IN THE APPEAL COURT OF SWAZILAND

HELD AT MBABANE Appeal Case No. 34/2000

In the matter between:

CHIEF MDVUBA MAGAGULA Appellant

And

CHIEF MADZANGA NDWANDWE 1st Respondent

HLAMBANI FARMERS ASSOCIATION 2nd Respondent

MABHUDLU FARMERS ASSOCIATION 3rd Respondent

LUBISANA FARMERS ASSOCIATION 4th Respondent

Coram LEON, JP

STEYN, J A

VAN DEN HEEVER, J A

SHEARER, J A

BECK, J A

For Appellant Adv. Thwala

For Respondents Mr. J. Henwood

JUDGMENT

THE COURT

This is an appeal against a decision of the High Court in which it dismissed the Appellant's claim for an interdict and certain ancillary relief.

The Appellant describes himself as the Chief of the Mandlangempisi Chiefdom in the Hhohho, although his status as a chief is in dispute. The first Respondent is the Chief of the Ebulandzeni area. His status is not in dispute. The second, third and fourth Respondents are respectively farmers' associations duly registered in terms of the Law of Swaziland each of them having its principal place of business at Ebulandzeni also in the Hhohho District.

In the founding affidavit the Appellant says that it has come to his attention that certain people were tilling land under his chiefdom. He was told that this was being done by 2nd, 3rd and 4th Respondents in terms of an allocation made by the 1st Respondent. The 1st Respondent

contended that he could make such allocation "rightfully and lawfully" as his chiefdom included land across the "Nkomati".

Appellant averred that the Mandlangempisi chiefdom covered these areas and his Ndvunas would confirm this. He therefore sought the eviction of 2nd, 3rd and 4th Respondents and an interdict, restraining the 1st Respondent from allocating land within the Mandlangempisi Chiefdom Umphakatsi.

However, a much more fundamental dispute of fact has been raised in the Papers. The Respondent in his answering affidavit, denies that the Appellant is a Chief; he is an Indvuna. The matter being before the Court a quo on notice of motion it had to be decided on the acceptance of the Respondent's averments. See Plascon Evans Paints Ltd vs Van Riebeeck Paints (Pty) Ltd 1984(3) SA 623(A).

It follows that this is a matter which in terms of Section 14 of the Constitution was to be regulated by Swazi Law and Custom. This Section reads as follows:

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"14. The following matters shall continue to be regulated by Swazi Law and Custom -

(a) the office of Ngwenyama;

(b) the office of Ndlovukazi (the Queen Mother);

(c) the authorization of a person to perform the functions of Regent for the purposes of section 30 of the repealed Constitution;

(d) the appointment, revocation of appointment and suspension of Chiefs;

(e) the composition of the Swazi National Council, the appointment and revocation of members of the Council and the procedure of the Council;

(j) the Ncwala ceremony; (g) the Libutfo (regimental) system. (Added D.1 /1981.)"

The Swazi administration Order No. 6 of 1998 (the Order) has created the procedural framework within which chieftainship disputes have to be adjudicated.

It was contended on behalf of the Appellant that this Order is unconstitutional as being in conflict with Section 104(1) of the Constitution which decrees that the High Court shall have unlimited original jurisdiction in civil and criminal matters. This contention cannot be upheld. The Order is not inconsistent or incompatible with the Constitution. See in this regard the judgment of this Court in the case of Professor Dlamini vs Rex delivered simultaneously with this judgment.

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What the Order does is to give flesh to the bones of the provisions contained in Section 14 of the Constitution. It must also be noted that an appeal to the High Court is specifically reserved in Section 25(6) of the Order. In addition the right of review by the High Court on the wellknown common law grounds cannot lawfully be excluded and an aggrieved party who has been subjected to a decision which is arbitrary or procedurally flawed will always retain the right to have such decision reviewed by the High Court.

In this regard we also point out that no facts were deposed to which could bring the dispute within the ambit of Section 24(1) of the Order of 1998, such as that the applicant had been deprived of rights to which he was entitled by Swazi Law and Custom, particularly Swazi Law and Custom as set out in the Order itself. An example would be that such an applicant was denied an impartial hearing by the properly constituted body empowered to deal with the matter or; passed on to a body which in fact had not been properly constituted; or not granted an opportunity to be heard at all. In such event the Appellant may well have had the right to approach the High Court for relief.

This is clearly not such a case. As indicated above the dispute is, on these papers, one of chieftainship which in terms of Section 41 (1) of the Order fell to be resolved in accordance with Swazi Law and Custom and in accordance with the procedural framework enacted in the Order.

It follows that the High Court was correct in finding that it had no jurisdiction to determine the dispute between these parties on these papers.

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For these reasons the appeal is dismissed with costs.

LEON, JP

I AGREE

STEYN, J A

I AGREE

VAN DEN HEEVER, J A

I AGREE

BECK, J A

I AGREE

SHEARER, J A