

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 3937/08

In the matter between:

**TOSH MAGAGULA
RESPONDENT**

1st

BUSISIWE MAGAGULA (Born Dlamini)

2ND APPLICANT

THABITHA MAGAGULA (Born Mavimbela)

3rd APPLICANT

and

CHIEF KUSA DLAMINI N.O.

1st RESPONDENT

JIM GAMA N.O.

2nd RESPONDENT

THE COMMISSIONER OF POLICE

3rd RESTPONDENT

CORAM: Q.M. MABUZA -J

FOR THE RESPONDENTS: MR. M. MABILA

FOR THE RESPONDENTS: MR. KUNENE

RULING 24/10/08

[1] The deceased herein is a Chief who died on the 13th September 2008. There is a dispute as to where he should be buried. The Applicants want him buried at Ntonto Mountain e Ndabeni.

[2] It appears from the founding affidavit that there is an ongoing boundary dispute regarding the mountain. This dispute is between ka Bhudla Umphakatsi and e-Mdumezulu Umphakatsi. Consequently it was suggested that the deceased should not be buried at this mountain until this dispute has been resolved. It also appears that only His Majesty can resolve this dispute.

[3] I have been informed that Chief Mpica Magagula was the first in his dynasty. He was installed by King Sobhuza II. The deceased is second in line to Chief Mpica. I have not been told where Chief Mpica came from nor where his father, grandfather and great-grandfather were buried. I have not been told whether or not Chief Mpica after being installed set aside a burial area for his immediate family and successors and where this is.

[4] I have however been informed that the 1st Respondent, Chief Kusa Dlamini follows a long dynasty of Chiefs who have been in existence at e Mdumezulu long before Chief Mpica's dynasty began.

[5] The affidavit of the Acting Head of the Ludzidzini Libandla, Timothy Velabo Mthethwa stated that the deceased should be buried at ka Bhudla Chiefdom where he belongs and where his mother and other Magagula relatives are buried. The latter statement is supported by Chief Kusa Dlamini.

[6] It is difficult for this court to declare that the late Chief be buried where it is alleged that he is not a resident and on land

that is being disputed. It is therefore seemly and prudent to order that the matter of the disputed mountain be referred back to the 2nd Respondent for him to facilitate its conclusion to avoid problems with future burials and it is so ordered.

In casu the Applicants have alternative areas where they can bury the deceased namely; where his grandfather and great grandfathers were buried or at ka-Bhudla chiefdom next to his mother. The Application is refused. Each party to pay its own costs.

Q.M. MABUZA-J