



**IN THE HIGH COURT OF SWAZILAND
JUDGMENT**

Civil Case No.405/2009

In the matter between

THOMAS MOORE CARL KIRK

PLAINTIFF

And

RHODA ZIKALALA

1ST DEFENDANT

SIFISO S'GOD JELE

2ND DEFENDANT

SEBENELE MASUKU

3RD DEFENDANT

MGCIBELO MASUKU

4TH DEFENDANT

SABELO SIBANDZE

5TH DEFENDANT

JOHN DLAMINI

6TH DEFENDANT

DUMSANI MAGAGULA

7TH DEFENDANT

Neutral citation

*Thomas Moore Carl Kirk vs Rhonda Zikalala and
Six Others (405/2009) [SZHC] 236 (26 September
2014)*

Coram:

Ota J.

Heard:

29 August 2014

Delivered:

26 September 2014

Summary: **Civil Procedure: action for the eviction of the Defendants from private Freehold land; 1st Defendant claiming right to property in terms of concessionary title; held: Property Freehold Title Land; Plaintiff's Title Deed authentic; Plaintiff's case upheld**

JUDGMENT

OTA J.

[1] The Plaintiff instituted proceedings against the Defendants seeking, *inter alia*, the eviction of the 1st Defendant and all those claiming occupation under her from Portion 62 (a Portion of Portion 49) of Farm 1270, situated in the District of Manzini, and thereafter, authorize the Deputy Sheriff, duly assisted by members of the Royal Swaziland Police Force, if need be, to execute the court order; costs of suit as well as further and / or alternative relief.

[2] In his particulars of claim the Plaintiff averred as follows:-

“10 The Plaintiff is and has at all material times been the lawful owner of the immovable property to wit certain:

Portion 62 (a Portion of Portion 49) of Farm 1270 situate in the District of Manzini.

(Herewith annexed is a Deed of Transfer marked “A”)

11 The Defendants are in unlawful occupation of the said property as there was no agreement whether oral or written existing between the parties that entitle the Defendants to occupy the said property or portion thereof. The 1st Defendant has leased some structures on the property to the rest of the Defendants and has appointed the 7th Defendant as care taker of the property as she does not reside on the property herself.

12 The Plaintiff requires the property for its own use since it is the lawful owner of the said property and such entitled to its use and enjoyment.

13 The Defendants have however refused, failed and / or neglected to vacate the said property despite lawful demand being made.”

[3] The 1st Defendant alone defended the action. In her plea she advanced the following grounds of defence:-

“ 2

AD PARAGRAPH 10
Contents thereof are denied.

First Defendant avers the proof in the form of the Deed of Transfer is immaterial as she was born and raised on the said landed property at a time when it still had concessionary title status.

First Defendant further avers that the said land was subsequently returned to Swazi Nation land under the Chieftaincy of Ekufinyeni. The Deed of Transfer, as will appear *ex facie* the document bears the relatively recent date of the 22nd November, 2007.

3

AD PARAGRAPH 11
Contents hereof are denied

First Defendant avers that they were never even consulted on the intended transfer of the property, as occupants of the said piece of land over decades by virtue of successory title.

4

AD PARAGRAPH 12
Contents hereof are denied.

First Defendant particularly denies the legitimacy or otherwise of Plaintiff's claim to ownership title in as much as she finds the sudden existence of a Title Deed over property on Swazi nation land questionable.”

[4] Minutes of the pre-trial conference held by the parties on 6 April 2012, streamlined the steps to be undertaken in the matter in the following terms:-

“The parties agree further that an inspection in loco should be conducted and further that the matter turns on two (2) issues which are to be determined in court during trial, i.e;

- 1. whether the property in issue is Swazi Nation Land or Free Hold Title.**
- 2. whether the Title Deed which Plaintiff holds is legitimate or otherwise.”**

[5] **THE PLAINTIFF’S CASE**

In proof of the fact that the property is a Free Hold Title and that his Title Deed is legitimate, the Plaintiff called the evidence of two expert witnesses. PW1 was Mr Albert Mhlanga, the Surveyor-General of Swaziland, appointed as such since 1985. He has been a qualified land surveyor for over 30 years. He told the court that his office falls under the Ministry of Natural Resources and Energy which is the custodian of all surveyed land in Swaziland. The surveys are registered and kept by the office.

[6] PW1 led evidence during the inspection in loco. He pointed out the property in issue, which he identified as Portion 62 (a Portion of Portion 49) of Farm 1270, and told the court that it falls under the Free Hold Land. It has a Title Deed.

[7] He showed the court some pegs demarcating the land which show the total extent of the property. PW1 told the court that the demarcation was done by a registered land surveyor who then submitted the record to his office for approval and it was given.

[8] PW1 also showed the court an Aerial map and a Diagram Deed of the property, which were admitted in evidence as Exhibits 1 and 2 respectively. The Aerial map shows the Farms within the area including the property in issue. PW1 told the court that Exhibits 1 and 2 were prepared by his office after having satisfied

themselves through the relevant process that the land in issue to be surveyed and subdivided was Title Deed Land. He said that the process that should be adopted before the surveyor puts pegs on the land to subdivide it, is that the owner would have applied to the Ministry of Land Resources and Energy for the land that is outside the urban area, to be subdivided. Before the Minister issues a certificate, the owner would have produced proof of ownership. Thereafter, the consent will be given for the subdivision. PW1 further told the court that without the certificate of consent, his office will not subdivide such property.

[9] PW1 stressed that in principle, his office does not subdivide land which falls under Swazi Nation Land, except where his Majesty The King and Ingwenyama, authorized for a certain piece of land under Swazi Nation Land to be used for a specific project.

[10] Under cross-examination, PW1 told the court that portion 62 of Farm 1270 on the Diagram Deed was surveyed in 2006 and approved in 2007. He said that the property, just like most of the land in the area, started as concession land and later converted to Title Deed Land, way back before independence. PW1 further stated that his office is the custodian of diagrams of all land including concessions.

[11] PW2 was Gabsile Mabuza, the Registrar of Deeds, Deeds Registry Ministry of Natural Resources and Energy. She told the court that her duties include preserving the records at the Deeds Registry as well as examination and registration of Titles and Deeds. That her office registers privately held Title Deeds as well as land that was not originally Swazi Nation Land but was bought and registered under the name of the Ingwenyama in Trust for the Swazi Nation. PW2 stated that she has a record of the property in issue, Portion 62 of Farm 1270 and it is Title Deed Land. Her office does not register Swazi Nation Land.

[12] The rest of PW2's evidence was aptly captured in the Plaintiff's heads of argument as follows:-

“16 This witness also gave very educational evidence on the history of land in Swaziland with specific references and times. She told the court that land in Swaziland was once all under concession land and it was later divided into three (3) types, with different apportionment to Crown grant land, Swazi Nation Land and some concession remained. She said even today we still have those three types of land in the Kingdom. The above took place whilst the country was still under colonization and she gave evidence on how disputes arising from land were handled by then which is also provided for in THE CONCESSIONS ACT, 1904, which provides amongst other things, the recognition of grants concessions under Section 2, appointment of define boundaries under Section 3 and 5 respectively, suspensions of certain concessions under Section 4 and the establishment of Towns under Section 7.

17 This witness thereafter gave a full historical background of the property in issue dating back to 1920, which is as follows:-

‘In 1935 the Remaining Extent of Concession 182L was proclaimed a Crown Land No. 252 and allocated a Farm No. 654. The Crown granted freehold title to Eliza Inskip in respect of the said property. The said Eliza Inskip held the said property under Crown Grant No. 17/1935.’

‘In 1920 Concession 133L was proclaimed a Crown Land Lot No. 185 and allocated a Farm No. 286. The said Farm No. 286 was sold to James Inskip who held the property under Crown Grant No. 33/1920. The late James Inskip bequeathed the Remaining Extent of Farm No. 286 to Eliza Inskip.’

‘In 1970 Eliza Inskip consolidated the above-mentioned properties to form Farm No. 892 and held same under Certificate of Consolidated Title No. 196/1970 registered on the 10th July 1970.’

‘In 1979 Eliza Inskip transferred the whole of Farm No. 892 to Mary Inskip and Eunice Inskip. Who held same under Deed of Transfer No. 10/1979 registered on the 17th January 1979.’

‘In 1984 Mary Inskip and Eunice Inskip subdivided Farm No. 892 and took out Portion I thereof and obtained a certificate of registered title in respect of the said Portion and held it under

Certificate of Registered Title No. 309/1984 registered on the 30th November 1984.'

'In 1990 Portion 1 of Farm No. 892 was further subdivided by Mary Inskip and Eunice Inskip into several Portions. The joint owners consolidated the Remaining Extent of Portion 1 of Farm No 892 and the Remaining Extent of Farm No. 892 to form Farm No. 1270 and held it under Certificate of Consolidated Title No . 209/1990 registered on the 20th of April 1990.'

'In 1990 the joint owners of Farm No. 1270 executed deeds of partitions transfer being Deed of Partition Transfer No. 211/1990 registered on the 20th April 1990 made in favour of Mary Inskip in respect of Portion 4 of Farm No. 1270 and Deed of Partition Transfer No.212/1990 registered on the same date made in favour of Eunice Inskip in respect of the Remainder of Farm No. 1270.'

'In 1995 Mary Inskip subdivided Portions 5 of Farm No. 1270 to take out Portion 10 (a Portion of Portion 4) of Farm No. 1270 and transferred the said Portion to Mary Hazel Inskip under Deed of Transfer No. 46/1995 registered on the 21st February 1995.'

'In 2000 Mary Inskip transferred the Remaining Extent of Portion 4 of Farm No. 1270 to Eliza Investments under Deed of Transfer No. 368/2000 registered on the 15th August 2000.'

'In 2005, Eliza Investments subdivided the Remaining Extent of Portion 4 of Farm No. 1270 to take out Portion 49 of Farm No. 1270. The said Portion 49 of Farm No. 1270 was transferred to Mavis Hazel Inskip under Deed of Transfer No. 483/2005 registered on the 6th July 2005.'

'In 2006, Mary Hazel Inskip transferred the whole of Portion 49 of Farm No. 1270 to the Quadro Trust under Deed of Transfer No. 95/2006 registered on the 1st December 2006.'

'In 2007, The Quadro Trust subdivided Portion 49 of Farm No. 1270 to take out Portion 62 (a Portion of Portion 49) of Farm No. 1270 and subsequently transferred the said Portion 62 to Thomas Moore Carl Kirk under Deed of transfer No. 951/2007 registered on the 6th December 2007.'

18 She mentioned that all the people mentioned above held Title Deeds in respect of the property in question and for all intents and purposes it was registered in her office.

19 It was also her evidence that for land to be a Farm it has to be sold by the Government after concession land has been proclaimed Crown Land. The court is hereby referred to THE CROWN LAND ACT, 1949 in which some concession lands were proclaimed Crown Land. This Act provides specifically which concession land is being converted into Crown Land.”

[13] PW2 further told the court that the Title Deed of the property in issue Exhibit 3, was prepared by her office and is authentic. The property was not returned to the chieftaincy of Ekufinyeni nor is it Swazi Nation Land as alleged by the 1st Defendant. It is privately held Title Deed Land.

[14] Under cross-examination, PW2 told the court that the property originated from two land concessions, namely, Portion 182 and 133. She told the court that in 1907 concessions were demarcated to the effect that 1/3rd was for the exclusive use of Swazis and 2/3rd was demarcated for further use of Government for the development of the country. She stated that it is not correct that Portion 182 was demarcated to be held by the Ingwenyama in trust for the Swazi Nation and it is not correct that the land held by the Ingwenyama was later returned to the chieftaincy of Ekufinyeni. She stated that Crown Grant No. 33/1920 is evidence of the fact that concession land proclaimed Crown lot land 185, was sold by Government to James Inskip.

[15] **THE 1ST DEFENDANT’S CASE**

For her own part the 1st Defendant led the evidence of one witness, DW1, Mr Gideon Fonono Roy Dube. He told the court that the property in question does not have a Title Deed or Portion Number, because it is part of the Ekufinyeni Royal Kraal belonging to the King. That it is the administrative capital of His Majesty The king, which originated from Ludzidzini, which is the National Capital. That

after the King has attended the Incwala Ceremony for about two or three times, then an administrative capital is established, for instance Lozitha, which was the administrative capital for His Majesty, King Sobhuza 11.

- [16] DW1 sought to trace the history of the Ekufinyeni Royal Kraal to the reign of King Sobhuza 11, but it soon became apparent that his testimony was substantially hearsay, as he admitted that he was not present during the historic time, but gleaned knowledge of the alleged facts from his grandfather, whom he stated was the headman of the place. DW1 further testified that the property in question is not a Farm and has never been a Farm. DW1, who told the court that he is 87½ years old, further testified that he knows James Inskip historically and not personally.
- [17] DW1 also stated that before King Sobhuza 11 died he was then a Teacher at Zombodze National School. That the King told Prince Mshelevu and TV Nthethwa in his presence that he wanted to revive the Ekufinyeni Royal Kraal and asked them to go and find a perfect place where the Royal Kraal will be placed. He said King Sobhuza 11 was in the process of reviving the Ekufinyeni Royal Kraal when he died. DW1 also told the court that he was part of the delegation which appeared before the Land Management Board concerning Portion 62 of Farm 1270. That the outcome of that deliberation is contained in exhibit 4.
- [18] Under cross-examination, DW1 told the court that Ekufinyeni Royal Kraal is now at Malkerns under Chief Lusendvo Fakudze. He admitted that he is aware that Malkerns has now been declared a town after these proceedings were instituted.
- [19] DW1 posited that the Concession Order (Exhibit 5) is proof that after Swaziland regained its sovereignty from its Colonial Masters, the King called a Sibaya where he informed the people that all farms and concessions will be returned back to the

people and that if anyone had a concession that had not yet expired they must come back to the King so that they make a new agreement.

[20] DW1 further told the court that there are no Title Deed Lands in Swaziland. He said even though he is aware of the Deeds Registry, he did not know its functions.

[21] He admitted knowledge of the fact that after the decision of the Land Management Board as contained in exhibit 4, the Board referred the matter back to the Tribunal in 2012, after it had found that the land was a farm. He stated that the matter is still pending before the High Court, because the Plaintiff in that case, had raised the doctrine of acquisitive prescription.

[22] **ANALYSIS OF EVIDENCE LED**

Now, I have put the case for the Plaintiff and that for the 1st Defendant on an imaginary scale and weighed them, and the scale, is in my view, firmly tilted in favour of the Plaintiff.

[23] I say this because, there is no doubt that the property was originally concession land. This is common course evidence. It soon became obvious through the evidence of PW2, which evidence was not discredited under cross-examination, that by the Concession Partition Act 1907, all concessionary land in Swaziland were partitioned. 1/3 of the concessions was set apart for the exclusive use of the Swazis (i.e Ticintsi). The remaining 2/3 rd was converted to either Crown land or Freehold Title to the concessionary upon application to the Government.

[24] The property in question which fell under land concession 133 was taken by government and proclaimed Crown land lot 185. It was allocated Farm No. 286 and sold to James Inskip who held it under Crown Grant No 33/1920. Suffice it to say that it was Farm No. 286, which over the years and pursuant to a long line of

Title Deed Holders, metamorphosed into Portion 49 of Farm 1270 held by Mary Hazel Inskip, a descendant of James Inskip, who in 2006 sold it to Quadro Trust under Deed of Transfer No. 951/2006. Quadro Trust in 2007, subdivided Portion 49 of 1270 to take out Portion 62 (a Portion of Portion 49), which they subsequently transferred to the Plaintiff, Thomas Moore Carl Kirk, under Deed of transfer No. 951/2007.

[25] During the inspection in loco, PW1 identified the property as being that held under Deed of Transfer No 951/2009 belonging to the Plaintiff. He identified the pegs which his office used to demarcate the land which he says was done after the Plaintiff produced proof of ownership, applied to the Board for the subdivision and obtained a certificate of consent from the Minister. He stated that his office will not subdivide any land without the certificate of consent from the Minister. This is in terms of **sections 4 and 5 the Subdivision of Land Act 1957**, which states thus:-

“Approval of plans and land transfer subject to Act.

4. The Surveyor-General shall not approve the diagram nor shall the Registrar of Deeds effect registration of the transfer or lease of any land which has been sub-divided contrary to the provisions of this Act.

Evidence of authority to sub-divide

5. A certificate under the hand of the Minister that the Board has consented to any sub-division, or that he is satisfied that the consent of the Board is in terms of section 7 (1) (vi) and (vii) not required, shall for the purpose of this Act be conclusive evidence of such consent or of such not being required.”

[26] I accept PW1’s evidence. He, in my view, is the most competent witness to attest to these facts. His office as Surveyor-General confers him with this honour. This is in terms of **section 3 of the Land Survey Act 1961**, which postulates:-

“3 (1) There shall be a Surveyor-General for Swaziland who shall be a person appointed by the Minister with the concurrence of the Prime Minister, and who shall be subject to this Act.

- (a) supervise and control the survey and charting of land for purposes of registration in the Deeds Office;**
- (b) take charge of and preserve all records appertaining to surveys of land;**
- (c) examine all general plans and diagrams of surveys of land before any registration of such land is effected in the Deeds Office, and approve all such plans and diagrams if he is satisfied that such surveys have been carried out in such a manner as to insure accurate results, and that such general plans and diagrams have been prepared and the boundaries of the land surveyed have been defined in accordance with the regulations;**
- (d) define on the diagram of any piece of land the geometrical figure representing any portion of such land –**
 - (i) the transfer whereof has been registered in the Deeds Office, and deduct the numerical extent of such portion;**
 - (ii) for which a certificate of township title or a certificate of registered title has been issued under any law relating to the registration of deeds, and deduct the numerical extent of such portion.**
- (e) cancel or amend in accordance with any law any general plan or diagram found to be incorrect;**
- (d) at the request of any person and on payment by such person of such fees as may be prescribed, prepare, certify and issue copies of diagrams and other documents filed in his office which are available to the public, and copies of general plans and diagrams registered in the Deeds Office.**

(Amended K.O-1-C. 35/1973)

(2) Any officer employed in the Surveyor-General’s office who is a land surveyor may, if deputed thereto by the Surveyor-General, do any act or thing which may lawfully be done under this Act or any other law by the Surveyor-General.”

[27] Then there is section 5 of the same Act, which states as follows:-

“5 (1) A land surveyor shall –

- (a) carry out every survey undertaken by him in such manner as will ensure accurate results, and in accordance with this Act;**
 - (b) be responsible to the Surveyor-General for the correctness of every survey carried out by him or under his supervision, and or every general plan and diagram which bears his signature;**
 - (c) deposit with the Surveyor-General for the purpose of being permanently filed in the surveyor-General’s office such records as may be prescribed relative to every survey carried out by him after the commencement of this Act for the purpose of, or in connection with, any registration of land in the Deeds Office, and relative to every general plan or diagram prepared as a result of any such survey, and replacement of a lost beacon; and**
 - (d) when required by the Surveyor-General, without delay correct, in any survey carried out by such land surveyor after the commencement of this Act or in any work appertaining thereto, any error which is in excess of the prescribed limits of error and take such steps as may be necessary to ensure the amendment of any diagram, general plan and title deed based on such incorrect survey and to adjust the position of any beacon which he has placed in accordance with such incorrect survey.**
- (2) The Surveyor-General shall examine all such records as are mentioned in subsection (1) (c) before approving any general plan or diagram to which such records refer.**
- (3) Neither the Government nor any officer thereof shall be liable for any defective survey or work appertaining thereto, performed by a land surveyor, notwithstanding that a general plan or diagram relating to such survey or work has been approved by the Surveyor-General or accepted for registration in the deeds Office.”**
(underlining mine)

[28] This backs up PW1's evidence that his office is the custodian of all surveys in Swaziland and that he is familiar with them.

[29] PW2 corroborated PW1 in material respects. She also told the court that the Deed of Transfer was issued by her office and it is authentic. I am highly persuaded by the evidence of PW2 as to the history, of the property and the authenticity of the Title Deed. The history, which I detailed in para [12] above, is in conformity with the process of disposal of Crown Land, after it was converted as such from concession land, in terms of **section 3 of the Crown Land Disposal Act 1911**, which states thus:-

“The Minster may dispose of Crown lands by grant, sale, lease or otherwise in such manner and on such conditions as he may deem advisable, and may grant any Crown Land or interest therein if it shall appear to him expedient to do so.”

[30] PW2's knowledge of the history of the property is beyond dispute, because, by virtue of her office as the Registrar of Deeds, she is vested with the power of preserving the record at the Deeds Registry as well as the examination and registration of Title Deeds. This duty is conferred on PW2 pursuant to **section 5 of the Deeds Registry Act, 1968, (The Deeds Act)**, the relevant portions which state as follows:-

“ The Registrar shall –

- (a) take charge of and preserve all records of the Deeds Registry referred to in section 3 (2) and of the Deeds Registry established by section 3 (1);**
- (b) examine all deeds or other documents submitted to him for execution or registration, and after examination reject any such deed or other document the execution or registration of which is not permitted by this Act or by any other law, or to the execution or registration of which any other valid objection exists;**

Provided that such deed or document need not be examined in its entirety before being rejected;

- (c) register grants or leases of land lawfully issued by the Government and register amendments, renewals and cancellations of such leases, and leases of any part of the property leased;
- (d) attest or execute and register deeds of transfer of land, and execute and register certificates of title to land.

- (t) register general plans of lots or of subdivision of land, open registers of the lots or subdivisions of land shown on such general plans and record in such registers the conditions upon which the lots or subdivisions have been laid out or established;

- (v) make, in connection with the registration of any deed or other document, or in compliance with the requirements of any law, such endorsements on any registered deed or other document as may be necessary to give effect to such registration or to the objects of such law;

- (x) remove from his records, with the approval of the Master and after the lapse of ten years from the date of entry in such records, any entry made therein, whether before or after the commencement of this Act, in pursuance of the transmission to him of a notice of liquidation or any Order of liquidation or sequestration or in pursuance of the lodging with him by the Master of a return in terms of section 66 of the Administration of Estates Act, No. 28 of 1902;

- (y) keep the registers prescribed under this Act or any other law, and make such entries therein as are necessary for the purpose of carrying out the provisions of this Act or such other law and of maintaining an efficient system of registration calculated to afford security of title and ready reference to any registered deed.” (emphasis added)

[31] Learned Defence Counsel Mr Motsa, has urged the court not to rely on the impressive historical background set out by PW2, because, so goes the argument, she did not state her source of information as it is apparent that her office was

established by the Deed Act, yet the land in question is said to have been granted Freehold Title between 1920 – 1935.

[32] I am unable to subscribe to the foregoing proposition. PW2 categorically told the court that she is the custodian of the record of land in Swaziland. This was not disputed by the defence and it is confirmed by section 5 of the Deeds Act. In any case, the mere fact that the land was registered prior to the commencement of the Deeds Act, does not take it outside the purview of the Deeds Registry and the custody of PW2. Section 3 (3) of the Deeds Act takes care of this situation in the following words:-

“All deeds which have been validly registered in the deeds office existing at the commencement of this Act shall be deemed to have been as validly registered to all intents and purposes as if they had been registered at the Deeds Registry or established in terms of subsection (1).”

[33] I agree, therefore, totally with Mr. Fakudze, that inasmuch as the documents relating to the property date back to as early as 1920, the documents are deemed to have been prepared and registered by the Deeds Registry and under the custody of PW2. She is familiar with them and is the most competent witness to give evidence of these facts.

[34] In view of the indisputable evidence that a Deeds Registry does exist in Swaziland where Titles to Freehold properties are registered, the evidence of DW1 to the effect that there are no Freehold properties or Title Deeds in Swaziland, falls flat on its face.

[35] There is yet another contention by DW1, which is not sustainable. This contention is that Exhibit 5 is proof of his proposition, that after Swaziland regained sovereignty from the British, the King called a Sibaya where he announced that

all farms and concessions, will be reverted back to the people, therefore, the property in issue reverted back to the Kingdom, as Swazi Nation Land.

- [36] The foregoing allegation is not borne out of Exhibit 5, **The Land Concession Order of 1973**. Exhibit 5 refers to concession title or lease which was still in force as at 8th May 1973. For the avoidance of doubts paras 3 and 4 which are the relevant portions of Exhibit 5, state as follows:-

“Concession land to be held at the will and pleasure of the King

3. **Notwithstanding anything in any other law any land held in Swaziland by a concessionaire, whose concession title or lease is still in force, shall be so held at the will and pleasure of the King on such terms as he may determine.**

No right to have concession land converted to freehold title

4. **Notwithstanding any other law a concessionaire shall not be entitled as of right to be issued with freehold title in respect of any land or portion of land held by him under a concession title or lease.”**
(underlining mine)

- [37] What stands out in its stark enormity, is that, the foregoing legislation finds no application in the property *in casu*, which uncontroverted evidence has shown ceased to be concession land as far back as 1920. That was when it acquired private Freehold Title after it was sold by Government to James Inskip and held by him under Crown Grant No. 33/1920.

- [38] Then there is the suggestion by DW1, that due to the desire of His Majesty, King Sobhuza 11 to revive the Ekufinyeni Umphakatsi, the property and the whole area wherein it is located was converted as such. This is where DW1’s evidence posed serious challenges. He became quite contradictory, speaking two different languages in the same breath. I say this because the same witness turned around to tell the court that His Majesty King Sobhuza 11 was in the process of reviving the

Umphakatsi when he died. Implicit from this evidence is that the Ekufinyeni Umphakatsi had not been revived before the death of King Sobhuza 11. DW1 failed to tell the court when it was so revived. This simply leads me to the conclusion that the property is not part of the Ekufinyeni Umphakatsi, or Swazi Nation land, but privately held Freehold property as confirmed by the testimonies of PW1 and PW2.

[39] What remain for me to add, is that even though 1st Defendant alleged in her plea that she was born and raised on the said property at a time when it still had Concessionary Title Status, she has adduced no evidence whatsoever in proof of these material allegations of fact. Pleadings do not constitute evidence. A party is required by law to adduce evidence in proof of the material facts alleged in her pleadings. This is not the case here. I thus discountenance this defence.

[40] For the above stated facts, I find that the Plaintiff has proved on the balance of probabilities, that the property in issue is privately held Freehold property and that his Title Deed is authentic.

[41] **ORDER**

I grant judgment to the Plaintiff and make the following order :-

1. That the 1st Defendant and all those claiming occupation under her (i.e the 2nd to 7th Defendants and their successors in title and assigns) be and are hereby evicted from Portion 62 (a Portion of Portion 49) of Farm 1270, situated in the District of Manzini.

2. That the Deputy Sheriff duly assisted by members of the Royal Swaziland Police Force, if need be, be and is hereby authorized to execute the court order.
3. Costs to follow the event.

**DELIVERED IN OPEN COURT IN MBABANE ON THIS
THE DAY OF2014**

**OTA J.
JUDGE OF THE HIGH COURT**

For the Plaintiff:

T. Fakudze

For the 1st Defendant:

S.B. Motsa

6th to 7th Defendants unrepresented