

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.3326/04

In the matter between:

THOKO IVY MKHABELA. APPLICANT

VS

MBONGENI MKHABELA RESPONDENT

AND THREE OTHERS

CORAM: MATSEBULA

FOR THE RESPONDENTS: MR. MAZIBUKO

JUDGMENT

13th MARCH 2005

By notice of motion dated 21st October 2004, applicant is applying for the following relief:

1. Restraining and interdicting first and second respondent from dealing with or alienating property belonging to the deceased Zachariah Mkhabela of Mabiya in the Hhohho district pending the decision of the Master of the High Court.

2. Directing the first and the third respondent to restore the possession of the applicant following:

2.1 a white Toyota van registered SD 866 LL; a Massey Ferguson tractor;

2.2 a Massey Ferguson tractor;

2.3 a grocery shop;

2.4 a water pump;

2.5 herd of 105 cattle;

2.6 herd of 87 goats;

3. Costs of suit;

4. Further and/or alternative relief.

In support of the application, plaintiff has herself deposed to an affidavit. In the application, applicant called upon the respondent to file papers on or before the 10th November 2004 in the event they oppose the application.

The applicant is legally represented by Miss Masuku and the respondents by Mr. Mazibuko. The first and third respondents were personally served with the notice of motion on the 22nd October 2004 of motion until the filing of the heads of argument which are undated and were handed in from the bar by Mr. Mazibuko on the 18th October 2004. For all intents and purposes, the court treats this notice of motion as one unopposed. Having said that the court will base its judgment on the contents of the applicant's founding affidavit.

Applicant is a senior wife of a polygamous marriage to the late Zacharias Mkhabela who died on the 20th September 2003. From applicant's affidavit, it seems that the delay in winding up the estate and filing the liquidation and distribution account is caused by the delay by the fourth respondent who is the Master of the High Court.

In the circumstances, I would seriously urge it upon counsel for, the applicant to consider the provisions of

Section 84 of the Swaziland Administrational Estate Act No.28 of 1902 with a view to approaching the estate. In the meantime, the winding up of the estate being in the interest of all concerned, the court will grant the following prayers (1), (2), and (3) of the notice of motion.

J. M. MATSEBULA

JUDGE