



IN THE SUPREME COURT OF SWAZILAND

HELD AT MBABANE

JUDGMENT

Civil Appeal No. 46/2013

In the matter between

MUZI SHONGWE

Appellant

And

ISABELLA KATAMZI (born Shongwe)

First Respondent

MASTER OF THE HIGH COURT

Second Respondent

Neutral citation:

Muzi Shongwe v Isabella Katamzi & Master of the High Court (46/2013) [2014] SZSC 22 (30 May 2014)

Coram:

RAMODIBEDI CJ, EBRAHIM JA, and DR TWUM JA

Heard: 16 MAY 2014

Delivered: 30 MAY 2014

Summary

Practice and procedure – Application on notice of motion for an interdict – Jurisdiction – The choice of law between Roman – Dutch law on the one hand and Swazi customary law (Swazi law and custom) on the other hand – Held that the matter fell within the jurisdiction of the Swazi National Court and not the High Court – The appeal accordingly dismissed with costs.

JUDGMENT

RAMODIBEDI CJ

[1] In a long series of judgments, starting with the landmark case of the **Commissioner of Police and Another v Mkhondvo Aaron Maseko, Civil Appeal No. 03/2011**, this Court has consistently stressed the fundamental need for the courts in this jurisdiction to make a proper choice of law in matters coming before them. The choice in question is between the Roman Dutch law on the one hand and Swazi customary law (Swazi law and custom) on the other hand. This appeal regrettably serves as a perfect illustration

that this principle has still not permeated through to all the sections of the community, including some lawyers, it would seem.

[2] The appellant, as applicant, brought a notice of motion against the respondents seeking the following relief:-

(1) Interdicting and restraining the first respondent from invading, ploughing and/or taking over fields which are owned and in the lawful possession of the applicant at a homestead called PHOLELA and situated at Ludzeludze in the Manzini district;

(2) Interdicting and restraining the first respondent from continuing to erect the fencing of the homestead known as PHOLELA and situated at Ludzeludze which is owned by and is in the possession of the applicant;

(3) Directing the first respondent to vacate the applicant's land and homestead known as PHOLELA at Ludzeludze in the Manzini district;

[3] Admittedly pressed by this Court, Mr S.C. Dlamini for the appellant conceded in the forefront of his submissions that the disputed homestead is situated on Swazi National Land. In my view, this concession was properly made in the circumstances of this case. In this regard one merely has to refer to the appellant's own inventory, Annexure, "RAZ" appearing on page 63 of the record of proceedings in the court below. It specifically describes the disputed property as a "Homestead at PHOLELA on Swazi National Land." It was upon this basis that *the court a quo* (MCB Maphalala J) as he then was correctly, in my view, made a finding in that regard.

[4] This then raises the question of jurisdiction. In his heads of argument and in oral submissions before us, Mr S.C. Dlamini sought to rely on s 151 (1) (a) of the Constitution for the

proposition that the High Court was vested with jurisdiction in the matter. The section reads as follows:-

“151. (1) The High Court has –

(a) Unlimited jurisdiction in civil and criminal matters as the High Court possesses at the date of commencement of this Constitution.”

[5] It seems to me that the appellant’s counsel has ignored the other relevant provisions of the Constitution such as sections 4, 151 (8) and 252. In particular, counsel has ignored the material provisions of subsection 151 (3) (b) which provides as follows:-

“(3) Notwithstanding the provisions of subsection (1), the High Court –

(a) ---

(b) has no original but has review and appellate jurisdiction in matters in which a Swazi Court or Court Martial has jurisdiction under any law for the time being in force.”

- [6] Properly construed, what this subsection means is that in a matter where a Swazi Court has jurisdiction, litigants must first exhaust the local remedies before bringing the matter to the High Court on appeal or review as the case may be. In this regard it requires to be stressed that s 151 (3) (b) of the Constitution is decidedly dominant. Subsection 151 (1) (a) is subservient to it.
- [7] For the avoidance of doubt, it is necessary to observe that the jurisdiction of the Swazi National Courts is derived from s 9 of the Swazi Courts Act No. 80 of 1950. It provides as follows:-

“7. Every Swazi Court shall exercise civil jurisdiction, to the extent set out in its warrant and subject to the provisions of the Act, over causes and matters in which all the parties are members of the Swazi nation and the defendant is ordinarily resident, or the cause of action shall have arisen, within the area of jurisdiction of the Court.”

It is not in dispute that the homestead forming the subject matter of the dispute in this case is situated within the area of

jurisdiction of the court specified in the section. I conclude, therefore, that the matter falls within the jurisdiction of the Swazi National Court.

[8] Finally, and for the sake of brevity, I draw attention to the remarks of this Court in Maseko's case *supra* at para [22] namely:-

“[22] It must be remembered, too, that there are traditional structures designed specifically to deal with settlement of disputes such as we have here...” This is such a case.

See also **Maziya Ntombi v Ndzimandze, Thembinkosi, Case No.02/12.** Indeed, it is common cause that the matter was pending before the Zombodze Umphakatsi where it was filed by none other than the appellant himself. It follows that he could not bring the same matter to the High Court before exhausting the local remedies.

[9] In all the circumstances of this case, therefore, there is no merit in the appeal. The High Court had no jurisdiction. The appeal is accordingly dismissed with costs.

M.M. RAMODIBEDI
CHIEF JUSTICE

I agree

A. M. EBRAHIM
JUSTICE OF APPEAL

I agree

DR S. TWUM
JUSTICE OF APPEAL

For Appellant : **Mr. S.C. Dlamini**

For Respondent : **Mr N. D. Jele**

