IN THE HIGH COURT OF ESWATINI

CASE NO: 1474/2024

HELD IN MBABANE

IN THE MATTER BETWEEN

MTHETHWA NHLANHLA INNOCENT	**APPLICANT**
AND	
MTHETHWA (NEE SHONGWE) NOKUTHULA QINISILE	**1ST RESPONDENT**
REGISTRAR OF THE NATIONAL CIVIL REGISTRY	**2ND RESPONDENT**
ATTORNEY GENERAL N.O	**3RD RESPONDENT**

NEUTRAL CITATION:	*MTHETHWA NHLANHLA INNOCENT VS MTHETHWA QINISILE & 2 OTHERS (1474/2024) [2025] SZHC – 08 [11/02/2025]*
CORAM:	**BW MAGAGULA J**
HEARD:	**09/07/2024**
DELIVERED:	**11/02/2025**

Summary: *Civil Law – Cancelling and expungement from the civil registry of an entry relating to a marriage in terms of Swazi Law and Custom – what constitutes exhaustion of the customary processes that must unfold before a marriage in terms of the Swazi Law*

and Custom is considered to have terminated – consideration of points in limine. Point of law in respect of failure to exhaust processes in terms of Eswatini Law and Custom upheld.

Held Further: *There is no evidence before Court that any traditional structure pronounced that the marriage has terminated.*

JUDGMENT

BW MAGAGULA J

[1] This matter concerns an application by the Applicant seeking an order directing the Registrar of Marriages to expunge the registration of a customary marriage between the Applicant and the 1st Respondent. The central issue before this Court is whether the Applicant has satisfied the legal and procedural requirements under Swazi customary law for the dissolution of the marriage. The 1st Respondent opposes the application on the ground that the Applicant failed to exhaust the traditional structures necessary to formally dissolve a customary marriage before approaching this Court.

[2] A point in *limine* which ostensibly attacks the failure to exhaust the relevant traditional structures by the Applicant before he could approach this Court, has been raised by the Applicant.

Brief outline of Relevant Facts

[3] The parties before Court appear to have been married in terms of Siswati Law and Custom on September 2003, at an area called eMahhashini. It appears from the papers filed in court[1] that after getting married they established their marital homestead at Tubungu in Matsapha. There were initially five (5) children born out of this union, although as it appears from the Application, it subsequently transpired that the fifth child was not fathered by the Applicant.

[4] After the registration of the birth certificate on or about August 2023, Applicant together with the 1st Respondent proceeded to Lancet Laboratories to conduct DNA tests to determine whether Applicant is the biological father of the fifth child. On the 31st of August 2023 the results came back and reflected that Applicant is not the father of the minor child. It does not appear to the Court that the 1st Respondent disputes the results. This is apparent from the evasive manner in which she has responded to this specific allegation in her answering affidavit. Instead of dealing directly with the results of the paternity tests, she generally asserts that the Applicant's allegation are inaccurate. She then goes further to tell an unrelated story about her experience with a certain inyanga.

[1] Reference is made to the Applicant's founding affidavit from paragraph 11 - 15

[5] The Applicant continues to aver that he has since obtained an order that his name be expunged from the records of the 2nd Respondent which reflect that he is the father of the minor child.

[6] After finding out about the infidelity of the 1st Respondent, Applicant avers that he commenced proceedings to have the Siswati Law and Custom Marriage terminated. He insists that he has not condoned the 1st Respondent's adultery.

[7] The Applicant further attests that a series of family meetings were held to try and see if the parties could reconcile their differences and avoid termination of the marriage. Apparently, these attempts were not successful. The Applicant has gone further to attach to his affidavit a copy of minutes of one of the meetings. It is marked annexure "AA5". This annexure reflects the following;

Umhlangano webakaMthethwa nebaka Dlamini ekhabo Make wala Shongwe lobekangumakoti waka Mthethwa

Umhlangano wabanjwa mhlaka 12th August 2023 ekhaya kaMthethwa – eMponono.

Umhlangano wavulwa ngemthandazo ngetitfuba tantsambama 4:10. Labebakhona kulomhlangano:

Umndeni waka Mthethwa

1. *Babe Jika*
2. *Babe Esau*
3. *Babe Cijimpi*
4. *Babe Khisimusi*
5. *Babe Nhlanhla*
6. *Babe Mzwandile*
7. *Make laSigubudvu*
8. *Make laNkhosi*
9. *Make laMkhonta*
10. *Make laMdluli*
11. *Anti Siphila*
12. *Celani Sibandze*

Umhlangano wawumayelana nekuphinga kwamakoti uLaShongwe, lowagcina atfole umntfwana lungumfana lambita ngesibongo sakaMthethwa. Umkhenyane wasesoyowenta luhlolo lengati (DNA tests) lolwakhipha kutsi vele umntfwana akasuye waka Mthethwa. Baka Mthethwa babese bambuyisa khabo nina ulaShongwe lapho bamtsatsa khona kaDlamini. Kwatfunyelwa emajaha lamabili kutsi amikise laShongwe kaDlamini lokwakungu Khisimusi Mthethwa Kanye na Phinda Matsebula. Nga June 2 kwahamba emalanga solo bangabuyi baka Dlamini kutokuva kutsi laShongwe ubuyiswe yini ekhaya kubo. Baka Mthethwa

basebatsatsa sincumo sekubita baka Dlamini kutokhulumisa lendzaba besihlangane ngayo mhlaka 12th August 2023. Efika eMalangeni kwakhulunywa, ambuta eMalangeni makoti ulaShongwe kutsi wakabani lomntfwana watsi waka Lokotfwako eMpuluzi akasuye waka Mthethwa. Ngalesosizatfu kungako Mthethwa acela sehlukaniso.

Umhlangano waphela nga 16:32 wavalwa ngemthantazo.

Lobhalile ngu make Nkhosi

Lobekangusihlao babe Jika Mthethwa

[8] In light of that fact that the above quoted annexure is written in Siswati, the Court asked the Court interpreter to interpret the contents thereof into English. The interpretation is produced hereunder;

A Meeting between the Mthethwa and Dlamini family held at LaShongwe's birth place, who is a bride to the Mthethwa family.

The meeting was held on the 12th August 2025 at the Mthethwa homestead at Mponono. The meeting was opened in prayer at 4:10. The following were present.

The Mthethwa family

1. *Babe Jika*
2. *Babe Esau*
3. *Babe Cijimpi*
4. *Babe Khisimusi*
5. *Babe Nhlanhla*
6. *Babe Mzwandile*
7. *Make laSigubudvu*
8. *Make laNkhosi*
9. *Make laMkhonta*
10. *Make laMdluli*
11. *Anti Siphila*
12. *Celani Sibandze*

The meeting was about the infidelity of the Mthethwa bride (Ms Shongwe) who ended up giving birth to a boy who is not of the Mthethwa surname. The groom went on to conduct DNA tests which confirmed to the boy not being a Mthethwa.

The Mthethwa family then took back LaShongwe to her birth place where the Dlamini family had asked for her hand in marriage. Two men were sent

to take LaShongwe back to her family who were Khisimusi Mthethwa and Phinda Matsebula on the 2nd of June.

Days went by without the Dlamini family coming to ask about the return of LaShongwe home. The Mthethwa family then came to a decision to call the Dlamini family so that they could talk about the matter which they had met about on the 12th August 2023.

The Dlamini family attended the meeting and talks were heard and the Dlamini's asked LaShongwe what the child's real surname was and she said the child was a Lokotfwako from Mpuluzi and not a Mthethwa, and for that reason Mthethwa was asking for a separation.

The meeting finished at 16:32and was closed in prayer.

Writing these minutes is Make Nkhosi

Chairperson was babe Jika Mthethwa

[9] The Applicant avers that after the non-success of the reconciliation meetings, the matter was then reported to the Applicant's Umphakatsi being the **MAHHASHINI ROYAL KRAAL** where it is alleged that further attempts were made to try and reconcile the Applicant and 1st Respondent. It appears that, these attempts were allegedly not successful. The Applicant also states

that further attempts were also made by the Regional Administrator (**NDABAZABANTU**) and also these were not successful. The letter from **MAHHASHINI ROYAL KRAAL** states the following;

Mahhashini Royal Kraal

P.O.Box 237

Mankayane

12/06/2024

Mnumzane/Nkhosatana

Umphakatsi wase Mahhashini phansi kwababe Chief Umntfwanenkhosi Mleshe, Indvuna Nimrod Nkambule.

Siyavuma kutsi babe Nhlanhla Mtsetfwa siyamati, singumphakatsi.

Mhlaka 17/03/2024 wefika watomangala Acela kutsi Umphakatsi umentele incwadzi yesehlukaniso emva kwekutfola makoti kutsi uphingile. Baka Mthethwa babakhulumisa babeka sikhatsi sekutsi baphindze babuye bahamba liwonkhe bangabuyi bakhabo nina wamakoti kaNkhosi/uLaShongwe.

Umphakatsi nawo wababita bangeti, wase uchubekela embili kuNdabazabantu, babese bayeta nababitwa nguNdabazabantu yakhulunywa indzaba yekuphinga kwamakoti wavuma makoti kutsi uyayati, waphinga waze watala umntfwana.

Babe Nhlanhla Mthethwa wambonga makoti uLaShongwe phambikwa Ndabazabantu, ngesento sakhe. Singanakalutfola lonkhe lusito laludzingako.

Ngumabhalane lobhalile

Rose Dlamini

Phansi kwendlunkhulu

[10] In light of the fact that the above annexure is in Siswati, the Court Clerk, Miss Xolile Nyaweni has interpreted the letter into English, and the following is her interpretation;

Mahhashini Royal Kraal

P.O. Box 237

Mankayane

12/06/2024

Sir/ Madam

The Chiefdom of Mahhashini under Chief Prince Mleshe, Indvuna Nimrod Nkhambule.

We confirm that as a Chiefdom we do know Nhlanhla Mtsetfwa/Mthethwa.

On the 17/03/2024 he came to complain to us and asked that we do a letter of separation after he had found out about the infidelity of his wife. The Mthethwa family spoke to them and set a date for them to return and they left and never returned, the family of the bride, the Dlamini's/Shongwe.

The Royal Kraal also summoned them and they did not come/and the matter was taken to Ndabazabantu. They then came when they were called by Ndabazabantu and the matter of infidelity was spoken about and the bride agreed to know about it and to the extent that she also gave birth to a child.

Nhlanhla Mthethwa then thanked his wife LaShongwe infront of Ndabazabantu for her act.

We can appreciate it if he could get all the help he needs.

Written by Secretary

Rose Dlamini

Under Ndlunkhulu

[11] Following exhaustion of the customary processes for termination, Applicant avers that he then approached the 2nd Respondent seeking to expunge the record of the marriage and he was advised that he needed to approach this Court for an Order expunging the record. It is on this basis that he then approached this Court.

[12] The 1st Respondent has raised the following points of law:-

Failure to exhaust relevant structures

[13] ***The Applicant dismally failed to exhaust the relevant traditional structures and therefore, he is not entitled to any order in the circumstances. The matter was not deliberated even once at family level. The Applicant's family invited my family to a meeting. As per the invitation my family complied and attended the family meeting as invited by the Applicant's family.***

[14] ***The meeting never took off as the Applicant demanded a total One Hundred and Ten (110) cattle before any deliberations could commence. It is upon this that my family was duly informed to go and organize the aforementioned cattle before any deliberations could commence. Whilst my***

family was discussing the issue of the cattle the Applicant took the matter a step further on a unilateral fashion.

[15] *Applicant further hastily invited my family to a meeting at Mahhashini Royal Kraal, scheduled for the 7th April 2024. Upon receipt of a response that my family had reported the invitation to the Gundvwini Royal Kraal for purposes of assigning someone to accompany the Shongwe family, the Applicant insisted on the date of invitation.*

[16] *Even when they were informed that the Shongwe family would only be in the position to be met by the Indvuna of Gundvwini Royal Kraal on the following week, the Applicants insisted on the continuation of the matter. My family could not attend to the meeting without the authorities by the Gundvwini Royal Kraal. It was upon this that a postponement to a later date was made. Request for a postponement was made within a reasonable period, however, the Applicant's family acted unreasonable.*

[17] *All the decisions taken by the Mthethwa family, unilateral and without involving positively the Shongwe family. It is upon the aforementioned that the relevant avenues were not exhausted as the Applicant's family took arbitrary and unilateral decision. The Shongwe family were being side-lined as everything was being hastily done.*

Failure to Satisfy Adultery

[18] *The Applicant herein has failed to satisfy any of the grounds for adultery herein as everything resulting in the present matter was staged by him. The Applicant took me to traditional healer in Matsetsa area under the district of Lubombo. It was at that traditional healer's home wherein I was advised to undergo the traditional Kwetfwasa (initiation). I was further caused to drink some concoction, whose purpose and side effects were never explained to me. Whatever happened at the traditional healer's home was well staged by the Applicant.*

[19] *The above is further confirmed by his conduct after taking me to the traditional healer's home. Actually, post taking me to the traditional healer's home, he went a step further and impregnated the traditional healer's daughter. Such is clear indication that the present application is misplaced.*

[20] *It is the aforementioned that the adultery as per the customary law requirement was never established.*

Arguments by the Parties Regarding the Points of Law

[21] The first issue that warrants consideration is the argument by the 1st Respondent that the matter was not even once deliberated at family level.[2] This issue is crucial for determination because if this assertion is correct, in

[2] This appears in paragraph 3 of the 1st Respondent's answering affidavit.

light of the plethora of judicial precedents on this issue, then the Applicant would have failed to follow the processes and procedure necessary before a marriage contracted in terms of Swati Law and Custom is terminated. The Applicant in his founding affidavit has actually stated the opposite. He has averred as follows; *"a series of family meetings were held to try and see if we could reconcile our differences"*.[3]

[22] A consideration will now be made of the first point of law, being the alleged dismissal failure to exhaust the relevant traditional structures. The 1st Respondent first issue is that the initial step would have been to deliberate the matter first at family level. She argues that this was not done even once.

[23] On perusal of the minutes that have been annexed by the Applicant as supporting the averment that a series of family meetings were held, is annexure "AA5" which are minutes of a meeting that allegedly took place between baka Mthethwa and baka Dlamini (the 1st Respondents family). This is per the reading of the heading of the minutes. It reads a meeting between the Mthethwa and Dlamini families. However, when one reads the body of the minutes, especially the list of the attendees it appears that it is only the Mthethwa's that were in attendance. As there is no mention of the persons who were present representing the Dlamini's faction. Yet the heading gives an impression that the meeting was between the two families. The other issue that transpires on closer examination of this annexure, is the contradiction relating to the place where the meeting was held. On one part, the minutes

[3] This is contained in paragraph 15 of the Applicant's founding affidavit.

reflect that it was held KaDlamini at the 1st Respondent's maternal home, ekhabo make waLa Shongwe. Just below that heading, it is reflected the meeting was held Ka-Mthethwa. This appears to be two distinct places. The meeting could not have been held at the different places at the same time.

[24] Further, if one considers the same minutes against the backdrop of the point of law by the 1st Respondents, it appears that this was a family meeting held by the Mthethwa's. One is inclined to conclude that this was a meeting of the Mthethwa's before the Dlamini's could be involved. However, if the argument is that there is no single meeting that was held where the Dlamini's were present, a consideration of the other meetings is warranted. The next annexure contained in the Applicant's founding affidavit is "AA6", which is a letter written by the Mahhashini Royal Kraal on the 12th June 2024 addressed to Mnumzane/Nkhosatana. Which can be interpreted as Sir or Princess. It does not appear to be clear as to who this Sir or Princess is.

[25] The Applicant's founding affidavit is also not helpful in this regard, as it does not state who the addressee of the letter is and who received it eventually. However, the contents of the letter appear to be an acknowledgment by the Umphakatsi of Mahhashini Royal Kraal that the Applicant is known to them and that the Applicant approached the Royal Kraal on the 17th March 2024 to file a complaint and to also request that the Umphakatsi (Chiefdom) must issue a letter of divorce (*sehlukaniso*) after he had discovered that his wife had committed adultery.

[26] The letter also captures that it is alleged that the Applicant's family engaged the 1st Respondent's family in talks, subsequent to which the Dlaminis adjoined the meeting on the understanding that they would return, but they never did. The Royal Kraal also mentions in the same letter that they also called the family of the 1st Respondent for deliberations, but they failed to attend. The Royal Kraal then referred the matter to the Regional Administrator. Apparently the 1st Respondent's family then attended. Although there is no record to that effect. According to this letter the 1st Respondent admitted before the Regional Administrator that she committed adultery to the extent that a child was born out of that adulterous relationship. Again, this assertion is not backed by a record or a confirmation letter from the Regional Administrator. The body which asserts this is the Mahhashini Royal Kraal.

[27] The Court must at this stage express it's disquiet at the apparent hearsay evidence contained in this letter. It does not appear expressed anywhere in this letter that the author attended the proceedings at the Regional Administrator and personally observed the proceedings to the extent that she maybe qualified to give an opinion on what transpired at that forum. There are also no minutes or record of the proceedings at the Regional Administrator that have been placed before Court. There is also no confirmatory affidavit by the Regional Administrator to confirm the averments made by Rose Dlamini who wrote the letter on behalf of the Mahhashini Royal Kraal.

[28] In response to the points of law, the Applicant over and above denying the assertion that he demanded 110 (Hundred and Ten) cattle, has stated the following in his replying affidavit; *"This allegation is with due respect preposterous and has been made up by the 1st Respondent to convolute the issues before Court. The 1st Respondent does not state when, where and who was present in this meeting. What further compounds the issue is the 1st Respondent does not state why I demanded the 110 cattle, what were they for? Were they compensation for the adulterous relationship? Were they a return of Lobola with progeny?"*

[29] The Court now turns to the primary issue for determination: whether the Applicant has exhausted the necessary traditional structures before approaching this Court. The 1st Respondent has raised this as a point of law, arguing that the application is premature in the absence of a final determination by the relevant customary authorities.

[30] It is trite that under Swazi customary law, the dissolution of a customary marriage must be preceded by specific procedural steps, including deliberations between the families, mediation by traditional structures, and ultimately a formal determination by the relevant authorities. The 1st Respondent contends that these steps were not followed, and the Applicant has prematurely sought relief from this Court without first obtaining a final decision from the customary law structures.

[31] The Applicant in response, argues that meetings were held and that the matter was placed before traditional authorities. However, the evidence presented does not establish that both families engaged in a meaningful and conclusive deliberation regarding the alleged adultery. Furthermore, there is no indication that a formal pronouncement was made by the Mahhashini Umphakatsi or any other competent customary authority to dissolve the marriage. The Court must therefore determine whether the procedural requirements for a customary divorce were satisfied before judicial intervention can be considered.

[32] During the arguments, the Court posed a question to the Applicants Attorney Mr Shabangu, on whether the Court had the requisite jurisdiction to declare a marriage to have terminated. This emanated from the fact that on the reading of prayer 1, the Applicant sought that kind of a relief. Mr Shabangu outrightly conceded that this Court does not have that jurisdiction. The Court is of the view that the Applicant rightly conceded that this Court declare a Swazi Law marriage to have terminated as that is the preview of the relevant structures.[4] Which is a different issue from an order to expunge an entry from a marriage register.

The Law

[33] In the matter of **Gcinaphi Susan Nxumalo v Fortune Nxumalo**[5], the Court held that the law and practice require that there must be a final judgment determining that the customary marriage terminated. That is before the High

[4] See the case of Gcinaphi Susan Nxumalo vs Fortune Nxumalo case no. 24/2021 where the Supreme Court stated that it is not enough that there was adultery, there must be a lawful decision dissolving the marriage.
[5] Supreme Court case no. 24/2021 at paragraph 21

Court can entertain an application for an order to expunge the registration of the marriage certificate from the Registrar of Marriages. The Court proceeded to state that it is not enough that there be adultery or witchcraft, what is required is a lawful decision by the relevant traditional structures, dissolving the marriage.

[34] The Applicant in his heads of argument, relied at length on the High Court judgment of **Matry Nompumelelo Dlamini and Another vs Musa Clement Nkambule and others**[6], for the proposition that where the dissolution is at the instance of the husband after failing to reach a reconciliation with his wife, the husband would pack most if not all of the wife's personal belongings into a bundle and place them in the open outside her hut. He would then place momentarily his penis covering (*umvunulo or umncadvo*) on the luggage and instruct a young girl to assist the wife carry her luggage and to accompany her to her parental home. The Applicant citing the same authority also acknowledges that the joint family court decision is decisive and not an unilateral act by one of the protagonist before such a decision is made.

ADJUDICATION

[35] It is a trite and established customary procedure that, there are relevant structures to be exhausted in the event the Applicant intends to nullify a customary marriage. Such is commenced by a meeting between the families i.e that of Applicant and that of Respondent.

[6] Cases 3045/06 (1) and 3822/08 (2)

See Nolwazi Mundzebele v Patricia Cebsile Mndzebele (nee Msibi) Civil Appeal Case No. 13/2014 wherein the Supreme Court in articulating the procedure for nullification of customary marriage referred to **Nxumalo v Nellie Siphiwe Ndlovu and others Case No.43/2010** wherein it was stated as follows;

> *"There is consensus amongst the authors that for the dissolution to take place there must be a meeting of the families and a serious attempt to resolve the matters by the families. If this fails, a divorce can then be arranged if the differences are irreconcilable and a refund of lobola is made after the talks have exhausted all possibilities of reconciliation. It is only then that the matter can be taken to the relevant Chief so that the dissolution can be formalized before the Chief."*

[36] In the case at hand the Applicant alleges that there were family meetings convened. See paragraph 15 at page 9 of the book. He further referred to **annexure "AA5"** at pages 20 - 21 to be the minutes.

[37] The Court will now discern to apply the above legal principle to the legal point of law.

[38] *Ex-facie* **annexure "AA5",** it was only a meeting for the Mthethwa family only and the Respondent's family was never involved. Therefore, annexure AA5 cannot be minutes for a meeting between the families. The Respondent's

disposition that there was never a meeting between the families to deliberate on the issue is unassailable in the present scenario. The only meeting referred to on the said minutes, is a meeting between the Mthethwa family members only.

[39] Clearly, in the event the family meeting had occurred, the issue of adultery would have been deliberated. Furthermore, the circumstances of the events at the traditional healer's home would have been deliberated. A conclusion would have been reached on whether same amounts to adultery.

[40] Furthermore, as clearly indicated by the 1st Respondent, the family did not appear before the Mahhashini Umphakatsi as they had asked for a postponement to a later date so as to report to their Umphakatsi the invitation from another Chiefdom. See paragraph 32 at page 32 of the Book of Pleadings.

[41] The above clearly indicate that the Mahhashini Umphakatsi made no determination of the issue. If ever there was a determination, the matter would not have been taken to Ndabazabantu for mediation. In the **Samuel Myeni Hlawe case Supra at paragraph 33**, the Court stated as follows;

[42] Emphasis is made therefore, that had the families had the opportunity to deliberate on the matter, the chronology of events leading to the alleged adultery which is yet to be proved at family level, would have been

deliberated. The alarming speed with which the Applicant engaged and failure to afford the Respondent's family that right to be heard before any adverse decision at the customary structures, that speed defeats the whole purpose of customary marriage being a union between the families.

See **Gcinaphi Susan Nxumalo v Fortune Nxumalo Case No.24/2021** wherein the Supreme Court at paragraph 21 stated as follows:

> *"The law and practice require that there be a final judgment determining the customary marriage terminated to be recognized by the High Court before the Order to expunge the registration of the marriage certificate from the Register of Marriages under the administrative custody of the 2nd Respondent is granted. It is not enough that there be adultery (or witchcraft); what is required is a lawful decision dissolving the marriage. I was unable to find such a decision in this matter."*

[43] It is also proper that the Applicant's response to the legal point of failure to exhaust the traditional structures first before approaching this Court be considered further. The Applicant filed a replying affidavit where he sought to reply to the legal point. He first deals with the allegations that in that meeting, which he describes as a meeting of my (*emphasis on "my"*) family council[7], he is alleged to have demanded 110 cattle.

[7] See paragraph 9 of the Replying affidavit

[44] The Applicant addresses this by criticizing the 1st Respondent for failure to state when, where and who was present in that meeting. But in a subsequent paragraph[8], Applicant mentions a specific date which is the 12th of August 2023. This is the date which is reflected in the minutes attached by him in his founding affidavit marked A of 5. It baffles me why the 1st Respondent should be branded as preposterous of omitting what is common cause. On the face of the minutes the attendees are stated, although it is not immediately clear that the La-Nkhosi mentioned is the 1st Respondent. But that is no issue if in the founding affidavit the Applicant acknowledges that she was indeed present. The other issue that is confusing with the Applicant's replying affidavit is that, he refers to this meeting as a meeting of his family where 1st Respondent was also present. Yet on the heading of the minutes an impression is given that the meeting was between the Mthethwa's and the Dlamini's. Which denotes that both families were in attendence, yet it appears that it was only the 1st Respondent who was present without the backing of the other members of her parental family, (the Dlamini's). This then begs the question that does the composition of the attendees in this meeting suffice to pass the muster of a meeting between the two families? In the matter of **Gcinaphi Susan Nxumalo vs Fortune Nxumalo and others** (*supra*), the Supreme Court emphasized that a Swazi Customary marriage is not just a short term informal contract.[9] The Court also stated that a Siswati marriage is as much a marriage of families as it is of the man and woman. This then leads the Court to conclude that it is clear that there was no proper meeting of both families where the issue of the dissolution of the marriage was deliberated. Whether the Applicant demanded cattle as a prerequisite to meet or for failure to attend by the other Dlamini

[8] In paragraph 12 of the Replying affidavit
[9] See para 9 of the judgment (supra)

family members, the end result is the same. There was never a meeting of both families to deliberate on the issue that the 1st Respondent had allegedly committed adultery.

[45] The other aspect that warrants consideration, is that the Applicant in his founding affidavit [10], states that after the first meeting, the 1st Respondent was sent to her home. It appears that there was another meeting where the 1st Respondent's family attended where the 1st Respondent admitted that the father of the child is a certain Lokotfwako of Mpuluzi. The 1st Respondent denies that this meeting was held. Unfortunately, there are no minutes that have been attached by the Applicant, like he has done pertaining to the meeting of the Mthethwa's only, held on the 12th August 2023. Hence there is no proof that this subsequent meeting referred to by the Applicant indeed took place. In the case of **Nxumalo vs Nellie Siphiwe Ndlovu and others case no.47/2010** it was emphasized that for the dissolution to take place, there must be a meeting of the families and a serious attempt to resolve the matters by the families.

[46] It is also does not appear that the Siswati marriage in issue was dissolved by any of the traditional structures. According to the Applicant's own version, the Mahhashini Royal Kraal referred the matter to the Regional Administrator. The Royal Kraal did not make a pronouncement on the status of the marriage[11]. It also appears that the attempts by the Regional Administrator

[10] In paragraph 16

[11] See paragraph 16, where the Applicant says the Royal Kraal made attempts to reconcile us but however these attempts were not successful.

were also not successful. If this is the case which traditional structure dissolved this marriage to warrant the interpretation by this Court to expunge the entry in the Register of Marriages? It appears that this marriage has not yet been dissolved.

Applicant's Response to the Legal Points Raised and Why They Fail

[47] In his replying affidavit, the Applicant attempted to challenge the legal points raised by the 1st Respondent, particularly the claim that the customary dissolution process was not exhausted before approaching the High Court. Below is an analysis of the Applicant's responses, demonstrating why they fail in law and why the 1st Respondent's legal points remain valid and unassailable.

[48] The Applicant claims that a family meeting was held on 12th August 2023 and provides annexure "AA5" as proof of such a meeting. He further criticizes the 1st Respondent for failing to specify the date, place, and attendees of the meeting. Ironically, in the replying affidavit Applicant says the resolution that the marriage had come to an end as per the custom of *"kimpakishela nemtfwalo"* was taken in the meeting of *"his"* family council of the 12th August 2023. First, as stated before the minutes are confusing, as it does not appear that the Dlaminis were in attendance. Second, on reading of the minutes it does not appear that the resolution to dissolve the marriage was taken. At the very least, the resolution that was taken was for the 1st Respondent to be taken back to the Dlaminis. This does not constitute a pronouncement or a resolution to dissolve the marriage.

[49] Annexure "AA5" proves that only the Mthethwa family met; it does not show that both the Applicant's and the Respondent's families participated, as required by customary law.

[50] The Respondent's parental family (Dlamini) was not present, meaning this was not a true joint family meeting for reconciliation, as required by the cases of **Nxumalo v Ndlovu and Gcinaphi Susan Nxumalo v Fortune Nxumalo**.

[51] The Applicant's own affidavit contradicts itself by first referring to the meeting as his family council and later trying to frame it as a meeting between both families.

[52] Since Swazi customary marriage is a union between families, a unilateral meeting of only the husband's family does not meet the legal threshold for a valid family reconciliation process. The 1st Respondent's argument that no valid family meeting took place is therefore legally sound.

[53] The Applicant does not outright deny that his family demanded 110 cattle but instead criticizes the 1st Respondent for not specifying where, when, and who was present at the meeting where this demand was allegedly made.

[54] The Applicant's affidavit contradicts itself: he first criticizes the 1st Respondent for not mentioning the date but then himself acknowledges the meeting took place on 12th August 2023.

[55] Even if the 1st Respondent did not specify the exact details, the demand for cattle before deliberation contradicts the core principles of customary law, where family meetings should focus on reconciliation and not financial conditions.

[56] The Court finds the 1st Respondent's version more credible because the minutes (AA5) confirm that only the Mthethwa family meeting supporting the claim that the meeting was not a genuine reconciliation attempt.

[57] The Applicant claims that there was another meeting where the 1st Respondent admitted that her child was fathered by another man, Lokotfwako of Mpuluzi. The 1st Respondent denies the existence of this meeting, and the Applicant provides no minutes or independent proof that it took place.

[58] The only minutes provided (AA5) relate to the Mthethwa family meeting, meaning there is no documentary evidence of a meeting where both families were present and the issue of termination of the marriage was deliberated by both families. Let alone where she admitted to the adultery and that the consequences would be the termination of the marriage.[12]

[12] We now know from the judgment of Samuel Myeni Hlawe vs Beatrice Tholakele Seyama and 2 others, Supreme Court Case No. 56/2016, that even where the adultery can be proved, it does not follow that the consequences will be termination or dissolution of the marriage. The husband can condone the adultery. Alternatively, he can build her a home outside the main home, where she will stay with her children. (umngcwaba aphila).

[59] Even if the 1st Respondent had admitted to adultery, Swazi customary law still requires that the families jointly deliberate and determine the consequences, which never happened.

[60] The lack of minutes or independent confirmation weakens the Applicant's claim and strengthens the 1st Respondent's argument that there was never a formal meeting where adultery was adjudicated. The Supreme Court in **Nxumalo v Ndlovu** (*supra*) made it clear that allegations alone are not enough there must be a family decision before dissolution can occur.

[61] The Applicant argues that the matter was taken before the Mahhashini Umphakatsi, which then referred the case to the Regional Administrator (Ndabazabantu). He implies that this was sufficient to prove dissolution.

[62] The Mahhashini Umphakatsi never made a ruling dissolving the marriage; it merely referred the case for mediation.

[63] The Regional Administrator's office has not filed an affidavit or a letter in respect of a pronouncement made by that office after it dealt with the matter, if it dealt with it.

[64] Case law **Gcinaphi Susan Nxumalo v Fortune Nxumalo** (*supra*) is clear that only a traditional authority, can dissolve a customary marriage and no

such determination was made by any traditional structure in respect of the marriage between the parties.

[65] Since neither the Umphakatsi nor any traditional authority dissolved the marriage, the Applicant had no legal basis to seek an order from the High Court to expunge the marriage certificate. This validates the 1st Respondent's argument that the case was prematurely brought before the Court.

[66] The only meeting he provided evidence for (AA5) was not a proper family meeting under Swazi customary law.

[67] The Applicant's own annexures contains contradictions undermining their reliability.

[68] No traditional authority formally dissolved the marriage, making his application to the High Court premature and legally flawed. The letter from Mahhashini Royal Kraal is instructive in this regard. Its contents reflect that the Applicant approached it to report the 1st Respondent and also to ask the Royal Kraal to issue a letter of dissolution of their marriage. This is a sign that the Applicant at that time, accepted that his marriage was not yet dissolved. Second, it is also telling that the Applicant had been properly advised that a traditional authority needed to pronounce on the dissolution. Unfortunately, the Royal Kraal did not issue such a dissolution letter. Instead it referred the matter to the Regional Administrator.

[69] This means there was no valid family meeting as required under customary law. Without a formal attempt to reconcile through a proper meeting, the dissolution process was not properly initiated.

[70] The Applicant first described the family meeting as his family council but later claimed it was a meeting of both families.

[71] The absence of the Respondent's family in the minutes contradicts his claim that both families met.

[72] These inconsistencies weaken the Applicant's case and further support the view that proper customary procedures were not followed.

CONCLUSION

[73] Due to the aforegoing facts and legal principles, the Court rules that there is no evidence placed before Court to signify that the Swazi Law and Custom marriage between the parties have been lawfully dissolved. This is due to *inter alia* that;

a) The customary law procedure for dissolution was not followed there was no proper joint family meeting between both families.

b) The Mahhashini Umphakatsi did not dissolve the marriage it only referred the case for mediation, which does not satisfy the legal requirement for finality.

c) Since there was no formal decision dissolving the marriage, the High Court cannot lawfully expunge the marriage certificate.

d) The customary authorities never made a formal decision dissolving the marriage.

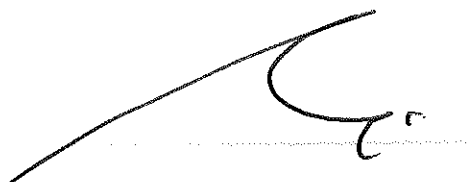
e) The Regional Administrator's involvement also did not produce tangible evidence that the marriage was pronounced to have been dissolved.

[74] The Court finds that the Applicant's application to expunge the marriage certificate is premature and legally unfounded.

ORDER

a) The Applicant's Application is hereby dismissed.

b) Costs to follow the event.



BW MAGAGULA

JUDGE OF THE HIGH COURT OF ESWATINI

For the Applicant:	E. Shabangu (Robinson Betram)
For the 1st Respondent:	B. Gama (C.J. Littler & Company)
For the 2nd and 3rd Respondent:	P. Nyoni (The Attorney General)