

**IN THE HIGH COURT OF SWAZILAND
JUDGMENT
CASE NO. 68/2018**

HELD IN MBABANE

In the matter between:

SWAZILAND PERISHABLE FOODS

(PTY) LTD t/a FOOD LOVERS MARKETMARKET 1st Applicant

THANDI MAZIYA 2nd Applicant

SIZWE SYDNEY SHABALALA 3rd Applicant

DAVIOT (PROPRIETARY) LIMITED 4th Applicant

And

ESWATINI DEVELOPMENT FINANCE

CORPORATION Respondent

In re:

SWAZILAND DEVELOPMENT FINANCE

CORPORATION Plaintiff

And

SWAZILAND PERISHABLE FOODS

(PTY) LTD t/a FOOD LOVERS MARKET 1st Defendant

THANDI MAZIYA 2nd Defendant

SIZWE SIDNEY SHABALALA 3rd Defendant

DAVIOT (PROPRIETARY) LIMITED 4th Defendant

Neutral Citation: ***Swaziland Perishable Foods (Pty) Ltd t/a Food lovers Market & 3 Others V. Swaziland Development Finance Corporation. In re: Swaziland Development Finance Corporation V. Swaziland Pershable Foods (Pty) t/a Food lovers Market & 3 Others. (68/2018) [2019] SZHC 200 (25th October 2019).***

Coram: Magagula J

Date Heard: 3rd October 2019

Delivered: 25th October 2019.

[1] This is an application for stay of execution of a judgment of this court handed down on the 17th April 2018. The applicants seek substantive relief as follows:

“2 Pending determination of this application as well as the applicants’ Supreme Court constitutional review under Supreme Court case number 18/2018 an interim order issues operating effectively with immediate effect as follows:

2.1 staying the public auction sale of the applicant’s immovable properties scheduled for Friday 13th September 2019 in execution of the order of this Honorable Court Of 17 April 2018;

2.2 Staying execution of the writ issued pursuant to the order of this honourable court of 17 April 2018.

3. That Respondents be directed to show cause on a date to be determined by this Honorable court why the relief sought in terms of prayers 2.1 and 2.2 above should not be made final.

4. Costs of suit.”


[2] In its response the respondent (FINCORP) has raised some points of law in *limine*. One of such points is that this court has no jurisdiction to hear the matter since it is now pending before the Supreme court where the applicants have filed an application for review of a judgment of the same court in terms of section 148 (2) of the constitution. The respondent maintains that the Supreme court is now seized with the matter and as such the Hligh Court has no jurisdiction to hear it at the same time. Respondent contends that any relief sought on the matter should be directed to the Supreme Court since it is the one currently seized with the matter.

[3] In my view it is simple logic that one matter cannot be dealt with in two fora at the same time. This would lead to an undesirable scenario where all the courts would be issuing orders on the matter at the same time. In any event the respondent has filed several judgments demonstrating that invariably, litigants seeking stay of execution pending finalisation of constitutional review proceedings before the Supreme Court approach the same court for such relief. Such cases include NUR & SAME (PTY) LTD t/a BIG TREE FILLING STATION Vs GALP SWAZILAND (PTY) LTD (13/2015) [2015] SZHC 54 (23rd September 2015. PHINDILE NXUMALO Vs SWAZI MTN LIMITED (71/2016) [2017] SZSC 10 (21 April 2017) and others.

[4] In the premises I am satisfied that this court has no jurisdiction to deal with any aspect of a matter that is pending before the Supreme Court unless it is so directed by that court.

For the foregoing reasons the following order is made:

4.1 The application is dismissed with costs.



J.S MAGAGULA J

For Applicants: S. K Dlamini

For Respondent: Z.O Jele