



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

**Civil Case No: 51/15**

**In the matter between**

**THE COMMISSIONER GENERAL  
[CORRECTIONAL SERVICES]**

**APPLICANT**

**And**

**LUCKY NKULULEKO NDLOVU**

**RESPONDENT**

Neutral citation: *The Commissioner General [Correctional Services] v  
Lucky Nkululeko Ndlovu (51/15) [2015] SZHC 19*  
(23 February 2015)

**Coram: M. S. SIMELANE, J**

**Heard: 23 January 2015**

**Delivered: 23 February 2015**

**Summary: Civil Procedure – urgency – ejection – Application granted.**

### **Judgment**

#### **SIMELANE J**

[1] The application herein came by way of urgency for an order in the following terms:-

- (1) Dispensing with the normal time limits and terms of service and hearing this matter as one of urgency.
  - (2) That the Respondent including all other persons in occupation under him be ejected forthwith from the premises described as Flat No. MA5B/A, situated at Sidwashini Correctional Services Quarters.
  - (3) Costs of Application.
  - (4) Further and/or alternative relief.
- [2] The Respondent opposed the application and raised the following points of law:-

It was submitted by the Respondent that the High Court does not have jurisdiction to hear and determine this matter because the cause of action emanates from an employment contract. It is contended by the Respondents that jurisdiction on such matters is vested on the Industrial Court in terms of Section 8 (1) of the Industrial Relations Act 2000 (as amended).

- [3] It was further submitted by the Respondent that the Applicant has failed to join the Civil Service Commission as a party yet the Respondent is answerable to it. The contention by the Respondent in this regard is that the Civil Service Commission effected the transfer of the Respondent to the Ministry of Labour and Social Security, hence the Civil Service Commission has a direct and substantial interest in the matter.
- [4] The Ministry of Labour and Social Security according to the Respondent should attest on whether the Respondent has been secured an alternative accommodation.
- [5] The Respondent further contends that there is no urgency in this matter because the issues involved started as early as October 2014.
- [6] According to the Respondent the Applicant came to Court with dirty hands as he has already locked out the Respondent from the house in issue.

[7] Having carefully considered the written and oral submissions before this Court, I am inclined to agree with the Applicant that this Court has jurisdiction to hear the matter. This is sanctioned by Section 3 (c) of the Industrial Relations Act of year 2000 which stipulates as follows:-

**“[3] This Act shall apply to employment by or under Government in the same way and to the same extent as if the Government were a private person but shall not apply to:**

**(a) any person serving the Umbutfo Swaziland Defence Force established by the Umbutfo Defence Force Order, 1977.**

**(b) the Royal Swaziland Police Force.**

**(c) His Majesty’s Correctional Services established by Prison Act No. 40 of 1964.”**

[8] On an ordinary interpretation of the relevant section it is evident that the Industrial Relations Act, 2000 shall not apply to His Majesty’s Correctional Services established by the Prisons Act No. 40 of 1964. It is clear that the Act excludes the jurisdiction of the Industrial Court in such matters.

[9] I reject the contention that the Civil Service Commission should have been joined as a party as they have an interest by virtue of the fact that they effected the transfer. I say this because the house in issue was not allocated to the Respondent by the Civil Service Commission but

it is apparent from the papers and an uncontroverted evidence that the Respondent was allocated the house by His Majesty's Correctional Services whilst under the employ of His Majesty's Correctional Services.

[10] It is apparent that this was a benefit in terms of the employment contract. I fail to understand on what basis should the Respondent be entitled to such benefit when he concedes on his own papers before Court that he is no longer under the employ of His Majesty's Correctional Services. I find that the housing benefit he had with the Applicant ceased to exist on termination of the employment contract. I find that he has no right to be in occupation of the said premises.

[11] On urgency, it is apparent that the Applicant is suffering severe prejudice with the Respondent's persistent occupation of the said premises. This is so because he cannot even charge rentals on the Respondent because there is now no lease agreement between the Applicant and the Respondent. The continued unlawful occupation is a serious financial loss to the Applicant.

[12] Furthermore, the Applicant states that another officer by the name of Thomas Vusumuzi Dlamini has since been allocated the Flat in issue and the said officer is greatly prejudiced due to the conduct of the Respondent. He cannot take occupation of the house.

[13] Further to the above there is the confirmatory affidavit of Thomas Vusumuzi Dlamini who states at paragraph 3 of his affidavit as follows:-

**“[3] In particular I confirm that I was allocated the flat which is the subject matter of this application by the Commissioner General after being transferred from Zakhele Remand Centre in the Manzini Region to Correctional Headquarters in Mbabane. I was supposed to start occupation of the flat from the 1<sup>st</sup> January 2015, however due to the Respondent’s refusal to vacate, I am still without accommodation. I further confirm that I have children who will be now schooling in Mbabane who also currently without accommodation. May further (sic) confirm that if the schools open on the 27<sup>th</sup> January 2015 I will be more prejudiced if I am still without accommodation as my family will be without a house.”**

[14] It is apparent on the papers that the Respondent was requested to vacate the house in October 2014. He agreed and requested that he be given some time to remove his property. However in December 2014 instead of removing his property he decided to put a gadget on the main door of the house in issue. He was requested to remove the gadget lock but he refused.

[15] Consequently, in light of the foregoing, I am of the considered view that the matter warrants to be heard on the basis of urgency.

[16] Furthermore, in the case of **Cargo Carriers (Pty) Ltd v Jerry Dlamini High Court Case No. 2053/1999**, the Court stated at page 4 paragraph 4 as follows:-

**“There are numerous decisions of this Court to the effect that an erstwhile employee may not continue to occupy the former employer’s house, given to him as part of the employment contract once the employment contract has been terminated. This is so, notwithstanding that there may be pending issues relating to unfair dismissal.”**

[17] *In casu*, there is no contract of employment between His Majesty’s Correctional Services and the Respondent and consequently there is no legal justification for the Respondent to be still in occupation of a house belonging to his former employer.

[18] The worst part of the matter is that the Respondent concedes that he has been allocated a new house at Nhlangano but states that he cannot take occupation of that house because it has to undergo renovations. I fail with respect to understand how this concerns the Applicant. I am of the view that since the Respondent has a house and has concerns with that house it is incumbent upon him to pursue that with the relevant government departments and this cannot be said to be a problem of the Applicant.

[19] Furthermore it would be absurd for this Court to endorse the Respondent’s stay in the flat in issue because this would be

tantamount to allocating him two government houses at the same time.

[20] I am of the considered view that whatever issue the Respondent may have with the Applicant it has no bearing on the ejection as he is at liberty to pursue those issues in the Courts. In the case of **Palabora Mining Co. Ltd v Coetzer 1993 (2) SA 306 at 310J where Mahomed J** (as he then was) stated as follows:-

**“What is common cause is that the Respondent has been dismissed, that he no longer works for the Applicant, and that no Court has held that his dismissal was unfair, or that he should be reinstated. It seems to me clear in these circumstances that, notwithstanding the proceedings pending in the Industrial Court, I have jurisdiction to order the Respondent’s ejection. RANDFONTEIN ESTATES GOLD MINING CO (Withwatersrand) LTD v FORBES 1992 (1) SA 648 (w).”**

[21] I accordingly find that this application has merit and it is consequently granted.

[22] **COURT ORDER**

I hereby order as follows:-

(1) The Respondent including all other persons under him in occupation be ejected forthwith from the premises described as Flat No. MA5B/A, situated at Sidwashini Correctional Services Quarter’s.



(2) The Respondent to pay the costs of the application.

**M. S. SIMELANE J.**  
**JUDGE OF THE HIGH COURT**

**For the Applicant: Mr. V. Kunene**

**For the Respondent: Mr. K. Magagula**