |  |                             |
|--------|--|-----------------------------|
| (i)    | Khesaya Dlamini (nee Ndlangamandla)                      | 1 <sup>st</sup> Respondent  |
| (ii)   | Bongani Pointer Dlamini                                  | 2 <sup>nd</sup> Respondent  |
| (iii)  | Fana Mahhala Nhlabatsi                                   | 3 <sup>rd</sup> Respondent  |
| (iv)   | Nhlanhla Nhlabatsi                                       | 4 <sup>th</sup> Respondent  |
| (v)    | Dumsani Dlamini  | 5 <sup>th</sup> Respondent  |
| (vi)   | Gcina Dlamini  | 6 <sup>th</sup> Respondent  |
| (vii)  | Prince Velebantfu Dlamini                                | 7 <sup>th</sup> Respondent  |
| (viii) | The Chairman Swazi Commercial<br>Amadoda                 | 8 <sup>th</sup> Respondent  |
| (ix)   | Zwakele Dlamini, Regional Secretary<br>Shiselweni Region | 9 <sup>th</sup> Respondent  |
| (x)    | Winile Nhlabatsi   | 10 <sup>th</sup> Respondent |
| (xi)   | The Chairman Swazi Commercial<br>Hlathikhulu Branch      | 11 <sup>th</sup> Respondent |

[6] It is common cause that on the said 21<sup>st</sup> August 2020 a **consent interim order was granted**, the Applicant being 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.

- [7] The main purpose of the interim interdict was to restrain and interdict the respondents in their various capacities from operating businesses, construction of business structures and unlawful allocation of land at Lawuba area without the authority of the Mbangweni Umphakatsi under the KoNtshingila Chiefdom.
- [8] It should be noted that the 4<sup>th</sup> Respondent *in casu* Prince Velebantfu Dlamini is the Chief of Velebantfu area. He is the 7<sup>th</sup> Respondent in the main application, and is responsible for the allocation of land at Lawuba business centre to the extent that, despite the issuance of the interim order on the 21<sup>st</sup> August 2020, the construction of business structures and operation of businesses, as well as allocation of land which had been interdicted and restrained pending the finalization of the main matter, continued as if no Court order existed.
- [9] In their Answering Affidavits in the main application, the Respondents raised points *in limine*, and further filed an application that I recuse myself from this matter. I dismissed the recusal application, and the Respondents lodged an appeal before the Supreme Court, and which appeal is still pending before the Supreme Court.
- [10] I must point out that the Applicant who succeeded Inkhosatana Gelane Simelane launched contempt of court proceedings as well as interim interdictory proceedings against the 1<sup>st</sup> to 4<sup>th</sup> Respondents *in casu*, this was on the 4<sup>th</sup> July 2023. I eventually granted the order on the 1<sup>st</sup> September 2023 as contained in **Annexure "A"** in these interlocutory proceedings.

[11] The Respondents again lodged an appeal as can be seen from **Annexure "B"**.

### **APPLICANT'S CASE**

[12] At paragraphs 11-14 of the Applicant's Founding Affidavit, he states that:-

"[11] On or about the 3<sup>rd</sup> November 2023, my Indvuna and Inner Council reported that the Respondents continue with their unlawful conduct of allocating land and operating the business area in question. When warned to desist from such unlawful conduct, they stated that they have appealed the judgment which was issued against them" (my emphasis).

[12] Attempts to stop the Respondents from their unlawful conduct were made but with no success. The community members suggested mob justice and resort to self-help. However, I warned them on numerous occasions to desist from such conduct and allow the long hand of the law to take its course, which they acceded to. The assertion is supported by Indvuna Shongwe whose confirmatory affidavit is attached herein.

[13] I was advised by my Attorneys that an appeal stay execution of the judgment and I cannot be able to enforce it. It is due to these reasons that the Applicant now seeks leave to execute the Court order pending appeal and restore the *status quo ante*.

[14] I am advised that the application for leave to execute is the only effective remedy to curtail the harm caused by the Respondents. It is due to the above reasons that I was advised by my attorneys to launch the present proceedings."

[13] The Applicant states further that he has established the grounds for leave to execute the order pending the appeal. He states that he had demonstrated the potentiality of harm or injury to be suffered by either of the parties as well as the balance of convenience and the prospects of success on the appeal pending before the Supreme Court.

[14] The Applicant has stated that there is no harm to be suffered by the Respondents, because the aforesaid Respondents were ordered to halt and/or cease allocation of land as well as construction and operation of

businesses at Lawuba Business Centre, however, they have continued to defy the Court order(s) and thereby causing irreparable harm to the Applicant who has the legitimate authority to allocate land at Lawuba Business Centre, and the surrounding areas. Applicant argues that in the circumstances no harm will be suffered by the Respondents if he is granted leave to execute the order pending the appeal.

- [15] The Applicant states further that the Respondents' deliberate and unlawful defiance of the Court order(s) has caused irreparable harm in that the Respondents continued and still continue to allocate land, construction of the various structures as well as operation of the businesses despite having been ordered by this Court to halt their activities. The Applicant states that the Respondents' conduct of undermining the Court's authority by defying the Court orders has caused irreparable harm in that since the interim order of the 21<sup>st</sup> August 2020 was issued by this Court, allocation of land and operation of businesses continued. The Applicant states further that the contemptuous conduct of the Respondents would ultimately result to the completion of the structures erected on land allocated to them unlawfully. The Applicant argues that the balance of convenience favours that he be granted leave to execute the order pending the appeal because it would be in the best interest of justice that Court orders be complied with and that where Court orders are not complied with by the Respondents and they continue to allocate land, build/construct structures and operate their businesses result to a breakdown of the rule of law and also pose a great challenge to the Applicant to reverse such unlawful activities should he be victorious in the appeal. Applicant argues that the harm to be suffered by the Applicant far outweighs the harm to be suffered by the Respondents if leave to execute is not granted.

[16] The Applicant states further that he has great prospects of success because the appeal lodged by the Respondents is frivolous and vexatious, and that the Respondents do not have a case against the Applicant. Applicant says the unlawful and contemptuous conduct of the Respondents before, during and after the issuance of the interim orders against them by this Court is indicative of lack of prospects of success on appeal. Applicant states that the Respondents have at all material times been desirous to disrupt the peaceful administration of the KoNtshingila Chiefdom, hence the contempt proceedings were instituted as well as these proceedings for leave to execute the order pending the determination of the appeal.

**THE 1<sup>ST</sup> TO 4<sup>TH</sup> RESPONDENTS' CASE (Respondents)**

[17] The 4<sup>th</sup> Respondent states that the Applicant has not established a clear right over the land in question, instead he states that he is the lawful chief of area concerned.

[18] The 4<sup>th</sup> Respondent further states that the order issued by this Court is unlawful and is still the subject of an appeal as there is a dispute over the precise boundaries of their chiefdoms, and that this matter is pending before the Ludzidzini Council. The 4<sup>th</sup> Respondent states further that the contempt application was not necessary because they had noted an appeal against the judgment for which the contempt was issued.

[19] The 4<sup>th</sup> Respondent states that the Applicant has not established a clear right because he has no dominion over the land in question. Further that the Applicant has not established any irreparable harm, balance of

convenience and has also not established any prospects of success in the appeal.

- [20] The 4<sup>th</sup> Respondent states that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents are his subjects and have a right to do or construct whatever developmental buildings on allocated land and they cannot be stopped by the ongoing disputes over boundaries of chiefdoms. He denies that the harm to be suffered by the Applicant far outweighs the harm to be suffered by him and his subjects, instead he alleges that the harm to be suffered by him and his subjects far outweighs the Applicant's anticipated harm because he has dominion over the land in question.

#### **ANALYSIS OF THE EVIDENCE**

- [21] I must state at the outset that on the 21<sup>st</sup> August 2020 when the main matter was launched by the then Acting Chief Gelane Simelane N.O., Mr. Msibi for the Respondents and Mr. Tsabedze consented to an interim order which operate with interim effect and relief. The import of that Court order is clear and unambiguous in that its object and purpose is to interdict, restrain and halt any further activities in the area by the Respondents, i.e. allocation of land, construction of structures, operation of businesses etc. at Lawuba Business Centre pending the finalization of the application.
- [22] The important factor is that the interim order issued on the 21<sup>st</sup> August 2020 is still in force. It is on those basis that this Court issued the order of the 1<sup>st</sup> September 2023, which is also the subject of an appeal by the Respondents. This order is attached in these interlocutory proceedings marked **Annexure "A"**.



[23] In the celebrated case of **South Cape Corporation v Engineering Management Services (Pty) Ltd 1977 (3) SA 534 at 544-545** Corbett JA stated as follows:-

“Whatever the true position may have been in the Dutch Courts, and more particularly the Court of Holland (as to which see: **Ruby’s Cash Store (Pty) Ltd. v Estate Marks and Another 1961 (2) SA 118 (T)** at pp. 120-3, it is today the accepted common law rule of practice in our courts that generally the execution of a judgment is automatically suspended upon the noting of an appeal, with the result that, pending the appeal, the judgment cannot be carried out and no effect can be given thereto, except with the leave of the Court which granted the judgment. To obtain such leave the party in whose favour the judgment was given must make special application. (see: **Generally Olifants Tin “B” Syndicate v De Jager 1912 AD 377 at p. 481; Reid and Another v Godart and Another 1938 AD 511 at 513; Genticuro A.G. v Firestone SA (Pty) Ltd. 1972 (1) SA 589 AD at p. 667; Standard Bank of SA Limited v Stama (Pty) Ltd 1975 (1) 730 AD at p. 746**). The purpose of this rule as to the suspension of a judgment on the noting of an appeal is to prevent irreparable damage from being done to the intending appellant, either by levy or under writ of execution or by execution of the judgment in any other manner appropriate to the nature of the judgment appealed from (Reid’s case *supra* at p. 513).

The Court to which application for leave to execute is made has a wide discretion to grant or refuse leave and, if leave be granted, to determine the conditions upon which the right to execute shall be exercised ----. This discretion is part and parcel of the inherent jurisdiction which the Court has to control its judgments (**cf. Fisser v Thornton 1929 AD at p. 19**). In exercising this discretion the Court should, in my view determine what is just and equitable in all the circumstances, and, in doing so, would normally have regard, inter alia, to the following factors:-

- (1) the potentiality of irreparable harm or prejudice being sustained by the Appellant on appeal (respondent in the application) if leave to execute were to be granted;
- (2) the potentiality of irreparable harm or prejudice being sustained by the respondent on appeal (applicant in the application) if leave to execute were to be refused;
- (3) the prospects of success on appeal, including more particularly the question as to whether the appeal is frivolous or vexatious or has been noted not with the bona fide intention of seeking to reverse the judgment but for some indirect purpose e.g. to gain time or harass the other party; and
- (4) where there is the potentiality of irreparable harm or prejudice to both appellant and respondent, the balance of hardship or convenience, as the case may be.

[24] *In casu*, there is no potentiality of irreparable harm or prejudice to be sustained by the appellants if leave to execute is granted in favour of the respondent. The reason being that the appellants continue to defy the interim orders of this Court by carrying out the allocation of land, construction of structures and operation of businesses ever since the interim orders were issued. There is no prejudice or potentiality of irreparable harm because they conduct themselves as if the interim orders do not exist. The appellants state expressly that once they file an appeal to any interim order that is issued they then continue with their defiance because the appeal which has been lodged grants them authority to carry on with their acts which they have been interdicted or restrained from carrying out by the interim orders. This conduct by the appellants is not only contemptuous of the orders of this Court but also an abuse of the process of this Court.

[25] On the other hand the Respondent i.e. the Applicant in this interlocutory application has the potentiality to suffer irreparable harm or prejudice because, if the appellants are not successful on appeal, the structures are being constructed, some of them are already completed and the businesses being operated and the allocation of land which continue despite the existence of the interim orders on the land which Chief Bhozongo claims dominion over, would in fact result to actual irreparable harm and prejudice to the said Chief Bhozongo, because such activities are not easily reversible in the event he is successful on appeal.

[26] Further, I do not foresee any prospects of success of the appeal lodged by the appellants because of their non-compliance with the interim orders whilst at the same time they are expecting the Supreme Court to adjudicate upon. In my view the appellants have thus acted frivolously or

vexatious appeals with *mala fide* intentions to harass the Applicant and to unlawfully defeat the main purpose of the interim orders by committing the very same acts for which they have been interdicted or restrained from doing by the interim orders.

[27] I agree with Mr. Hlawe's submissions that the conduct of the appellants is in contempt of the orders of this Court, and that it would be in the interest of justice for this Court to grant leave to the Applicant to execute the Court order pending the determination of the appeal to prevent escalation of the irreparable harm or prejudice being perpetrated on the Applicant. It must be borne in mind that ever since the 21<sup>st</sup> August 2020 when the interim order was issued, there was no compliance with the interim order by the appellants and they continued to build their structures some of which are now completed and are being operated as businesses, further the allocation of land has also continued despite the existence of the interim orders.

[28] The appellants were and are under a legal duty to obey orders of this Court pending the determination of their appeals. *In casu* the balance of convenience favours the Applicant because as I stated earlier on in this judgment, the initial interim order of the 21<sup>st</sup> August 2020 was granted with consent of the parties represented by Mr. P.K. Msibi and Mr. B. Tsabedze respectively.

[29] In the case of **Thoko Reginah Mamba and Another v Phumzile Simelane (nee Dlamini and Others (1257/15) [2015] SZHC 186 (30 October 2015)** Mlangeni J stated the following at paras 10-13:-

- [10] At common law the noting of an appeal has the effect of suspending execution of the judgment appealed against. It is said that the underlying purpose of this principle or rule is to avoid irreparable harm being occasioned to the Appellant while the appeal is pending. Where, for instance, it would be impossible to restore the *status quo ante* there is likely to be irreparable harm, and in this event the Court should be loath to grant leave to execute.
- [11] The onus is upon the Applicant to show the existence of special circumstances that justify departure from the general rule that the noting of an appeal has the effect of suspending execution. The Court has a wide discretion in the matter, and, in granting leave, it may impose such conditions as are appropriate in the circumstances of the case. In judgments sounding in money, for instance, courts will normally require the judgment creditor to furnish security *de restituendo*. See, for instance, the case of *Long Distance Swaziland v Swazi Paper Mills (Pty) Ltd.* HC Case No. 84/2009.
- [12] The quest of the Court is to do real and substantial justice. In the words of Innes CJ in **Rood v Wallach** –  
 “In considering in each particular matter what substantial justice requires, the courts may take into account all circumstances surrounding the case, and among other things it would be justified, I think, in taking into consideration the special circumstances of the parties.”
- [13] In the case of *Swazi MTN v MVTEL Communications (Pty) Ltd. and Another* HC No. 7/2006, the Court made an informative analysis of the law on the subject, including factors that guide the Court in the exercise of discretion. The factors include, among others, the following:-
- (i) Whether or not execution would occasion irreparable harm;
  - (ii) Prospects of success on appeal;
  - (iii) Balance of convenience or hardship to either party.”
- [30] *In casu* the purpose and objective of the interim order consented to by the parties on the 21<sup>st</sup> August 2020 was to preserve the status quo at the Lawuba Business Centre pending the finalization of the main application, however, persistent non-compliance with the orders of this Court by the respondents ever since the interim order was issued justifies the grant of leave to execute the orders by the Applicant pending the hearing or determination of the appeal or appeals which have been lodged by the respondents, to avoid the irreparable harm which is persistently being occasioned on the Applicant.

[31] Each time the respondents lodge an appeal, they then carry out the activities which they have been interdicted from carrying out pending finalization of the main matter and allege that the filing of the appeal grants them the authority to continue and defy the lawful orders of this Court. Their conduct of defying Court orders under the pretext that they have filed “**appeals**” is an abuse of the process of this Court, and ultimately attracts the doctrine of unclean hands. These are the circumstances which justify the grant of the leave to the Applicant to execute the order pending the finalization of the appeal. This is the only remedy in the circumstances in order to send a clear message that the respondents like all other citizens are under a legal duty to abide by and comply with orders of this Court. The respondents (i.e. 1<sup>st</sup> to 4<sup>th</sup>) behave and conduct themselves as if they are above the law.

[32] In my view the Applicant has established the special circumstances warranting this Court in the exercise of its discretion to grant the aforesaid leave to execute the order of the 4<sup>th</sup> August 2023 pending the determination of the matter by the Supreme Court.

[33] In the case of **Lateral Dynamics (Pty) Ltd v Wonga Finance SA (Pty) Ltd and Three Others Case No. 12808/2017** Kusevitsky AJ Western Cape Division – Cape Town, stated as follows at paragraphs 13-14:-

[13] Turning next to the application for leave to execute the judgment and order pending appeal. Section 18 of that Act regulates the circumstances under which a party may apply for an order that departs from the ordinary consequence of filing an application for leave to appeal, i.e. that the operation and execution of the judgment and order appealed against is suspended. The approach established by Section 18 requires an applicant in an application for leave to execute to show that the facts and circumstances of the particular application are exceptional and warrant a deviation from the normal rule. This has been referred to as the “**threshold factual test**” (see **Incubeta Holdings (Pty Ltd and Another v Ellis**

**and Another 2014 (3) SA 189 (GJ)** and requires the applicant to show that the facts and circumstances of its particular case are uncommon, unusual and/or out of the ordinary to the extent that a departure from the ordinary rule that an appeal suspends the operation of a judgment and order appealed against should not apply. Further, the applicant is required to show on a balance of probabilities that it will suffer irreparable harm should the order for leave to execute not be granted pending the appeal. Finally, the applicant must prove on a balance of probabilities that the respondent in the application for leave to execute will not suffer irreparable harm if leave to execute is granted pending appeal.

[14] With regard to the requirement “exceptional circumstances”, it was held in the matter of **University of the Free State v Afriforum and Another [2017] 1 ALL SA 79 (SCA) p 194, para 16** that whether exceptional circumstances for the purpose of Section 18 (1) of the Act existed would necessarily depend on the peculiar facts of each case, the Court citing Incubeta Holdings with approval where the Court held that:-

“necessarily, in my view, exceptionality must be fact specific. The circumstances which are or may be exceptional must be derived from the actual predicaments in which the given litigants find themselves.”

[34] *In casu* the Applicant has established that the facts and circumstances are uncommon, unusual and/or out of the ordinary that the respondents systematically and persistently continue to defy orders of the Court once they lodge an appeal because their ultimate aim is to continue the contemptuous allocation of land, construction of structures and operation of the businesses under the devious pretext that once they file an appeal then they can continue and carry out the activities which are the subject of the pending appeal or appeals. The position at law is that once an appeal is filed, all activities related to the pending appeal must stop pending the determination of the appeal and none of the parties has a right to partake or conduct any activities unless the Court otherwise directs.

[35] The conduct of the respondents has resulted to the actual predicament in which the Applicant finds himself where the Respondent willfully disobey the orders of this Court and continue to allocate land, build structures

and operate businesses as if the appeal proceedings have been finalised in their favour, yet that is not the position, the position is that the appeal is pending before the Supreme Court.

[36] In the case of *Busisiwe Nandi Fuphe N.O. v Dr Butare Rukondo and Another* (953/2017) [2020] SZHC 19 (14 February 2020) Hlophe J as he then was, stated as follows at para 5 of his judgment:-

[5] The legal position is that a Court of similar status or standing as the one that handles down the judgment being appealed against, has a discretion to allow execution of the judgment irrespective of the noted appeal. In *South Africa Cape Corporation (Pty) Ltd v Engineering Management Services Pty Ltd* 1977 (3) SA 534 at 545 C-D, it was stated that where the Court granted the order decided to allow execution notwithstanding the appeal, it also had a wide discretion to determine the conditions upon which the right to execute the judgment shall be predicated upon. This discretion on the part of the Court, it was said, is part and parcel of the inherent jurisdiction which the Court has to control its own judgments or processes.'

[37] The discretion which a Court exercises whether to grant or not to grant leave to execute an order pending appeal is influenced and/or determined by the special and exceptional circumstances of each and every case. *In casu* such circumstances have been proven or established by the Applicant. In the case of **Old Mutual Life Assurance Company (Private) Limited v D.L. Makgatho, Makarau JP (Harare High Court of Zimbabwe)** summarized the requirements for the grant of leave to execute pending appeal as set out in the South Cape case (*supra*) and other legal authorities as follows at pgs 4-5 of his judgment:-

The position as stated in the decided cases then appears to me to be as follows:-

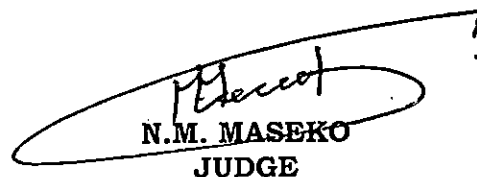
- (1) An appellant has an absolute right to appeal and to test the correctness of the decision of the lower court before he or she is called upon to satisfy the judgment appealed against.

- (2) Execution of the judgment of the lower court before the determination of the appeal will negate the absolute right that the appellant has and is generally not permissible.
- (3) Where however, the appellant brings the appeal with no *bona fide* intention of testing the correctness of the decision of the lower court, but is motivated by desire to either buy time or to harass the successful party, the Court, in its discretion, may allow the successful party to execute the judgment notwithstanding the absolute right to appeal vesting in the Appellant.
- (4) In exercising its discretion, the Court has regard to the considerations suggested by Corbett JA in **South Cape Corporation supra** ----.
- (5) Where the judgment sounds in money and the successful party offers security *de restituendo* or the Courts can safeguard the appellant by an order of security *de restituendo* and the appellant has no prospects of success on appeal, the Court may exercise its discretion against the appellant's absolute right to appeal.
- (6) An appeal for leave to execute pending appeal cannot be determined solely on the basis that the appellant has no prospects of success on appeal especially where the whole object of the appeal will be defeated if execution were to proceed (see **Woods N.O. v Edwards and Another 1966 RLE 335**).'

[38] *In casu* the appeal or appeals filed by the respondents have been filed on the basis of *mala fides* primarily to delay, buy time and to harass the Applicant. I say this because they continue to allocate land, construct structures as well as operate the businesses whilst the matter is pending in the Supreme Court, instead of halting these activities and allow due process to take its course. This in my view is a clear indication of ulterior motives on the part of the respondents, hence this Court would be justified to grant leave to the Applicant to execute the order pending the determination of the appeal.

[39] In the circumstances, I hereby grant an order in terms of –

1. Prayer 2 of the Notice of Motion dated the 17<sup>th</sup> November 2023.

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