



IN THE SUPREME COURT OF SWAZILAND

HELD AT MBABANE

Civ. App. No. 07/2013

In the matter between:

RAYMOND NKOSINKULU DLAMINI

1st Appellant

JULIA DLAMINI (born Ngubeni)

2nd Appellant

And

HELEN ZWANE

1st Respondent

PHASHA ZWANE

2nd Respondent

ROBERT ZWANE

3rd Respondent

Neutral citation:

Raymond Nkosinkulu Dlamini v Helen Zwane & 2 Others (07/2013) [2013] SZSC 62 (29 November 2013)

Coram:

**RAMODIBEDI CJ, MOORE JA and
LEVINSOHN JA**

Heard:

11 November 2013

Delivered:

29 November 2013

JUDGMENT

LEVINSOHN JA

- [1] Following the dismissal of their application accompanied by certain consequential orders made against them, the appellants noted an appeal to this court on 28th February 2013.
- [2] The applicants had sought the ejection of the respondents from a homestead said to be held in joint ownership by the applicants. The *court a quo* found the applicants, while the application was pending, had unlawfully locked the applicants out of the homestead in question. In addition, the court found that the applicants had also demolished a wall that divided the said homestead from other structures occupied by the applicants. In the result the court concluded that the applicants had unlawfully resorted to self-help and were guilty of spoliation. It ordered the applicants to restore possession and also visited them with a punitive costs order.
- [3] It appears that the appellants duly prosecuted the appeal by preparing the record and delivering heads of argument. However the respondents in their heads of argument drew the court's attention to a most crucial fact. Both applicants have, subsequent to the judgment of the *court a quo*, passed away. Their respective death certificates have been annexed. Mr. S. C. Dlamini, who purports to appear for the appellants, acknowledges that they are indeed deceased.

[4] In these circumstances it seems to me that this appeal cannot proceed until the Master of the High Court appoints executors to wind up the respective estates and that these be substituted in the present proceedings.

[5] In the result I propose the following order:

1. The appeal is postponed *sine die*.
2. In the event of the Master of the High court duly appointing executors in the respective deceased estates of the appellants Raymond Nkosinkulu Dlamini and Julia Dlamini (born Ngubeni) such executors are hereby given leave, after due notice to the respondents, to:
 - 2.1 apply to be substituted in place of the appellants and to be cited accordingly;
 - 2.2 Cause the appeal to be re-enrolled for hearing on a date to be arranged by the Registrar of this Court in consultation with the Chief Justice.
3. No order is made in regard to any wasted costs occasioned by this postponement.

P. LEVINSOHN
JUSTICE OF APPEAL

I agree

M. M. RAMODIBEDI
CHIEF JUSTICE

I agree

S. A. MOORE
JUSTICE OF APPEAL

For the Appellant:

Mr. S. C. Dlamini

For the Respondents:

Mr. B. Xaba

