



IN THE HIGH COURT OF SWAZILAND

Civil Case No. 925/2016

In the matter between

MCINISELI CINDZI

1ST APPLICANT

BONGANI CINDZI

2ND APPLICANT

And

**THE MINISTRY OF HOUSING AND URBAN
DEVELOPMENT**

1ST RESPONDENT

**THE REGIONAL ADMINISTRATOR FOR
DISTRICT OF MANZINI**

2ND RESPONDENT

KENNETH CINDZI

3RD RESPONDENT

KHANYISILE CINDZI

4TH RESPONDENT

TENGETILE CINDZI

5TH RESPONDENT

MARIA CINDZI

6TH RESPONDENT

THOKOZANI CINDZI

7TH RESPONDENT

SINDI CINDZI

8TH RESPONDENT

PHINDILE CINDZI

9TH RESPONDENT

THE ATTORNEY GENERAL

10TH RESPONDENT

Neutral citation: *McIniseli Cindzi & Another v The Ministry of Housing & Urban Development & 9 Others* (925/2016) [2017] SZHC 227 (30 October 2017)

Coram: MAMBA J

Delivered: 30 October 2017

[1] In this application, the Applicants seek or pray for the following orders:

- ‘3. An order directing the 1st Respondent to pay out the compensation payment due to the 1st Applicant and 2nd Applicant as per the advice of the Masundvwini Royal Kraal.
4. An order interdicting and or restraining the 2nd Respondent from deliberating the matter touching upon the compensation payment due to the 1st and 2nd Applicant.’

[2] The Second Respondent is the Regional Administrator for the Manzini Region, in his or her official capacity as the political Administrator of the said region.

[3] This is essentially a family dispute. It involves compensation that is due to the family over fixed property or land situate on Swazi Nation Land. This property is within the jurisdiction of the Second Respondent. The Applicants allege that certain structures on their parental home are owned

by them individually or personally whilst their siblings who are some of the respondents herein claim that the said structures are owned collectively by the family. The respondents in particular claim that the relevant structures belong to their late father, one Elijah Cindzi who died in February 2000. The respondents claim, that they are beneficiaries in the Estate of their late father and consequently they have a stake in or are entitled to a share of the said Estate. The deceased died intestate and, in any event, it is doubtful whether he could have bequeathed such fixed structures through a Will to any of his children. That, however, is not the issue in this application.

- [4] The structures in question are stick and mud houses situated at Mhobodleni on the outskirts of the city of Manzini. The area has been rezoned and taken over by the local authority under the jurisdiction of the Second Respondent. Because of this restructuring or rezoning of the area expropriation of the premises by the said local authority, compensation is now due to the owners of the said properties that have been expropriated.
- [5] It is common cause that the respondents do not reside in the area. Their sole claim to the compensation aforesaid, is as already stated above, that the compensation is in respect of their family home; which was owned by their late father, Elijah Cindzi. This point strongly suggests that the

Master of The High Court may need to have a say in the matter, or at the very least, be notified about it. (See Rule 6 (23) of the Rule of this Court).

[6] It is also noted that, whoever is going to be deemed to be entitled to compensation, would not only receive a cash payment from the Second Respondent, but would also be entitled to be given or allocated a suitable piece of land on Swazi Nation Land, to construct a home there. This new land allocation is nothing else but to enable whoever is responsible, to rebuild or revive the homestead of the Late Elijah Cindzi. (In siSwati it is referred to a *Kuvusa or Kumisa Likhaya* – literally to revive or resurrect a home).

[7] It is noted further that this application is not the first matter involving these siblings before this court. For instance Civil Case 1525/2015 is one such case wherein the two applicants herein were the respondents together with Richard Simelane. That was an application for an injunction or interdict restraining and or interdicting the applicants from interfering with the use of a church structure or building situate on the relevant ground or piece of land. This application was finalised before this court on 04 December 2015; whereby my Learned Brother and Colleague Mlangeni J granted the injunction by confirming the rule nisi that had been granted on 09 October 2015.

[8] It is common cause further that the dispute over the homestead in question was also taken before the Masundvwini Royal Residence by some of the disputants herein. The said Royal Residence is the traditional authority which has control over the area where the disputed structures are situated. It is the authority that has the necessary power or jurisdiction to allocate land to an individual in that area. In turn, the person to whom the land has been allocated, pays allegiance or homage (*Kuhlehla*) to that Royal or traditional authority.

[9] In a long line of cases before our Supreme Court and this Court, the courts have consistently held that these courts have no jurisdiction over matters pertaining to the rights of persons over Swazi Nation Land. Such jurisdiction rests with the applicable local or traditional authority. In this case, that authority is the Masundvwini Royal Residence. (See the case of *Phildah Khumalo v Mashovane Khumalo*, Civil Case 2023/2007, which was cited with approval by Mlangeni J in Case 1523/2015 above).

[10] The Masundvwini Royal Kraal as per annexure C (at page 36 of The Book of Pleadings) at one stage dealt with the matter; in one form or another. In the said deliberations, the Chairman of The Inner Council, which is the supreme authority therein, issued a written acknowledgement or certification that David and Bongani Cindzi (2nd Applicant) were

known in the area and ‘recommended that’ they be given the necessary assistance. This letter or certification is dated 04 February 2016.

[11] As appears from prayer 3 quoted above, the applicants want this court to order or direct the First Respondent to pay to them the compensation due to them as ordered by the Masundvwini Royal Kraal. Although the word “advice” rather than order is used in that prayer, I think the tenor or import thereof is very clear and it is this: “Masundvwini Royal Residence has ordered that we be paid compensation. This court must endorse that order and accordingly compel the First Respondent to comply therewith.”


[12] From the above facts, it is plain to me that this is a matter that has to be heard by the relevant traditional authority or structures. That authority is the Masundvwini Royal Residence. In fact the decision has been taken and this court is being asked to order compliance therewith. This court, in my judgment, cannot and must not be used as a forum to rubberstamp judgments of other appropriate and legitimate fora or structures. To my mind, structures under Swazi Law and Custom have their own mechanisms or methods of execution or enforcement of their own judgments and orders. A duplication in the enforcement of such orders is not desirable or advisable at all. It is quite unnecessary in fact and this

court must, as a general rule always decline to meddle or interfere in such matters.

[13] The respondents pray for an order whereby this court must identify ‘the rightful persons entitled to the compensation and or allocation of new plots’. Again, that is clearly a matter for the traditional authorities who allocated the original home to Elijah Cindzi. This is beyond the jurisdiction of this court.

[14] I have stated above that this is a family dispute. I do not think that any good would be achieved by an order for costs against the losing side – the respondents. In fact I am of the considered view that an adverse order for costs may have the undesirable effect of widening the gap between the warring siblings. This court would not want to enforce such situation. Justice and Family cohesion, law and order, must be encouraged instead. For this reason, I order that each party must bear his or her own costs of this application.

[15] The application is therefore dismissed and each party is to bear his or her own costs of the proceedings.



MAMBA J

FOR THE APPLICANTS: MS. N. NDLANGAMANDLA

FOR 3RD -9TH RESPONDENTS: MESSRS BEN J. SIMELANE AND ASSOCIATES