



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Civil Case No.470/2013

In the matter between:

NOMBUYISELO SIHLONGONYANE

Applicant

vs

MHLOLI JOSEPH SIHLONGONYANE

Respondent

Neutral citation: *Nombuyiselo Sihlongonyane vs Mhloli Joseph Sihlongonyane & Another (470/2013) [SZHC207] (19th September 2013)*

Coram: **MAPHALALA PJ**

Heard: **2nd August 2013**

Delivered: **19th September 2013**

For Applicant: Mr. S. Mamba

For Respondent: Ms. L. Simelane

Summary: (i) In this urgent application a point was raised by the court *mero muto* that a Full Bench be constituted on the directions on the Chief Justice on the *locus standi* of a married woman under the Constitution in this country.

- (ii) The Full Bench examined the question and held that a married woman has *locus standi* over her husband. The said court remitted the case to this court for determination on the merits of the case.
- (iii) This court finds on the facts that the *rule nisi* issued be confirmed with costs and that the Applicant has made a case on the merits of the case.

JUDGMENT

(On the merits)

[1] On the 29 April, 2013 this court issued a ruling *mero motu* that this case be decided by a Full Bench on the *locus standi* of a married woman under the common law.

[2] On the 18 July, 2013 a Full Bench was constituted by the Chief Justice on the above question which delivered its judgment on the above [1] and at paragraph [33] of its judgment stated the following:

“For the foregoing, we make the following declaratory order, per section 2(1) of the Constitution:

The common law concept of marital power insofar as and to the extent that it bars married woman from suing and being sued without the assistance of their husbands is hereby declared to be inconsistent with section 20 and 28 of our Constitution. This invalidity is with effect from 25 March 2013 from which date all

married women subject to the marital power of their husbands shall have the right to sue and to be sued in their own names.”

- [3] Further at paragraph [34] that court remitted the case to this court for hearing on the merits of the case.
- [4] Having considered all the arguments of the parties on the points *in limine* raised by the Respondent I agree *in toto* with the arguments of the Applicant’s on these points and therefore, they are accordingly dismissed. Firstly, on non-compliance with the Rules of this court in Rule 6(22) of the High Court Rules I agree *in toto* with the Applicant.
- [5] Secondly, on the non-joinder of Thokozani Gamedze, King Mkhonta and Thembinkosi Ntswebe Dube I again agree with the Applicant that she has no legal obligation to have the individuals in the matrimonial home. She is not biologically related to them and she owes them no duty of custodianship and care. Further, in my assessment of the facts of this case it appears to me that the best interest of the minor children in this dispute can be served with the husband who is their blood relative. In this regard the case of *De Sausa vs de Sousa (1978)* at 81 *SLR 315* at 319D-E is apposite.

[6] All in all, therefore, on the merits of the case I agree with the submissions of the Applicant in this regard and therefore will confirm the *rule nisi* issued by this court on the 23th January, 2003.

STANLEY B. MAPHALALA
PRINCIPAL JUDGE