



IN THE HIGH COURT OF ESWATINI
JUDGMENT

Case No. 1591/2013

In the matter between:

Priscilla Dlamini

Applicant

And

Hunter Shongwe

1st Respondent

Oupa Lapidos N.O.

2nd Respondent

Wilson Ndlavela Mavimbela N.O.

3rd Respondent

The Royal Swaziland Police

4th Respondent

The Attorney General

5th Respondent

Neutral citation: *Priscilla Dlamini v Hunter Shongwe and 4 Others*
(1591/2013) [2018] SZHC 150 (10 July 2018)

Coram : **T. L. Dlamini J**

Delivered : 10 July 2018

Summary: *Application proceedings – Oral agreement to lease a house situated on Swazi Nation Land – Renovation of the house by the lessee – Termination of lease following disagreements – Refusal by lessee to vacate unless paid compensation for the renovations – Intervention by umphakatsi (Chiefdom) – Disregard of decision of the umphakatsi by lessee – Failure of attempts to evict lessee pursuant to the decision issued by the umphakatsi – Resort to court for enforcement of the eviction order.*

Held: *That orders of umphakatsi are made in terms of Swazi Law and Custom which is part of the law to be recognized, applied and enforced.*

Held further: *That the decision of the umphakatsi is made an order of court following the difficulty encountered in enforcing it – Application upheld with an order for costs.*

JUDGMENT

[1] The applicant is an adult female of Zulwini under the Ezulwini *umphakatsi* (Chiefdom) in the Hhohho region.

[2] The 1st respondent is an adult male who currently resides at Zulwini, Hhohho region, under the jurisdiction of the Ezulwini *umphakatsi*. He

resides in a two bedroom flat (hereinafter referred to as the house) that is owned by the applicant.

- [3] The 2nd respondent is a leader of the community police for the Ezulwini *umphakatsi*. The 3rd respondent is the *Indvuna yeMculo* for the *umphakatsi* (of Ezulwini) whilst the 4th and 5th respondents are agents of the government who have been cited for the purpose of ensuring enforcement of the orders of this court.
- [4] The applicant has applied for an order registering a decision of the *umphakatsi* of Ezulwini as an order of this court. The decision evicts the 1st respondent from the applicant's house situated under the Ezulwini *umphakatsi* and was issued on the 13 October 2012.
- [5] The applicant also seeks an order directing the Deputy Sheriff for the District of Hhohho to effect the eviction order, and that the Royal Eswatini Police should be directed to assist the Deputy Sheriff in executing the order.
- [6] The applicant contends that the 2nd respondent, acting in his capacity as a leader of the community police of Ezulwini, made several attempts to enforce the decision of the *umphakatsi* by evicting the 1st respondent from the house but without success. The 1st respondent threatened the 2nd respondent and his agents with violence when attempting to effect the

decision of the *umphakatsi*. He went to the extent of informing them that he was going to shoot them if they attempted to come near the house.

- [7] The applicant further contends that attempts to seek assistance of the Royal Eswatini Police in effecting the decision of the *umphakatsi* are unsuccessful. The police Regional Commander, One Mr Mbhamali, according to the applicant, demanded a court order that directed the police to eject the 1st respondent from the house.
- [8] Efforts to explain that the Ezulwini *umphakatsi* issued the decision and has the jurisdiction over the matter fell on deaf ears as the police did not listen. The police maintained their position and demanded an order that has been issued by this court. It is this attitude of the police that compelled the applicant to approach this court for the relief she seeks.
- [9] The applicant states in her founding affidavit that sometime in February 2009 she entered into an oral agreement with the 1st respondent for the rental of the house. She further states that the 1st respondent however failed to pay the agreed rental amounts since that time till to date. The reason for refusing to pay is that the 1st respondent demands compensation for renovating the house. He insists that he will not vacate until he is paid the compensation in the sum of **E100, 000**. He threatened the applicant with violence and that he will shoot her if she continues demanding the monthly rentals.

- [10] The applicant alleges that the 1st respondent went to the extent of informing her that he would never vacate the house notwithstanding that he was not paying the monthly rentals. In March 2010 she verbally gave the 1st respondent the required notice to vacate the house but he became violent, insulted her and threatened to shoot her.
- [11] In January 2011 the applicant again instructed the 1st respondent to vacate the house but he still refused. He reiterated that he will not vacate until he was paid for the improvements that he made. The applicant thereafter requested him to furnish her with proof of payments for the improvements but he refused to produce any.
- [12] In September 2012 the applicant then approached the *umphakatsi* of Ezulwini and reported the matter. On hearing the applicant's complaint, the Ezulwini *umphakatsi* summoned the 1st respondent. He however refused to attend as summoned and claimed that he was not a subject for the Ezulwini *umphakatsi*. The *umphakatsi* became kind enough as it did not dwell on his refusal to attend but instead requested the applicant to further discuss the issue with the 1st respondent.
- [13] In the company of her brothers Mphilo, Lethuxolo and Paul Dlamini, the applicant went to the house in October 2012 but again the 1st respondent told them in no uncertain terms that he won't vacate the house until he is paid the compensation amount of E100, 000.

- [14] The applicant's brother Lethuxolo filed an affidavit and confirmed their visit to the house in October 2012. The 1st respondent however reiterated his stand and refused to vacate until he was paid the sum of E100, 000 for the renovations.
- [15] The Ezulwini *umphakatsi* thereafter summoned the 1st respondent but again he did not appear before it. It was on this day that the Ezulwini *umphakatsi* issued its decision for the eviction of the 1st respondent from the house. However, the decision could not be enforced because of the 1st respondent's belligerence and threat to shoot anyone who attempted to effect it.
- [16] I must mention that soon after the Ezulwini *umphakatsi* issued its decision for the eviction of the 1st respondent from the house, the 1st respondent filed an urgent application with this court bearing the citation: **Hunter Shongwe v Priscila Dlamini and 2 Others (1834/2012) [2012] SZHC 259 (13 December 2012)**. He sought an order interdicting his eviction from the house. The pleadings of this case were attached to this application and they form part of the pleadings for this case.
- [17] The urgent application was dismissed by this court. On appeal, the Supreme Court also dismissed it with costs following an application that was made by the applicant herein to have the appeal declared abandoned.

[18] The 1st respondent's case is that on the 14 July 2013 the decision of the Ezulwini *umphakatsi* was appealed against and is pending before the Ludzidzini Council under the Swazi Law custom of "*Kwembula Ingubo Enkhosini*" (appealing to the King). He states in his opposing affidavit that the Ludzidzini Council is a court of competent jurisdiction and the matter is pending determination and finalization before it. He accordingly contends that the present application before this court is an abuse of the process of the court. This is more true, he submits, because the Ludzidzini Council enjoys supremacy over the Ezulwini *umphakatsi*.

[19] The 1st respondent contends that the Ezulwini area is on Swazi Nation Land and a person may therefore only be evicted by order of the King. He denies that there was any lease agreement between him and the applicant. He submitted that in respect of Swazi Nation Land, there is no lease agreement permissible in terms of Swazi Law and Custom. He further submitted that same would only be acceptable in common law which is administered by courts of general jurisdiction.

[20] By courts of general jurisdiction I am of the view that the 1st respondent is referring to the civil law courts as opposed to courts administering Swazi Law and Custom. He also contended that his occupancy of the house was by agreement acceptable at common law which is administered by courts of general jurisdiction.

[21] In response to the averments made by the applicant, the 1st respondent generally denies them and maintains that what he seeks is compensation for renovations that he made to the house. In paragraphs 11, 12,13,15, and 16 of his opposing affidavit, the 1st respondent states his case as follows:

“ The contents hereof are denied where they go beyond my claim for compensation for renovations to the dwelling”.

[22] There is no doubt that the only reason which the 1st respondent has and advances for his refusal to vacate the house is that he wants to be compensated for renovations that he made.

[23] Based on analysis of the pleadings and submissions made, the issues for determination are the following:

- (a) whether or not the decision of the Ezulwini *umphakatsi* was wrongfully and unlawfully made;
- (b) whether the decision (of evicting the 1st respondent) made by the Ezulwini *umphakatsi* is pending before the Ludzidzini Council;
- (c) whether there is in fact in existence an order for the eviction of the 1st respondent that was issued by the Ezulwini *umphakatsi*; and
- (d) whether the decision of the *umphakatsi* can be registered as an order of this court.

[24] I now proceed to determine these issues. It was submitted that the applicant did not have, and she still does not have, the right to approach the Ezulwini *umphakatsi* alone to report the dispute. It was argued that she is a married woman and the house in question is an *intsanga* (a hut or room for the girls) that is situated in a Dlamini homestead. The complaint was therefore to be made to the *umphakatsi* by the Dlamini family and not the applicant. By giving audience to the applicant, it was submitted on the 1st respondent's behalf that the *umphakatsi* acted wrongfully and unlawfully. The application before court, it was argued, is accordingly based on an illegality that was committed by the *umphakatsi*.

[25] It is common cause that the 1st respondent took occupation of the house on the basis of an agreement that was between him and the applicant. It is an undisputed fact that 1st respondent did not occupy the house on the authority of any other member of the Dlamini homestead but did so on the authority of the applicant alone.

[26] In the founding affidavit of the urgent application that 1st respondent filed under Case No. 1834/2012, he deposed as quoted below:

*“8.1 When the 1st Respondent's father **Mashampu Dlamini** died in the 1990's I became acquainted to the 1st Respondent who requested me to assist her in protecting her house from her brothers who were then laying claim to it after the death of their father.*

- 8.1.1 *The house is situated at the homestead of the said **Mashampu Dlamini** but was constructed by the 1st Respondent (own emphasis)*
- 8.2 *I agreed to lease out the house for E300.00 (three hundred emalangeni) per month to one tenant called **Bob** who stayed in the house for about 15 (fifteen) years.*
- 8.3 *The said tenant paid the rent direct to my office and I would in turn pay over what was due to the 1st Respondent after deducting my fees. (own emphasis)*
- 8.4 *When **Bob** left I leased it again to another tenant called **Madzabu** for E400.00 (four hundred emalangeni) a month and he stayed in the house for about 5 years. He also paid the rent to my offices and I in turn would pay over what was due to the 1st Respondent. (own emphasis)*
- 8.5 *Then in or about the year 2009 we got a verbal request from the Royal Swazi Spa to lease the house to the Company.*
- 8.6 *We agreed on terms including that the house would have to be renovated as it was already dilapidated due to old age and then charge rental at E1, 500.00 (one thousand five hundred emalangeni) per month.*
- 8.7 *I informed the 1st Respondent of the latest developments and she agreed and instructed me to go ahead and effect the renovations and she would refund me all payments and expenses incurred on production of the receipts and proof of charges made. (own emphasis)*
- 8.8 *When the renovations were completed Royal Swazi Spa no longer wanted the house as they said they had already*

found alternative accommodation as we had taken too long to finish the renovations.

8.9 *I informed the 1st Respondent upon which she said I should stay in the house in order to safeguard it or preserve it from her brothers who wanted to take it.* (own emphasis)

8.10 *I did so and since about June 2009 I have stayed in the house without any problems from the 1st Respondent.*

8.11 *On the very first day I occupied the house the 1st Respondent's brothers blocked the entrance until the 1st Respondent herself came in the company of the Police and intervened and she told her brothers that she is the one who had given me the right to stay in and guard the house."*
(own emphasis)

[27] Based on the above quoted depositions by the 1st respondent who was an applicant then, there is no merit in turning around today and argue that the *umphakatsi* acted wrongfully and illegally in granting audience to the applicant.

[28] The 1st respondent deposed under oath that he occupied the house on the authority of the applicant (who was the 1st respondent then). He made renovations to the house on the basis of an instruction given to him by the applicant. Rentals for the house were paid through his offices and he would give them to the applicant who owns the house. When brothers of the applicant questioned how the 1st respondent came to reside in the

homestead, the applicant intervened and informed them that she is the one who gave him permission to stay in the house and guard it.

[29] For the above reasons, I find that the 1st respondent's submission that the Ezulwini *umphakatsi* acted wrongfully and unlawfully in giving audience to the applicant is without merit and is therefore rejected and dismissed by this court.

[30] The 1st respondent also submitted that the decision of the *umphakatsi* which evicts him from the house was reported to and is pending before the Ludzidzini Council. This was confirmed by Timothy Velabo Mthethwa in an affidavit that 1st respondent attached to his opposing affidavit. Mr Mthethwa was the Acting *Indvuna* (Governor) of Ludzidzini Royal Residence and was also the chairperson of the Ludzidzini Council at the time.

[31] Mr Mthethwa *inter alia* deposed what I quote below:

3.

*"I do confirm that the matter concerning the eviction of **Hunter Shongwe** by the *umphakatsi* of eZulwini from the house of **Priscilla Dlamini** situated at eZulwini was reported to the Ludzidzini Libandla by **Hunter Shongwe**.*

4.

“I hereby confirm further that the said matter was deliberated upon by the Libandla on the 24th July 2013 and on the 19th August 2013 and the matter is still pending before the Ludzidzini Libandla.”

[32] It was submitted on behalf of the applicant that the Ludzidzini Council is not a proper forum to hear the 1st respondent appeal. Counsel argued that the 1st respondent ought to have approached appropriate structures that have the jurisdiction to deal with his appeal. She submitted that there is therefore no appeal pending because the Council is not the proper forum to deal with the 1st respondent’s appeal.

[32] I have taken judicial notice of the functions and issues that the Ludzidzini Council determines. Primarily, the Council determines issues pertaining to disputes on the question of whether a nominee Chief qualifies for appointment as a Chief and thereafter advise Royalty. The Council also determines and thereafter advise Royalty on issues pertaining to chieftaincy disputes. It also hears appeals brought by subjects of a chieftaincy against decisions taken against those subjects by the chief and his Inner Council. In so doing, the Council plays a supervisory role over chiefs when discharging chieftaincy roles and responsibilities in the areas under their jurisdiction. The Council also determines issues that have been referred to it by Royalty for decision and advice.

[34] The issue in this matter is not one of these issues. I must mention with emphasis that the 1st respondent is not a subject of the Ezulwini

umphakatsi. It is for this reason that he refused when he was twice summoned by the Ezulwini *umphakatsi*.

[35] In her judgment in the matter of **Hunter Shongwe v Priscila (supra)**, **Her Lordship Dlamini J** quotes the 1st respondent's replying affidavit where he states as follows:

“3.1.2 On the contrary when I was summoned by the emissary I raised the issue of the Umphakatsi's jurisdiction to try a case against me since I am not their subject and custom demands that they should approach my chief and request him to send an emissary (lincusa) to accompany me as my chief's representative to see to it that justice is done to me and report back to my Chief what the outcome of the case was”.

[36] The 1st respondent therefore stated in clear terms that he is not a subject of the Ezulwini *umphakatsi*. The issue between the 1st respondent and the Ezulwini *umphakatsi* is clearly not one that is between a subject and his *umphakatsi*. It is therefore not one of those that the Ludzidzini Council determines. Accordingly, I reject the submission and argument that an appeal is pending before the Ludzidzini Council. I am not surprised that the appeal is still pending before the Council even to date.

[37] The 1st respondent is simply in forceful occupation of a house that belongs to the applicant. His claim for the forceful occupation is that the applicant must first compensate him for renovations before he can vacate. He has been in occupation since 2009 and has not denied in his papers before court that he never paid any rentals.

[38] The 1st respondent also deposed that he has appealed to His Majesty the King in terms of the Swazi Law custom of *kwembula ingubo*.

[39] From what is deposed to by 1st respondent and Timothy Velabo Mthethwa, there is no iota of evidence to show that an appeal was made to the King and is pending before him. No person is said to be the emissary who reported and submitted the appeal to the King. There is even no allegation that the matter is awaiting a decision by the King other than the unsubstantiated averment that an appeal was made to him. The former Governor of Ludzidzini Timothy Velabo deposed as quoted in paragraph [31] above. It is my finding that no appeal was made to the King in terms of the Swazi Custom of *Kwembula Ingubo*. *Kwembula Ingubo* specifically refers to directly appealing to the King who may then refer the issue to his *emabandla* (Councils) for deliberation and advice. *In casu*, that is not the case.

[40] I accordingly reject the 1st respondent's submission that he appealed the decision of the *umphakatsi* to the King.

[41] In her judgment in the case of **Hunter Shongwe (supra)**, **Her Lordship Dlamini J** correctly pointed out that in terms of the Swazi Administration Act as amended, the function and powers of chiefs are to promote the welfare of their subjects by maintaining peace and order, prevent crime and apportion land to subjects who are deemed fit by that authority. In the

exercise of their functions, Chiefs are empowered to adjudicate over cases of persons who reside in the area of their jurisdiction (see paragraph 16).

[42] It is accordingly my finding that the Ezulwini *umphakatsi* exercised a power that is vested in it when it issued the decision for the eviction of the 1st respondent from the applicant's house.

[43] The 1st respondent further raised an issue that the applicant's founding affidavit is based on untruthful allegations and the court is therefore not to trust her depositions.

[44] In pointing out the untruthful depositions, 1st respondent makes reference to paragraph 9.2 of the applicant's replying affidavit where she states that "*to my knowledge, the matter was finalized and then referred back by the Eludzidzini Libandla to the Ezulwini Umphakatsi*".

[45] When substantiating the submission regarding the alleged untruthfulness of the applicant, the 1st respondent referred this court to the supporting affidavit deposed to by Timothy Velabo Mthethwa. He therefore implored the court to dismiss the entire application and take a similar position that **Justice Maphalala PJ**, as then he was, took in the case of **Fangtheni Bongani Mthethwa vs The King, High Court Case No. 327/08 (unreported)** where he stated as follows:

“[25]... *If it is found that what has been deposed to under oath is a lie, the whole case crumbles*”.

[46] It is my considered view that I would be doing an injustice to do as implored by the 1st respondent’s attorney. The aspect on which the lie was made in the matter before **Justice Maphalala** was fundamental to the decision that the court had to make. That is not the situation *in casu*.

[47] Before **Justice Maphalala** Mr Fangtheni Mthethwa was seeking bail which his co-accused persons had already been granted. He deposed and maintained in his affidavits that he is a Swazi of Zombodze in the Shiselweni region and that he resided at Mbazwane in the Republic of South Africa before his arrest. The crown opposed the application for only one reason, *viz*; that the applicant is a South African citizen and will abscond trial if admitted to bail.

[48] In an attempt to get clarity about the citizenship issue, the court ordered that the evidence of the mother be called as the applicant mentioned in his founding affidavit that in view of the urgency of the matter he could not file her confirmatory affidavit.

[49] On the return date the court was informed that the mother was married in Mbazwane in South Africa and her husband strongly opposed to her coming to Eswatini to give evidence in the case. This was proof of the Crown’s ground for opposing the bail application. The applicant was

found to be residing in Mbazwane, South Africa, and not in the Shiselweni region as implied by his affidavits.

[50] *In casu*, the alleged lie for which the 1st respondent implores the court to dismiss the application is not fundamental to the decision that the court is to make. The cases are therefore distinguishable.

[51] The fundamental issues for determination *in casu* are, firstly, the lawfulness of the 1st respondent's occupation of the applicant's house. Secondly, whether the Ezulwini *umphakatsi* properly issued the order for his eviction from the house, and thirdly, whether the decision of the *umphakatsi* is *lis pendens* before another appropriate forum that has the jurisdiction to hear an appeal of the decision.

[52] For the above reasons, the 1st respondent's argument that the applicant's case should be dismissed because it is based on untruthful facts is rejected. When the facts are considered in their totality, a legally unanswerable case is made in favour of the applicant.

[53] The 1st respondent also submitted that there is no document that was furnished to this court as proof of the order that is said to be a decision of the *umphakatsi*. It was argued on his behalf that the applicant is untruthful and cannot therefore be trusted.

[54] The attorney for 1st respondent submitted that an original, authentic document ought to have been furnished to the court. At the least, a transcript of the proceedings, or minutes recorded by the Secretary of the Inner Council or an affidavit of the *Indvuna*, he argued, were to be furnished to the court. It was his argument that there is no proof of the existence of the order and the court was implored to find that the alleged order was never issued.

[55] I am astonished by the foregoing submission and argument. The 1st respondent is in fact blowing hot and cold. From the pleadings of both parties, it is common cause that the Ezulwini *umphakatsi* issued an order for the eviction of the 1st respondent from the applicant's house at Ezulwini area. In paragraphs 14 and 15 of the founding affidavit the applicant deposed as follows:

“14. On or about the 13th October 2012, the Ezulwini Umphakatsi issued an order inter alia directing as follows, that:

14.1 The 1st Respondent be evicted and/or ejected from a house belonging to myself, which house is situate at Ezulwini, District of Hhohho, at Ka Dlamini homestead

14.2 ...

15. The above mentioned orders, in particular the order in paragraph 14.1 was issued pursuant to myself approaching the Ezulwini Umphakatsi to seek their assistance in evicting the 1st Respondent who has been refusing to vacate my two bedroom flat situate in the area to date...

[56] In answering the above deposition, the 1st respondent deposed as follows:

“AD PARAGRAPH 15

The contents hereof are denied especially as relates to a legal eviction order since only by Order of The Ingwenyama Yemaswati may a person be evicted from Swazi Nation Land and this point is central to those pending decision before the Eludzidzini Libandla.”

[57] A confirmatory affidavit deposed to by Timothy Velabo Mthethwa was attached by the 1st respondent and it deposed as *inter alia* quoted below:

3.

“I do confirm that the matter concerning the eviction of Hunter Shongwe by the umphakatsi of eZulwini from the house of Priscilla Dlamini situated at eZulwini was reported to the Ludzidzini Libandla by Hunter Shongwe. (own emphasis)

[58] Based on the above quoted depositions, I find no merit in the argument that there was no order issued by the Ezulwini *umphakatsi* for the ejection of the 1st respondent from the applicant’s house. I accordingly reject and dismiss that argument.

[59] It was also submitted on behalf of the 1st respondent that there are no rules of this court that make provision for the registration of orders of *umphakatsi* to be orders of this court.

[60] In answering the above submission the applicant's attorney referred this court to two judgments, viz; **Maria Duduzile Dlamini v Augustine Divorce Dlamini and 2 Others (550/2012) [2012] SZHC 66 (12th April 2012)** and **Ndzimandze Thembinkosi v Maziya Ntombi and Another (394/2010) [2011] SZHC 129 (17 June 2011)** where the court held as follows:

“ Swazi Customary Law (Swazi Law and custom) is recognized, adopted, applied and enforced as part of the law of the Kingdom of Swaziland pursuant to section 252 (2), (3) and (4) of the Constitution of the Kingdom of Swaziland Act No. 001, 2005. (see paragraphs 14 and 27 respectively)”.

[61] In the case of **Ndzimandze Thembinkosi (supra)**, **Ota J** enforced an order of the Kwaluseni *Umphakatsi* and in so doing stated what is quoted below:

“[42] ... it is obvious to me that the Applicant has exhausted his right of redress before these traditional structures. I see no other option open to him, in the face of the flagrant disobedience and disregard of the verdicts of those traditional structures, displayed by the 1st Respondent, and I must say with impunity and opprobrium, than to approach this court for redress by way of an interdict to enforce the orders of the traditional structures,...”

[62] Likewise, the enforcement of the decision of the Ezulwini *umphakatsi* has failed. Even the Royal Eswatini Police have not been of assistance as they demanded to be first furnished with an order of this court.

[63] The forceful occupation of the applicant's house by the 1st respondent has turned into a serious injustice. It succinctly appears from the pleadings made that the 1st respondent will never vacate the applicant's house until his demand for payment of compensation for improvements has been met. This is confirmed by his resistance since the year 2009.

[64] On the basis of his conduct, I am of the firm view that 1st respondent has resorted to self-help and took the law into his own hands. For him to act in a lawful manner, he ought to claim the compensation through the courts and not the use of force.

[65] It accordingly would be a failure on my part to allow the 1st respondent to remain in forceful occupation of the applicant's house. I find no reason why I should not adopt, apply and enforce the decision of the Ezulwini *umphakatsi* because the *umphakatsi* acted in terms of its powers under Swazi Law and Custom which was adopted by the Constitution as part of the law of the Kingdom.

[66] Serious threats to shoot any person who attempted to enforce the decision of the *umphakatsi* were alleged to have been made by the 1st respondent. This is a serious indictment against the Firearms Licensing Board (the Board). Such threats are to be reported to the police and the Board. The Board has a legal duty to then hear evidence and determine the fitness of

the holder of the firearms licence regarding his or her continued possession of a firearm licence.

[67] On the totality of the evidence and the findings I made, the application succeeds and I find in favour of the applicant.

[68] On the issue of costs, both the applicant and 1st respondent seek costs against each other at attorney and client scale.

[69] I have taken into account the 1st respondent's conduct of disrespecting the Ezulwini *umphakatsi* by defying summons to attend at the *umphakatsi* for a hearing of the dispute that was reported by the applicant. This conduct undermines the authority of the Ezulwini *umphakatsi*. This court seriously frowns upon such conduct because it renders the Kingdom's Swazi Law and Custom valueless yet it is part of the country's laws in terms of section 252(2) of the Constitution.

[70] I have also taken into account the 1st respondent's conduct of resorting to self-help by taking the law into his own hands. He continued to do so even after he failed to have his ejection from the house interdicted by this court.

[70] I cannot turn a blind eye to the fact that 1st respondent has been in forceful occupation of the applicant's house from 2009 up to date. If citizens are

allowed to behave in the manner that the 1st respondent did, this country would be order less and become a disorderly society where survival of the fittest would be the order. This conduct must be discouraged, in my view, with an order for costs at the scale of attorney and client.

[71] For the foregoing, I make the following order:

1. The decision of the Ezulwini *umphakatsi* issued on the 13th October 2012 evicting the 1st respondent from the applicant's house is made an order of this court.
2. The Deputy Sheriff for Hhohho District is ordered and directed to effect this order.
3. The 4th respondent is ordered and directed to assist the Deputy Sheriff in effecting the order.
4. Costs of suit are granted in favour of the applicant against the 1st respondent at the scale of attorney and own client.

T.L. Dlamini

T.L. DLAMINI J

JUDGE OF THE HIGH COURT

For: Applicant : Ms Setsabile Matsebula
For 1st Respondent : Mr Abantu Maphalala
For 4th & 5th Respondent : Mr Vusi Kunene