

IN THE HIGH COURT OF SWAZILAND

a Mhlupheki

1

CASE NO. 1586/97

In the matter between

MHLUPHEKI MDLULI	1st Applicant
PHILEMON MDLULI	2nd Applicant
MVELASE MDLULI	3rd Applicant
MTUTU MDLULI	4th Applicant
MANTONGOMANE MDLULI	5th Applicant
NYASE MDLULI	6th Applicant
LOMALANGA MDLULI	7th Applicant

vs

CHRISTOPHER SHONGWE	RESPONDENT
CORAM	S.B. MAPHALALA AJ
FOR APPLICANTS:	Mr MNISI
FOR RESPONDANT:	MR MAGAGULA

JUDGEMENT

(15/08/97)

The matter came by way of motion for an order in the following terms:

1. Stating execution of the order granted by this court on Friday the 6th June, 1997 pending the finalization of this application.
2. Rescission of the order granted by this court in favour of the Respondent/Applicant in the main action;
3. Granting the Respondent to pay costs of this application.
4. Further and/or alternative relief;

It is supported by an affidavit of 1st Applicant and a confirmatory affidavit of one Mbabala Gama. The order which is sought to be rescinded was directing the applicant to exhume the body of the late Maguduva Mdluli buried within the homestead of Mshafane Shongwe at Ka-Lomshiya area in the Hhohho District and bury it in some other alternative place. Further that the Applicant's pay the costs of that application.

The Respondent opposed the application for rescission and filed a notice of intention to defend.

Respondent later filed his answering affidavit where he alleged in limine that the application is fatally defective in the following respects:

- 3.1. The applicant fail to state sufficient reasons for their failure to oppose the application in which the order sought to be rescinded was granted.
- 3.2. The applicant fail to reveal any real defence against the order sought to be Rescinded.

The matter came for argument on the 17th July, 1997.

It is clear from the papers before court that all the Respondents were served with the application in accordance with the Rules of this Court on the return date where the court explained to them the effect of the order that was granted that day. In retrospect, I would agree with Mr Mnisi for the Respondent that the court ought to have found out whether the Respondents opposed the application which way granted that day. I take the point by Mr Mnisi that here we are dealing with rural folk who are not wise to the ways of the law. They did not know what next to do with the papers they were served with.

For this reason I find that they have sufficiently advanced a reason to explain their failure to oppose the application.

On the second grounds in limine it is my considered view from the papers filed that they have revealed a real defence against the order sought to be rescinded.

I thus rule in favour of the applicants and rescind the order granted by the court on th 6th June, 1997.

Applicants are to file further papers and the matter to take its normal course. Costs to be costs in the course.

S. B. MAPHALALA

ACTING JUDGE