IN THE SUPREME COURT OF ESWATINI

Case No. 64/2022

HELD AT MBABANE

In the matter between:

TEE DOUGLAS MASUKU	**Applicant**
And	
LOBUSUKU GRACE MASUKU	**First Respondent**
MLONDO HOUSING (PTY) LTD	**Second Respondent**
VUSIE MAMBA N.O.	**Third Respondent**
MASTER OF THE HIGH COURT	**Fourth Respondent**
STATION COMMANDER OF MANZINI –	
ROYAL ESWATINI POLICE	**Fifth Respondent**
THE ATTORNEY GENERAL	**Sixth Respondent**
THE HONOURABLE JUSTICE M. DLAMINI N.O.	**Seventh Respondent**

Coram: **S.B. MAPHALALA JA, S.K.J MATSEBULA JA AND N.J.HLOPHE JA,**

For the Applicant : **Adv. L.M. MAZIYA instructed by Hlabangana Attorneys**

For the First to Second Respondents: **Adv. G. Shakoana (by virtual) instructed by K.M. Nxumalo Attorneys**

For the Fourth , Fifth and Sixth Respondents : **Mr M.E. Simelane and Mrs T.K. Magagula**

For the Seventh Respodent: **Mr M. Kunene**

Neutral Citation: *Tee Douglas Masuku V Lobusuku Grace Masuku and Five others* (64/2022) [2022] *SZSC46* (16th September 2022).

Date Heard: **8th SEPTEMBER 2022.**

Date handed down: **16th SEPTEMBER 2022.**

JUDGMENT

HLOPHE JA

1. The Applicant, claiming to be acting in terms of Section 148 (1) of the Constitution, instituted proceedings under a certificate of urgency seeking the following reliefs:-

   1.1 Dispensing with the rules relating to urgency and hearing this matter on an urgent basis.

   1.2 That the Applicant's non-compliance with the Rules relating to the above said form and service be condoned.

   1.3 Interdicting and restraining the 7th Respondent from hearing any matter involving the above parties pending the appeals.

   1.4 Interdicting and restraining the 7th Respondent from making cost orders and/ or issuing any further orders pertaining to the estate of the late Christian Gunka Masuku pending the appeals.

1.5 Vacating the orders issued by the High Court of Eswatini per M. Dlamini J, after the applicant herein had filed Notices of Appeal under the Supreme Court of Eswatini cases 10/22, 25/22 and 57/22.

1.6 Directing Z. Magagula J to proceed to finality with hearing the urgent Application filed by the Applicant on 13th July 2022 against 1st to 6th Respondents herein under High Court case no. 1339/22.

1.7 Directing the 7th Respondent to issue a written judgment compromising (sic) (comprising) reasons for all orders issued for the estate of the late Christain Gunka Masuku.

1.8 Costs including those of Counsel in terms of Rule 68 (2) of the High Court Rules of 1954.

1.9 Further and/or alternative relief.

2. One needs to acknowledge at the outset that the application instituted by the applicant herein appears to be strange and controversial when considering that it did not only cite and served a sitting Judge of the High Court with the papers instituting the proceedings on the basis of a matter she dealt with in such a capacity

but also went on to seek specific interdicts against the said Judge, seeking to prevent her from discharging what would be normal judicial functions as shown in the prayers captured above. The long reach of what I see as a controversy manifests itself in the prayer seeking to have vacated, the orders the Judge had issued in various aspects of the matter.

3. I can only point out that the considerations surrounding the propriety or otherwise of doing so are specifically reserved for the hearing of the merits of the matter given that what this judgment is currently about concerns a focused and narrow issue namely:- whether or not an eviction carried out against the applicant on the 31st August 2022 after these proceedings had already been instituted in court, and in the face of appeals he had previously noted, was done lawfully including whether he should not be reinstated to the said premises until these proceedings and the pending appeals shall have been finalized or a lawful basis to evict him and those holding under him shall have been relied upon. It was argued this Court would have to issue such an order in the circumstances utilizing its inherent jurisdiction to control its processes.

4. That the said matter be dealt with on the basis of the said focused issue came about as a result of an application by Applicant's

counsel, Mr Maziya. He argued that since the merits of the matter could not be dealt with on the day meant for that because it was not ripe for hearing owing to the fact that the opposing papers had still not been filed by the Respondents, it was then going to be in the interests of justice and fairness that the propriety of the eviction including a reinstatement of the applicant be heard and determined. The non – ripeness of the matter for hearing was despite that the matter had been brought as one of urgency and the time limits later given by the Court to file opposing papers had not been complied with by the Respondents.

5. He argued further that it was necessary that the Court dealt with the question of the propriety or otherwise of the eviction that had allegedly been carried out during the tenancy of the urgent application the applicant had filed (also referred to as the main application), ignoring the noted appeals. The propriety or otherwise of the eviction he argued, needed to be considered with a view to reinstating the Applicant to the said premises if it could be concluded that the eviction was indeed unlawful. It was argued that the reinstatement of the Applicant to the premises was to await the determination of the outstanding appeals which had already been given the 31st October 2022 as the hearing date.

6. A summary of the background facts of the matter as gleaned from the papers filed of record, are generally that the real dispute in these proceedings is between the Applicant on the one hand and his biological sister, the first Respondent on the other hand. The first Respondent has in her corner the second Respondent, a company whose shareholders were the parents of the two disputing siblings together with their other brothers and sisters.

7. These parents of the two were their father Christian Gunka Maluku and their mother Lizzy Lulu Masuku, who were married in community of property. Christian Gunka Masuku allegedly passed away in August 2001. His wife, Lizzy Lulu Masuku who for her own passed away in January 2022, was, during her life time, appointed an Executrix dative to the estate of her said late husband.

8. It is not in dispute that sometime after the passing away of Christian Masuku, the family got mired in disputes, the height of which saw the alleged eviction of the others who included applicant from the place they had come to know as their home situated on Peebles Block, Farm No.9, Portions 12 and 13, Manzini District. It is however not in dispute that those that had been evicted found themselves back in the premises after the Court had reinstated them before they were again evicted during the tenancy of this

application. As pointed out above this latter eviction is the one this matter is about.

9. On the current and as yet one sided allegations of the Applicant, the setting aside of the eviction had not brought about peace within the family as the Frist Respondent and their mother did not return thereto. All sort of allegations about their mother having been taken and kept away from them by the First Respondent were made by the applicant.

10. These allegations suggest further that it was during that sojourn by the First Respondent and her mother that the First Respondent was appointed as an agent of the executrix by means of a power of attorney. The executrix in the estate of the late Christian Gunka Masuku was his wife Lizzy Lulu Masuku. Following her appointment as the agent for the executrix, the first Respondent was empowered to act on behalf of her mother as if she had acted herself. In almost the same way she is shown as having also acted for the Second Respondent as a representative of her said mother who was a shareholder in that company.

11. Otherwise several disputes ensued between the two protagonists most of which ended up in Court. Most of these matters came before Judge M. Dlamini who appears, at least from some scant reasoning

given as a brief explanation of the orders she made, to have taken the view that the Applicant was frustrating the winding up of the estate. Whether or not that is correct we do not know save to say that if that conclusion is based solely on his challenging the First Respondent in the performance of her duties having a legitimate ground to do so in law including challenging the decisions made utilizing law, it may not necessarily mean he was frustrating the winding up of the estate than that he was exercising a right. I have no hesitation that the law has sufficient safeguards to ensure it was not being abused by any of the parties and those safeguards do not entail acting outside it in the name of avoiding its abuse. What is certain is that in its pure form the law will always be able to detect an abuse and respond to it lawfully.

12. Although in the majority of the applications that came before her ladyship the First Respondents were successful, most of those decisions, if not all of them, were appealed against by the current Applicant and none of them have yet been heard except that some of them have been allocated the 31st October 2022 as the hearing date. The propriety of the specific orders made including their correctness as well as the effect of their being appealed against are not matters that form the thrust of what this aspect of the matter culminating in this judgment, is about. For the record they are matters for either the appeals already allocated the dated of the 31st

October 2022 or they are matters to be dealt with when the merits of the current application are to be heard. It suffices that the date for the latter purpose has, like that of the appeals, already been set.

13. It is noteworthy that the eviction of the current applicants from the premises also referred to as the Masuku homestead in the papers and said to be situated on Plot 12 or 13 of Farm 9, Peebles Block, Manzini District, has its genesis on the order of the High Court per Judge M. Dlamini on the 28th June 2022. It was annexed to the papers as annexure C06.

14. The specific wording of the said order that talked to the eviction or ejectment or removal of the Applicant (among others) from the premises or house referred to above merely confirmed the grant of prayers 5 and 6 of the Notice of Motion dated the17th May 2022 and was initially meant to be heard on the15th June 2022. It incorporated case numbers 114/2013, 696/2014, 2009/2016 and 786/2017. It read as follows:-

> *"5. That the First and Second Respondents (who were Tee Douglas Masuku and Busisiwe Masuku) were being ordered to vacate and restore to the Applicants,(Lobusuku Masuku and Mlondo Housing (PTY) (LTD)possession of the property known as Peebles*

Block, Farm 9, Portion 12 and 13, together with its locks and keys, with immediate effect.

6. *That if the First and Second Respondents fail to so vacate the property, the Station commander of the Royal Eswatini Police Service, being the Third Respondent, was authorized to forthwith attend to remove and evict the First and Second Respondents and move all the their belongings on the property to an appropriate Government storage facility available, the costs to which storage will be borne by the First and Second Respondents from their own pockets."*

15. This order was appealed against by means of a Notice of Appeal filed with the Court and served on the parties on the even date of the order's grant, namely the 28th June 2022 and it was annexed to the papers as annexure NA3. It case number was 42/22. The relevant grounds for the appeals read as follows:-

"1. The Court a quo erred in law and in fact by entertaining a matter that is already pending before the Supreme Court under case No. 26/22. The jurisdiction of the Court a quo has been disabled by the noting of the appeal.

2. *The Court a quo erred in law and in fact by granting an order evicting the Appellants in a property owned by the 2nd Respondent (a company) wherein there is no resolution to evict.*

16. The normal position of our law is that the noting of an appeal suspends or stays execution of the order being appealed against. This is actually the position of the common law and has been confirmed in numerous judgments of this jurisdiction. This principle was confirmed in judgments like that of **South Cape Corporation (PTY) LTD V Engineering Management Services (PTY) LTD 1977 (3) SA 534 (A).** It was there stated that an appeal automatically stays execution of a judgment or an order of Court. This position was there expressed 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 at 120-3**) *it is today the accepted common law 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 481; Reid and Another V Godart and Another 1938 AD 511 at 513; Genticuro AG v Firestone SA (PTY) LTD 1972 (1) SA 589 (A) at 667....).*** *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 the levy under a writ of execution of the judgment in any other manner appropriate to the nature of the judgment appealed from. The Court to which the application for leave to execute is made has a wide general 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 own judgments (CF* ***Fismer V Thornton 1827 Ad 17 at p. 19).***"

17. I pay particular note to the fact that one of the grounds of appeal referred to above - that is the first of such grounds - contends that the error of the Court sought to be relied upon was that the proceedings culminating in the orders appealed against (among

which is the one for the eviction or ejectment of the Applicant) should not have been entertained at the time they were because the matter had already been appealed against and was therefore no longer live before the High Court but was then live before the Supreme Court. The effect of this argument as I understand it, is that the existence of the purported order allowing eviction of the Applicant and his sister was no longer appropriate so much so that the order allowing it to evict the two was a nullity as its lawfulness was already being challenged. Whatever the true position, I will revert thereto in due course and later on in this judgment.

18. It is otherwise common cause that on the 4th July 2022 (at least in terms of the Deputy Sherriff's return) the execution of the order of the 28th June 2022, was carried out against the Applicant. It is common cause that he reacted thereto by filing a spoliation application against the First Respondent in the main, claiming she had despoiled him by causing him to be evicted without a valid order of Court.

19. It cannot be denied that the said application was granted by Z. Magagula J, who ordered that the status quo ante be maintained in the interim, with the Applicant having had to go back into the premises concerned. Z. Magagula J had also ordered that the matter

be referred to justice M. Dlamini J who had issued the eviction order and before whom the proceedings involving the two had commenced. The Applicant, whilst accepting the order reinstating him and his sister into the premises, had not accepted the aspect referring the spoliation matter to Justice M. Dlamini. His feeling was that in terms of an alleged practice directive issued by the Chief Justice sometime back, a judge before whom was brought an urgent application with whose hearing he commenced, was enjoined to hear the said matter to finality. Contending that this directive had been overlooked, the Applicant .had then noted an appeal against the aspect of Z. Magagula J'S judgment referring the spoliation application that had served before him to Justice M. Dlamini.

20. The argument being made in Court on behalf of the Applicant by Advocate Maziya was that the appeal of that aspect of the application prohibited the Respondents from dealing with the matter until the appeal would have been heard. However, the un appealed aspect, that of reinstating the Applicant to the premises was welcome which meant that whatever else was done was to observe that his client was entitled to remain in the premises concerned.

21. Although at our hearing this application, and from the papers filed of record on the 22nd August 2022, which were under a certificate of urgency, an impression had been created that the papers in

question were the only ones to have been filed between the parties after the hearing of the spoliation application by Magagula J except for the notice of appeal to an aspect of that Court's order (that is the one appealing the referral of the matter to Justice M. Dlamini), it was to transpire that there had been filed a notice of motion accompanied by an affidavit with a heading that read "counter application". It had been filed on behalf of the 1st Respondent on the 25th July 2022. She there sought the following reliefs:-

1. *That the First and Second Respondents be granted leave to execute the Court Orders of the 17th March 2022 and 28th June 2022 pending the finalization of the appeals lodged by the Applicant under appeal case numbers 26/2022 and 42/2022 in the Supreme Court of appeal of Eswatini.*

2. *That the Applicant pays the costs of the counter – Application if she opposes same.*

22. That application in terms of the papers handed into Court, was as indicated above, filed on the 25th July 2022. It appears, in terms of annexure CO 8, to have been granted. This means, according to

CO8, that although belated, the 1st Respondent was at some point granted leave to execute pending the noted appeal. I must also reveal that over and above the urgent application filed on the 22nd August 2022, there was filed on the 31st August 2022 a supplementary affidavit by the Applicant. Its main function was to place on record that whilst the main application was awaiting a hearing, and after it had even been given a hearing date, the Applicant was once again evicted by the First Respondent supposedly because by that date the latter had been granted leave to execute pending appeal. It thereby ignored the order by Z. Magagula reinstating the Applicant into the premises concerned. This was done on the 31st August 2021. The apparent purpose of the supplementary affidavit was to incorporate those facts into the already pending matter.

23. It happened that there was annexed to that supplementary affidavit two orders both granted by the High Court per M. Dlamini J on the 17th July 2022. They were marked "C08" and "C09" respectively. C08 was couched in the following terms:-

1. An order is granted in terms of Prayer 1 of the Notice of Counter Application.

2. *The Applicant is to pay the costs of the counter application, which costs are to be deducted from his inheritance under the deceased's estate.*

The prayer 1 of the Notice of counter application granted by the High Court, reads as follows verbatim:-

1. *That the First and Second Respondents be granted leave to execute the Court Orders of 17th March 2022 and 28th June 2022, pending finalization of the appeal lodged by the Applicant under Appeal Case Number 26/2022 and 42/2022 in the Supreme Court of Appeal of Eswatini.*

24. I can only comment that from the facts of the matter, the leave to execute sought to be applied for herein, was clearly overtaken by events because it cannot possibly be denied that when that application was instituted, a lot had happened including several instances where notwithstanding the noted appeals, the matters had been continued with by or on behalf of the First Respondent, as if nothing had happened. In fact the main application herein is replete with several orders made after that of the 17th March 2022, which are themselves followed by Notices of appeal which were filed repeatedly pursuant to the said orders. As for the execution of the Order for eviction notwithstanding the Notice of Appeal filed,

one needs to look no further than the application for spoliation granted by Z. Magagula J. The question in that case is whether it was opened to the 1st Respondent to seek leave to execute an order she had already brazenly acted upon without the leave she now seeks to obtain. I hasten to clarify that it was in my view no longer opened to the First Respondent to obtain leave to execute an order she had already executed without caring about the stay brought about by the noting of an appeal. She had earlier on already illegally did what she now wants the Court to authorize her. Clearly the leave to execute sought is not an end in itself but a means to other ends. It means she was now seeking to use the Court as a cover up to its otherwise illegal act. It seems to me she would be stopped from so doing by a principle more akin to the dirty hands principle (which at times is referred to as the doctrine of clean hands). That principle, prohibits a party from approaching the fountains of justice with sullied hands.

25. On the other hand annexure C09 to the Supplementary affidavit provides as follows, verbatim:-

> *"The interim Order granted exparte on the 18th July 2022 is hereby rescinded.*

26. This order that was rescinded was that by Z. Magagula J. reinstating the applicant to the premises forming the subject matter of the proceedings. The First Respondent argues that when it evicted or ejected the Applicant for the second time, from the premises on the 31st August 2022, the order earlier reinstating the Applicant to the premises had been rescinded whilst the appeals pending to the earlier orders had execution of them allowed.

27. It seems to me that there was, *prima facie*, a problem with these belated acts of self - correcting by the First Respondent. It does not seem proper that if he had already acted outside the law by ignoring the noted appeals, he could realistically purport to correct that through filing such an application. It sounds worse for the purported rescission of the Order of Z. Magagula J, when considering the argument by counsel Maziya that there was no rescission of judgment possible given that the order in question (the reinstatement of the applicant to the premises), had been granted in the presence of all the parties. It was therefore a matter not suited for rescission.

28. It made it worse that when the eviction was carried out, the First Respondent had been served with the main application which still awaits determination. One finds it hard to understand why it was, notwithstanding this fact, necessary to execute the eviction order

against the applicant when the hearing of the application challenging the correctness of the Judge a quo's decision was just days away. I note that that application ended up not being heard because the Respondents who were so eager to execute the order for eviction had still not filed their opposing papers. It is noteworthy that notwithstanding the application having been served on her on the 22nd August 2022, she has to date still not filed her answering affidavit thereto, hence this court being requested to deal with the issue of reinstating the Applicant and those holding under him back to the premises until the matters, including the Appeal shall have been finalized.

29. If there was ever a doubt about the propriety of reinstating the Applicant to the premises on the basis of the fact that the purported leave to execute and the rescission the First Respondent had purported to obtain, per orders C08 and C09 to the supplementary affidavit, it is beyond doubt that the said orders were immediately upon their issuance appealed against by the Applicant through the Notice of Appeal annexed to the Supplementary affidavit as annexure NA7.

30. The said Notice of Appeal reads as follows on the crucial grounds:-

1. *The Learned Judge erred in law and in fact in entertaining the matter that was pending before the Supreme Court under case No. 54/22, in view of the fact that the appeal was against part of the Order granted by Z. Magagula J that referred the matter to the learned Judge. The Jurisdiction of the Court a quo has been disabled by the noting of the Appeal.*

2. *The learned Judge erred in law and in fact in rescinding Z. Magagula J's order granted on the 18th July 2022 under circumstances where it was impermissible to do so given that such an order by Z. Magagula J was issued not in the absence of either of the parties. To this end, the jurisdictional facts justifying a rescission were not met.*

3. *The Learned Judge erred in law and fact in presiding over a matter when there was a pending recusal application before her.*

4. *The learned Judge erred in law and in fact by granting substantive orders in the face of an application for her ladyship's recusal without first decisively dealing with the question of whether or not she was competent to preside over the matter.*

5. *The learned Judge erred in law and in fact in granting the Application for leave to execute pending appeal when it was*

clear that the Respondents had already resorted to extra-judicial means and had taken the law into their hands in that they committed acts of spoliation hence the order of Z. Magagula J for restoration of possession. To this end, the Respondents were inviting the Court to legitimize an illegality by filing the application for leave to execute the pending appeal.

31. This Notice of Appeal which bears the Registrar's stamp of the 23rd August 2022 and was *ex facie* itself received by the first Respondent's attorneys on the even date of the 23rd August 2022 had already been served and received by the First and Second Respondent's counsel when the Applicant and those holding under him were evicted for the second time from the premises concerned on the 31st August 2022.

32. The Applicant contends that this eviction had no legal basis, that it was irregular and that it amounted to a nullity given that the attempt on behalf of the First and Second Respondents to obtain leave to execute pending the earlier notices of appeal as well as the purported rescission of the order reinstating the applicant to the premises in question had been appealed against. This was on account of the said leave to appeal having been sought allegedly after the first and second Respondents had already acted, disregarding the appeals and had thus taken the law into their

own hands with the leave to execute merely being used to bless an illegality that had already been done.

33. With regards the rescission of the order restoring possession of the premises to the Applicant, it was contended that same had been done without a legal basis on account of the allegation that the order sought to be rescinded had been granted in the presence of all the parties. For a rescission to hold, the order should have been granted in the absence of the party seeking to rescind it.

34. The execution of the order resulting in the eviction and ejectment of the Applicant and those holding under him from the premises was challenged more on the grounds that it was carried out after the said orders allowing execution and that rescinding the reinstatement order of Magagula J had already been appealed against on the basis of the Notice of Appeal whose contents have just been referred to above. This it is contended is because in terms of settled law, an appeal stays execution. The argument was therefore that the latest eviction of the Applicant and those holding under him in the premises was a non - act as it was illegal. It was on this basis that the Applicant's counsel emphasized that the said eviction be set aside with the Applicant being allowed to go back into the premises until the appeal was to have been heard and determined.

35. The reality is that despite the Respondents having been served with the main application under a certificate of urgency on the 22nd August 2022 , they had still not filed their opposing papers as of the 8th September 2022 when the aspect of the matter that this judgment relates to was heard. This is despite the fact that when the matter was allocated to this court as currently empanelled on the 30th August 2022, it had been given the 1st September 2022 as the date for allocating it a hearing date. In shot by the time the matter was heard the Respondents who had still not answered by then had had it for over seventeen days inclusive of weekends.

36. As the First and Second Respondents were not filing their papers in opposition to the application it appears they were busy with the Deputy Sherriff, who notwithstanding the main application having been filed under a certificate of urgency and served on the parties, which was even after the Chief Justice had indicated the matter was being attended to as shown above the Deputy Sheriff went on and evicted the Applicant and those holding under him from the premises in question.

37. It was with this background that when the matter was called on the 8th September 2022, and after it became clear it could not be heard as opposing papers had not been filed, counsel for the Applicant, applied from the bar that his client who had been ejected the

previous week from the premises be reinstated as an interim measure and as the papers were still to be exchanged. He contended that there was no legal basis for the eviction claiming it had been granted by the Court a quo in the face of an appeal that had been noted , ignoring the settled position of our law that an appeal suspends an execution as captioned above.

38. Taking into account that it was going to take time to file the necessary papers and eventually hear the matter together with the fact that all the matters and facts relied upon were all covered in the papers already filed of record and that where other papers relied upon needed to be filed, they could be handed over to court as the matter was urgent, we allowed the hearing of the aspect of the matter raised by the Applicant. We were convinced there was no prejudice to be suffered as the matter was to be confined within the parameters of the contested eviction.

39. We have to agree that from the submissions made taken together with what we have read from the papers, the eviction of the Applicant cannot stand and should be set aside. It cannot be disputed it was carried out after a hurried and belated process to obtain leave to effect it was engaged upon. This process we agree had already been tainted as the matter had been heard on numerous occasions disregarding the appeals that had been noted including at some point

the Applicant having had to be evicted despite having noted an appeal. It is important for us to ensure that the sanctity and integrity of the judicial processes is upheld. The seeking of leave to execute notwithstanding the appeal should have been done from the very onset after the appeal had been noted. In our view the seeking of such leave in the manner done by the First and Second Respondents which was to obviously legitimize the illegality they had already resorted to cannot be allowed. It is akin to sharp practice which the law does not countenance.

40. The hurried rescission of the order to maintain the status quo which was aimed at protecting the integrity of the Judicial process was obviously engaged as a measure to lay ground and enhance chances for the intended eviction to be carried out. I say this because if the order in question had indeed been granted in the presence of the Respondents and in open court, it certainly cannot be a matter for a rescission in the circumstances.

41. We agree that in so far as the orders in question were themselves appealed against (that is the order for leave to execute and the one for rescission), it was not proper for the Respondents to ignore that appeal . It could be that they believed that the said noted appeal had no merit, but it was not proper for them to ignore it. The question of the propriety of the appeal is a matter for the Supreme Court to

decide. We note that the Notice of Appeal in question is annexure NA7 to the supplementary affidavit served on all the Respondents including the 1st and 2nd Respondents on the 31st August 2022, some eight (8) days before the date for hearing the matter culminating in this judgment was issued. We also note that it was referred to extensively during the hearing of the matter in Court. I emphasize this having noted a contention contained in a document filed some days of the matter having been heard contending that Counsel for the First and Second Respondents had just become aware of annexure NA7 to the Supplementary Affidavit and contending they needed to be heard on the said Notice of Appeal. The reality is that this contention is not accurate as the document concerned (annexure NA7) was relied upon during the hearing of the matter. Reopening the matter would therefore amount to the Respondents having a second bite on the cherry which the law does not permit.

42. The question of the propriety of the Applicant and those holding under him remaining in the premises should be a legal matter which should be resolved according to law. Resolving it in that manner calls for observing the processes of the law designed for that purpose. I comment in passing that how long the resolution of a dispute takes is dependent on a number of things including diligence on the parties to prosecute it according to law. It is not enough to

look merely at the time it has taken for a dispute to be resolved without considering the expertise brought about in resolving it. The cutting of corners whilst rushing at achieving a certain goal could end up being costly and bringing about more delay. The law should be followed at all times for the good of everybody.

43. We are therefore convinced that for the sanctity of the law to be observed and maintained the eviction of the Applicant in disregard of a noted appeal cannot be allowed to stand. Further the Applicant and those holding under him will have to be reinstated into the premises forming the subject of those proceedings. This position has to remain in place until the matters are finalized in Court or until an eviction justified and based on law shall have been resorted to.

44. I can only observe that the propriety or otherwise of the Applicants remaining in the premises concerned should be determined by the finalization of the main application pending in Court together with the various appeals meant to be heard on the 31st October 2022.

45. Consequently and for the foregoing considerations, we have come to the conclusion that the following order is appropriate to make and we go on to so order that:

1. The eviction or ejectment of the Applicant and those holding under him from the premises forming the subject matter of these proceedings and fully described as Peebles Block, Farm No. 9, Portion 12 and 13, Manzini District, be and is hereby set aside.

2. The Applicant and those holding under him, be and are hereby reinstated to the said premises until the matter shall have been finalized or unless a lawful eviction carried out in full observance of the law shall have been effected or carried out.

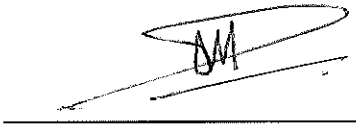
3. Before the Applicants assume the occupation ordered by this Court in the premises concerned, a neutral Deputy Sheriff other than the one who oversaw the eviction of the Applicant from the premises shall forthwith and under the auspices and control of the Registrar of this Court, prepare and file a report with the said Registrar on the state of the premises together with an inventory of the items found thereon.

4. Costs herein are to be costs in the course of the pending appeal.

N.J. HLOPHE

JUSTICE OF APPEAL

I Agree



S.B. MAPHALALA

JUSTICE OF APPEAL

I Agree

S.J.K. MATSEBULA

JUSTICE OF APPEAL