IN THE SUPREME COURT OF ESWATINI
JUDGMENT

Case No. 20/2022

HELD AT MBABANE
In the matter between:

UMZAMO RENTALS ASSOCIATION	**Applicant**
And	
THE PRINCIPAL SECRETARY, MINISTRY OF COMMERCE, INDUSTRY AND TRADE	**1st Respondent**
THE ATTORNEY GENERAL	**2nd Respondent**
In re:	
UMZAMO RENTALS ASSOCIATION	**Appellant**
And	
THE PRINCIPAL SECRETARY, MINISTRY OF COMMERCE, INDUSTRY AND TRADE	**1st Respondent**
THE ATTORNEY GENERAL	**2nd Respondent**

Neutral Citation: *Umzamo Rentals Association vs The Principal Secretary, Ministry of Commerce, Industry and Trade and Another* (20/2022) [2023] *SZSC* 18 (21/08/2023)

Coram: **M.J. DLAMINI JA; J.M. CURRIE JA AND S.J.K. MATSEBULA JA.**

Heard: 27 March, 2023.
Delivered: 21 August, 2023.

SUMMARY : *Appellant seeking to enforce transfer of Crown Land – provisions of Deed Registry Act 1968 – Crown Lands Act of 1911, Crown Lands (Conditions) Act, 1968 – Crown Lands Disposal Regulations 1912 – Crown Lands Disposal Regulations of 2003 considered which regulate acquisition of land from the Government of Eswatini – Doctrine of legitimate expectation considered – Appeal meets the requirements – Appeal succeeds..*

JUDGMENT

J.M. CURRIE – JA

INTRODUCTION

[1] This matter arises as a result of an application brought by the appellant/applicant in the Court *a quo* wherein the applicant sought to compel the Ministry of Commerce, Industry and Trade to sign a Deed of Sale and thereafter other relevant documents to transfer a piece of land being Portion 19 of Farm 140, Nhlangano, Shiselweni District in its favour.

[2] The application was refused and the appellant, dissatisfied with the judgment of the Court *a quo* noted an appeal on the following grounds:

1. **The Court *a quo* erred in fact and in law by holding that the Appellant's ground for seeking the 1st Respondent to sign the deed of sale was based on a receipt when the Appellant was willing to carry out the necessary procedures which would lead to signing of the deed of sale.**

2. **The Court *a quo* erred in fact and in law by failing to take into account that the Appellant was not privy of the land transfer procedures and was relying on the 1st Respondent's expertise and knowledge when holding that Appellant had not followed such procedure.**

3. **The Court *a quo* erred in fact and in law by holding that the Appellant had not demonstrated that it had followed the laid out procedure for the transfer of land under these given circumstances.**

BACKGROUND

[3] This matter goes back as far as the 13th October 1994. The parties were wrongly cited and described in the pleadings in the court *a quo* and thus remain so in the present appeal. The appellant describes itself in the founding affidavit dated 16 April 2009 as a non-profit organisation registered as such in terms of Section 21 of the Companies Act 1912. The affidavit is deposed to by Patrick Gamedze, who claims to be the chairman of the association and, as such, is authorized to depose to the affidavit on behalf of the association but no resolution authorising him to do so was attached to the affidavit.

[4] The replying affidavit, dated the 31st July 2020 some eleven years later, is deposed to by Joseph Dlamini, who claims to be a member of the executive committee, but, once again, no resolution authorizing him to depose to the affidavit is attached. This affidavit was disregarded by the court *a quo,* for the late filing of same and as such, non-compliance with High Court Rule 6 (13).

SUBMISSIONS OF THE APPELLANT

[5] The appellant contends that the appellant and the Government of Eswatini entered into a verbal agreement in Mbabane in terms of which the appellant

would purchase Portion 19 of Farm 140 Nhlangano from the Government of Eswatini for the sum of E 7 480.00. It is unknown who represented the parties in this regard. The appellant has based its claim on a receipt issued by the Government of Eswatini dated 13 December 1994, reflecting that the sum of E 7 480,00 was paid to the Government and is endorsed *"full purchase i.e. Portion 19 of Farm 140, Nhlangano."*

[6] Appellant states that upon payment of the purchase price of the land it took occupation of the land and some members of the appellant association erected various structures on the land until they were stopped from doing so by Town Council as the structures did not comply with the building regulations on the site.

[7] With regard to the alleged agreement concluded, appellant contends that the agreement was that after payment of the purchase price a written deed of sale would be produced by the Minister concerned. According to the appellant this written deed of sale was never produced and, year after year, one excuse after the other was given by the relevant ministers for their failure to sign *"the already prepared Deed of Sale"* stating, either, that they were heavily

engaged on other state business or that the applicant's file was missing or that some other documents in the file could not be traced.

[8] Finally, in March 2009, upon enquiry at the relevant Ministry the appellant was advised that the association ought to apply afresh as the purchase price was then over E 170 000.

[9] In conclusion the appellant contended that the conduct of the 1st Respondent in allowing the purchase of the land in full and issuing a receipt to this effect, further allowing the appellant to erect structures thereon induced the appellant to have a reasonable expectation that a deed of sale would be signed reflecting a purchase price of E 7 480.00 for the price of the land.

SUBMISSIONS OF THE RESPONDENT

[10] Respondent strenuously opposes this appeal and has referred this Court to the various Acts statutes governing the history of the disposal of Crown Land and their various provisions which are applicable to the present application.

[11] Whilst the appellant relies, in its founding affidavit filed in the court *a quo,* on a verbal agreement entered into, the respondents denied in the answering

affidavit that there was ever a verbal agreement entered into and explained the procedure at the time of acquiring land from the Government.

(a) The allocation of business plots in the Government's Industrial areas in Matsapha, Nhlangano and Ngwenya had commenced long before 1994 as alleged by the appellant and were allocated to all kinds of businesses, including companies, sole proprietors and associations.

(b) The first requirement to obtain such a business plot was the completion of a written application accompanied by a business plan to be submitted to the 1st respondent who would then allocate the land to the applicant.

(c) A Deed of Sale would then be drawn up by the Ministry and provided to the applicant for signature after payment of the purchase price.

(d) Upon signature by the applicant and return of the Deed of Sale to the Ministry same is transmitted to the Ministry of Housing and Urban Development for signature.

(e) After signature by the Ministry the land is then transferred and registered in the name of the applicant.

(f) A party who has been allocated such a business plot is expected to commence business within two years of the grant of the land, failing which the plot may be allocated to another.

[12] Despite the denial of the existence of a verbal agreement, the applicant only attempted to file a replying affidavit in response thereto some 11 years later, which was refused by the court *a quo*.

[13] Respondents contend that there is no indication on the file at the Ministry that the applicant ever applied for a business plot and followed the correct procedure by completing an application and submitting a business plan.

[14] Respondent submits that when certain of the appellant's executive member approached the Ministry in March 2009 they were advised that purchase price of the land had increased to E 20-00 per square metre and that upon payment of the current purchase price and completion of the relevant documentation the land would be transferred to it. However, appellant's members refused to comply with this advice and insisted that the land be transferred to appellant based on the price paid in 1994.

[15] Respondent contends that it is solely due to laxity of the appellant that the land was never transferred to it for failure to comply with the relevant procedure.

THE ISSUE

[16] The appellant seeks an order that the Ministry of Commerce Industry and Trade be compelled to sign a deed of sale in the sum of E 7 480.00 in favour of the appellant and thereafter all necessary documentation to transfer Portion 19 of Farm 140 in its favour. Appellant relies on the doctrine of legitimate expectation for its claim and contends that by allowing the applicant to take occupation of the land which unless shown or pointed out to it by the Respondents would not have identified amongst the other plots on sale and commence erecting structures thereon the Government created the legitimate expectation that appellant was entitled to transfer of the land and that a deed of sale would be entered into. The expectation of the appellant was reasonable in that a person in the position of the appellant would expect that after payment of the purchase price and allocation of the piece of land that a deed of sale would be promptly forthcoming.

THE LAW

[17] The alienation of land and, in particular, Government land is covered by the following statutes:

(a) The Deeds Registry Act 1968:

How real rights shall be transferred

"15. Save as otherwise provided in this Act or in any other law the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the Registrar, and other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the Registrar:

"..... the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the Registrar, and other real right in land may be conveyed from one person to another only by means of a deed of cession ...."

(b) The Crown Lands Disposal Act, 1911

Power of the Minister

" 3. The Minister may dispose of Crown lands by grant, sale, lease or otherwise in such manner and on such conditions as he may deem advisable, and may grant any Crown land in exchange for any other land or interest therein if it shall appear to him expedient to do so."

Section 17 provides:

"(1)The ownership of unalienated Government land may be transferred from the Government only by a deed of grant issued under proper authority and, save as hereinafter provided, having a diagram of the land annexed thereto.

(2) The ownership of land alienated from and reacquired by the Government may be transferred from the Government either by deed of grant issued under proper authority, or by deed of transfer, but in either case the deed of grant shall contain a reference to the title deed by which the government held the land and to the title deed to which the diagram of the land is annexed and shall set forth the conditions upon which the land is alienated and the right to the land reserved by the Government on that alienation."

(c) The Crown Lands Disposal Regulations of 1912 provides for the form of deed of grant to be issued in respect of government land sold under the Crown Lands Disposal Act.

(d) The Crown Lands Disposal regulations of 2003 superseded the 1912 Regulations. These regulations provided, *inter alia,* for the formation of a Crown Lands Disposal Committee and provides for its, functions, procedures and regulations in exercising its duties. Section 8 specifically provides that the process shall be as follows:

(f) Procedure for grant allocation

Section 8

(1) The application shall be addressed to the Local Authority.

(h) Section 9

(1) No grants shall be made to individuals.

(2) Grants shall be made only to non-profit making organisations that are of benefit to the community"

(3)The granted organisations shall be monitored to ensure they remain non-profit making. In case the organisation grows and generates profit, it shall be granted a lease.

(4) Organisations changing status to profit making shall be made to buy the property as if it was a new application.

(5) Crown land acquired by grant shall never be assigned, ceded or sublet."

(e) Schedule 1 of these Regulations provides as follows:

"On coming into effect of these regulations, all past applications shall be null and void."

[18] These regulations do not apply to the appellants because their application for allocation of land was accepted way back to 1994 when the Government accepted the application, accepted the purchase price, pointed out and allocated the plot and allowed the appellants to put up structures on the purchased land. When the new Crown lands disposal regulations of 2003

came into force, the appellants' application was not pending but the Deed of Sale was pending.

[19] The requirements for the legitimacy of expectation were canvassed in **Queeneth Ncobile Dlamini v The University of Swaziland (716/2013) [2013] SZHC 195 (19th September 2013)** where the Court quoted with approval the dicta in **National Director of Public Prosecution v Phillips and Others 2002 (4) SA 60 (W)**, para 28 where the Court stated:

> *"The law does not protect every expectation but only those which are 'legitimate'. The requirements for legitimacy of the expectation, include the following:*
>
> *(i) The representation underlying the expectation must be clear, unambiguous and devoid of relevant qualification': De Smith, Woolf and Jowell (op cit) [Judicial Review of Administrative Action 5th ed] at 424 para 8-055. The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate*

expectations. Is it also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing which they act at their peril.

(ii) The expectations must be reasonable: Administrator, Transvaal v Traub [1989] ZASCA 90; [1989 (4) SA 731 (A)] at 7561 – 757B); De Smith, Woolf and Jowell (supra at 417 para 8-037).

(iii) The representation must have been induced by the decision-maker: De Smith, Woolf and Jowel (op cit at 422 para 8-050); Attorney-General of Hong Kong v NgYuen Shiu [1983] UKPC 2; [1983] 2All ER 346 (PC) at 350h-j.

(iv) The representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate: Hauptfleisch v Caledon Divisional Council 1963(4) SA 53 (C) at 59E-G".

(per E. Cameron JA, with Howie P, Olivier JA, Strecher JA and Lewis JA concurring, in **South African Veterinary Council and Another v Szymanski (79/2001) [2003] ZASCA 11 (14 March 2003)).**

[54] Then, in para 21, Cameron JA continues and authoritatively says:

> *"It is worth emphasizing that the reasonableness of the expectation operates as pre-condition to its legitimacy. The first question is factual – whether in all the circumstances the expectation sought to be relied on is reasonable. That entails applying an objective test to the circumstances from which the applicant claims the expectation arose. Only if that test is fulfilled does the further question – whether in public law the expectation is legitimate – arise."*

[20] The question *in casu* is therefore whether the applicant meets the requirements referred to above.

[21] It is common cause that the Government was selling land to its people in Nhlangano, Matsapha and Ngwenya before the year 1994. Business plots we allocated to various types of businesses which included companies, sole proprietors and associations which took place before the promulgation of the Crown Lands Disposal regulations of 2003. It is therefore unknown what the exact procedure was as alleged in the answering affidavit.

[22] What is clear from the papers filed of record is that the appellant paid the sum of E7480.00 to Government and a receipt was issued endorsed *"Being full purchase price Portion 19 of Farm 140 Nhlangano"*. The respondent only denies the existence of a verbal agreement but does not deny payment of the purchase price, nor has it tendered to refund appellant this amount.

[23] The appellant contends that it went to 1st respondent on a number of occasions and was told many different stories – at one time that the file was missing, later that some documents were missing from the file and, thereafter, that a draft Deed of Sale was delayed at the Minister's office. Later appellant was told the Deed of Sale had not been signed by the relevant Minister because he was too busy during his term of office and that his term of office had

terminated. It is inconceivable to consider that a deed of sale would have reached the Minister's office for signature without the accompanying relevant documentation. It was at this stage that appellant was told that if it still wished to have the property transferred to it, it should pay the new purchase price.

[24] It is therefore unknown to this Court if there were documents and when and where they went missing or if the file went missing but clearly there was a file as in its answering affidavit the deponent states: *"I do state that in Applicant's file at the ministry, there is no indication that they ever applied to be allocated a business plot."* In my view this is an astounding statement when the applicant has in its possession a receipt from Government endorsed *"Being full purchase price Portion 19 of Farm 140 Nhlangano"* and Government does not deny the authenticity of the receipt.

[25] What is clear is that the appellant paid the full purchase price in respect of a portion of land allocated to it by the Government and took possession thereof. The fact that appellant was later stopped from building has nothing to do with the 1st respondent and 1st respondent states in its answering affidavit that

appellant must have been stopped by the Town Council of Nhlangano for failure to comply with its Building Regulations.

[26] Clearly therefore appellant had been dealing with the ministry as there is a file. It is understandable that appellant cannot produce witnesses to prove the terms of a verbal agreement some thirty years later but the indisputable fact is that appellant paid the purchase price in respect of Portion 19 of Farm 140 Nhlangano.

[27] I am of the view that appellant was entitled to a reasonable expectation that a deed of sale would be forthcoming after payment of the purchase price. It is highly improbable that appellant would have been allowed to pay the purchase price of the land and take occupation without providing any documentation whatsoever. Since 1994 no other person has claimed ownership of this particular piece of land which is consistent with the fact that the appellant purchased this land and it could not be sold to another potential buyer. Furthermore, Government has retained the purchase price and not refunded same to the appellant and it would appear to be inequitable to permit Government to benefit from its own inaction. Undoubtedly, applicant must

have entered into some agreement with Government that it induced it to pay the purchase price in respect of the land in question and take occupation thereof and erect structures thereon. It would be absurd for appellant to pay the purchase price and thereafter refuse to submit a written application together with a business plan, had such a procedure been brought to the knowledge of the appellant. Furthermore, appellant was advised that the relevant Minister would sign the already prepared Deed of Sale. In my view, therefore, without a doubt, appellant would have had a reasonable and legitimate expectation that a deed of sale would be signed and the land would be transferred to it.

[28] In view of the aforegoing, I am of the view that the appeal should succeed and that 1st respondent should prepare the relevant deed of sale for signature by appellant and thereafter all relevant documentation to effect transfer of the land in terms of the relevant legislation to appellant.

ORDER

[29] I accordingly make the following order:

1. The appeal succeeds.

2. Costs are awarded to the appellant.

J. M. CURRIE
JUSTICE OF APPEAL

I agree

M.J. DLAMINI
JUSTICE OF APPEAL

I agree

S.J.K. MATSEBULA
JUSTICE OF APPEAL

For the Appellant: BS DLAMINI & ASSOCIATES ATTORNEYS
For the Respondents: ATTORNEY GENERAL'S CHAMBERS