

**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 1403/16**

In the matter between:-

**MAKHOSAZANE EUNICE SACOLO**

**(NEE DLAMINI)**

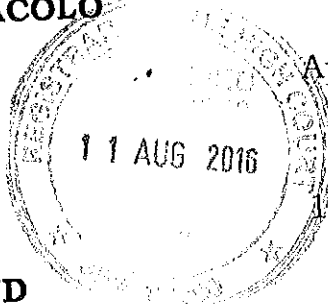
And

**JUKHI JUSTICE SACOLO**

**MINISTER OF JUSTICE AND**

**CONSTITUTIONAL AFFAIRS**

**ATTORNEY GENERAL**



Applicant

1st Respondent

2nd Respondent

3rd Respondent

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**NOTICE OF MOTION**

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**BE PLEASED TO TAKE NOTICE** that Applicant in the aforementioned matter intends making an application to the above Honourable Court for an order in the following terms:-

1. Declaring the common law doctrine of marital power unconstitutional and invalid in as far as it is inconsistent with the provisions of Section 18, 20 and 28 of The Constitution Act No.1 of 2005.
2. Declaring that Sections 24 and 25 of the Marriage Act of 1964 is unconstitutional and invalid in as far as it is inconsistent with sections 20 and 28 of The Constitution Act No.1 of 2005.

3. Declaring that spouses married in terms of the Marriage Act of 1964 and in Community of Property have equal capacity to administer marital property.
4. That the 1<sup>st</sup> applicant is authorized to administer the marital assets accruing to her marriage with the 1<sup>st</sup> respondent.
5. Costs of suit.
6. Further and/or alternative relief.

**TAKE FURTHER NOTICE** that the affidavit of **MAKHOSAZANE SACOLO AND COLANI HLATJWAYO** shall be used in support of this application.

**TAKE FURTHER NOTICE** that the Applicant has appointed the offices of **M. S DLAMINI LEGAL, c/o S.M MNGOMEZULU ATTORNEYS**, 4<sup>TH</sup> Floor, Mbandzeni House, Mbabane, at which address she will accept notice and service of all process in these proceedings.

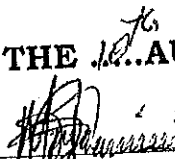
**TAKE NOTICE FURTHER** that if the Respondents intend to oppose this application they are required:-

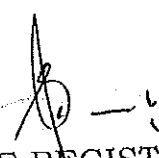
- (i) To file their Notice of Intention to Oppose in writing within 3 days from date of service.
- (ii) And thereafter within 14 days, to file if any, their answering affidavits or raise any point of law and to appoint such notification an address within five (5)

kilometers of the office of the Registrar of the above Honourable Court at which they will accept notice and service of all documents and processes in these proceedings.

**TAKE FURTHER NOTICE** that if no Notice to Oppose be filed as above indicated, application will be made to Court on an unopposed basis as stated in the Notice of Motion.

**DATED AT MANZINI ON THIS THE 10<sup>th</sup> AUGUST, 2016.**

  
\_\_\_\_\_  
**M. S DLAMINI LEGAL**  
(Applicant's Attorneys)  
c/o S.M Mngometulu Attorneys  
4<sup>th</sup> Floor, Mbandzeni House  
**MANZINI**

  
TO: THE REGISTRAR  
HIGH COURT  
**MBABANE**

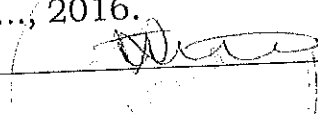
AND TO: **JUKHI JUSTICE SACOLO**  
(1<sup>st</sup> Respondent)

Received copy hereof on this  
the....day of....., 2016.

SGD: \_\_\_\_\_

AND TO: **MINISTER OF JUSTICE AND CONSTITUTIONAL  
AFFAIRS**  
**MBABANE**

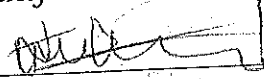
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....., 2016.

SGD:  12:21

AND TO: **ATTORNEY GENERAL**

Ministry of Justice Building  
Usuthu Link Road  
**MBABANE**

Received copy hereof on this  
the....day of ....., 2016.

SGD:  11/37



**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 1403/16**

In the matter between:-

**MAKHOSAZANE EUNICE SACOLO**

**(NEE DLAMINI)**

1<sup>st</sup> Applicant

**WOMEN AND LAW SOUTHERN**

**AFRICA-SWAZILAND**

2<sup>nd</sup> Applicant

And

**JUKHI JUSTICE SACOLO**

1<sup>st</sup> Respondent

**MINISTER OF JUSTICE AND**

**CONSTITUTIONAL AFFAIRS**

2<sup>nd</sup> Respondent

**ATTORNEY GENERAL**

3<sup>rd</sup> Respondent

---

**FOUNDING AFFIDAVIT**

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I, the undersigned;

**MAKHOSAZANE SACOLO (NEE DLAMINI);**

Do hereby make oath and state as follows:-

1.

I am an adult, married Swazi female of Velezizweni area, Mankayane in the Manzini Region. The facts herein deposed are to the best of my knowledge and recollection true and correct. Where I make legal assertions, I do so on the strength of legal advice derived from my representatives, which I believe and accept them to be correct.

2.

The 1<sup>st</sup> respondent is Jukhi Justice Sacolo, an adult married male of Velezizweni area, Mankayane in the Manzini Region.

3.

The 2<sup>nd</sup> respondent is the Minister of Justice and Constitutional Affairs cited herein in his official capacity responsible for Justice and Constitutional Affairs in the government of Swaziland.

4.

The 3<sup>rd</sup> respondent is the Attorney General cited in his official capacity as the legal representative for all government departments in Swaziland and herein being the 2<sup>nd</sup> respondent.

5.

### **BACKGROUND INFORMATION**

- 5.1 The 1<sup>st</sup> respondent and I were married as husband and wife on 19<sup>th</sup> August, 2000. The marriage is in terms of Civil Rites, in community of property and was registered on the 19<sup>th</sup> August, 2000, under Marriage Certificate Number 26239.
- 5.2 There are four (4) children in the marriage; the 1<sup>st</sup> born is a female followed by a male. The marriage still subsists. Upon marriage, the 1<sup>st</sup> respondent and I established our matrimonial home and I am currently residing there with my children. My husband, the 1<sup>st</sup> respondent, stopped residing there in 2012.
- 5.3 I have been unemployed since 2012. I have tried to force my husband via court order to maintain myself and our four children since 2012; he has persistently resisted. I was eventually able to obtain an order from the Manzini Magistrate Courts for maintenance in the sum of E900.00 (Nine Hundred Emalangeni) per month to provide for me and our four (4) children. In addition, he was ordered to pay school fees for the children as and when they fall due.

6.

- 6.1 The 1<sup>st</sup> respondent and I acquired land to build our home on Swazi Nation Land later in the year of 2000, following our marriage. We obtained the land at Velezizweni and started constructing our homestead. Because of limited resources, we

were not able to build a decent home. It was, however, sufficient for cohabitation at a basic level.

6.2 As the years went by we started constructing another house which was built from cement bricks and corrugated iron. This house was not completed.

6.3 During 2004, I bought four cattle and brought them to our matrimonial home. The 1<sup>st</sup> respondent refused to contribute anything towards the purchase price. In 2005, I bought another cow, which I also brought to our matrimonial home. Again the 1<sup>st</sup> respondent failed to contribute anything towards the purchase price.

## 7.

It is a requirement of the law in Swaziland that cattle must be registered at the veterinary offices. The cattle were registered under the first respondent's name, due to the marital power vested to him under the common law.

## 8.

8.1 Between 2009 and 2011, the 1<sup>st</sup> respondent drastically changed his behavior and became irresponsible. He became violent and refused to contribute towards our daily upkeep or paying school fees for our children.



- 8.2 The cattle that I had bought were breeding and increasing in number. The 1<sup>st</sup> respondent would sell some of them without even consulting me; the proceeds from their sale were never accounted for.
- 8.3 In 2011, my husband informed me that there was a truck coming to load all the cattle that were available; that he had sold them. I cannot recall how many cattle we had, but there were around 10. I brought suit to stop the sale of the cattle in Manzini Magistrates Courts.
- 8.4 The 1<sup>st</sup> respondent is employed as a soldier and stationed at Malkerns Barracks. Earlier in our relationship, he would come home every time he was off duty and would leave home when he was going back to work. By 2011, the 1<sup>st</sup> respondent was no longer coming to our matrimonial home when off duty.

9.

Sometime in the 2011, I was informed that the 1<sup>st</sup> respondent had traditionally wedded another woman by the name of Nakiwe Tfwala. She is employed as a nurse around Lavumisa. After this alleged traditional marriage my husband returned home only once. He came to fetch a child of his late brother. The child had been staying under my care at our matrimonial home.

10.

After the 1<sup>st</sup> respondent deserted me, life became very tough because he never discharged his obligations as a parent and a husband. In 2012, I lost my job as a pre-school teacher. I attempted to sell some of the cattle that we had in order to provide food, pay school fees, and buy clothes for the children, but I was not allowed to do so. Each time I tried, I was told that only the 1<sup>st</sup> respondent was allowed to sell the cattle. I was advised that he had the marital power and furthermore, the cattle were registered in his name.

11.

11.1 In 2013, I approached the veterinary officer and requested that the cattle be registered in my name so that I could sell them if the need arose. The veterinarian refused and told me that even if they were registered in my name, I would still need the 1<sup>st</sup> respondent's permission to transfer the cattle. I was disappointed that the 1<sup>st</sup> respondent did not need my consent in order to transfer ownership of the cattle, but that I needed his.

11.2 There are also goats at the matrimonial home. The goats are also registered in 1<sup>st</sup> respondent's name and I cannot do anything with them. The 1<sup>st</sup> respondent, however, is at liberty to sell them at will; he does not need my consent.

12.

Between 2010 and 2011, the 1<sup>st</sup> respondent, together with his mother and other family members, attempted to evict me from our matrimonial home. I refused to be evicted and the 1<sup>st</sup> respondent physically assaulted me on many occasions; I had to run to seek refuge at neighbors. Each time after being assaulted I returned to my matrimonial homestead because I had no other place to go to. This continued until I reported the abuse to the police and he was threatened with arrest. At that point he left our matrimonial home and he has been away from then till to date.

13.

There are currently 9 cattle and 24 goats at the homestead. I am unable to sell any of the cattle or the goats in order to take care of the needs of the family. The 1<sup>st</sup> respondent and I rarely communicate; each time I try to communicate with him, it ends up very sour. The 1<sup>st</sup> respondent is the only person with power to dispose of the livestock. Quite a number of livestock have died over the years due to drought and illness. These losses have been aggravated by my

situation; I cannot afford to provide the necessary biannual medication for the livestock. If I had the power to sell the livestock, I could sell one in order to buy medication for the rest of the livestock and to provide for the needs of the family. I would have also been able to sell some of the livestock before they were stricken by drought.

### **CAUSE OF APPLICATION**

14.

14.1 I am very frustrated that I am bound by the Common Law which vests the marital power in my husband. This doctrine of marital power, being vested in men, infringes on my right of equal treatment before the law; it gives my husband a more important status than myself when it comes to the assets of our marital estate.

14.2 The doctrine of marital power infringes on the Constitutional rights of equality before the law, equal treatment of women with men and the right to dignity. The doctrine is discriminatory towards women.

14.3 If the marital power was not vested in men, then the administration of property and the right to independent contract would be fair and equitable between the sexes.

15.

15.1 A greater injustice is done in this case because I personally acquired the livestock, but was forced to register them under the name of the 1<sup>st</sup> respondent. Now the 1<sup>st</sup> respondent is using the unjust registration policy and the marital power to prejudicially harm me and our children.

15.2 Due to the existence of the doctrine of marital power, and it being vested in men, I am afraid to wake up one day and find that the 1<sup>st</sup> respondent has disposed of all our joint assets; the livestock and household items. He can deal with all of our assets without my consent. This is unjust because I cannot do anything without him, even with regard to that which I personally acquired.

16.

6.1 I am advised that Sections 24 and 25 of the Marriage Act of 1964 dictates that marital power and property rights should be governed by Swazi Law and Custom. Swazi Custom vests these powers in the man, not the woman. This is an egregious violation of the Bill of Rights which is enshrined in the Constitution.

16.2 Swazi Law and Custom specifically applies where the parties to the marriage are Africans and it does not apply to those who are not Africans.

16.3 I am also advised and verily believe that the provisions of Section 24 and 25 of the Marriage Act of 1964 are fundamentally incompatible with the Constitution because they are discriminatory on the grounds of race, color and ethnic origin. They also impede on the right to dignity that is posed by all Swazis, including myself. This discrimination prevents equality before the law.

16.4 I am advised further that the Common Law marital power also infringes on the right of women to equality before the law, equal treatment with men, and the right to dignity for all women. I am directly affected by these violations. Despite the fact that my husband no longer takes care of myself or our children, he still holds the power to control our property; even the property which I acquired myself. I cannot contract or sell the property to take care of my family's needs. My husband, however, can commit and dispose our property without my input or consent. If the husband's marital power remains in force, women like myself will continue suffering and our Constitutional rights will not be upheld.

17.

I have no other remedy available at my disposal except to plead that the honorable court declare the aforementioned legislative

provisions unconstitutional. Without those provisions being removed, I will remain without any remedy in my situation. I have come before the court to seek enforcement of my Constitutional rights which are being violated by the legislative provisions I have mentioned above.

18.

**RELIEF SOUGHT**

18.1 I seek relief of a Constitutional nature. Before I can get relief against the 1<sup>st</sup> respondent, the impugned provisions of the Marriage Act have to be declared unconstitutional.

Furthermore, the marital power of the husband must be declared inconsistent with the Constitution.

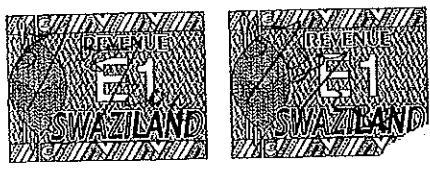
18.2 I approach the court under the authority of Sections 35 and 151 of The Constitution Act No.1 of 2005.

**WHEREFORE** I humbly submit that I have made a case for the relief sought and may it please the court to grant the order sought.

.....*Barzolo*.....

**DEPONENT**

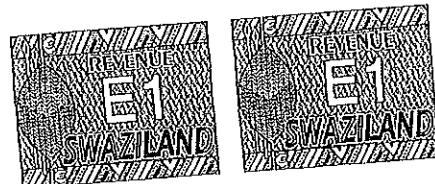
**THUS SIGNED AND SWORN** before me at **MANZINI** on this the *5<sup>th</sup>* day of *August*, **2016**, the deponent having acknowledged that she knows and understands the contents of this affidavit.



*Lucas Dlamini*  
.....  
**COMMISSIONER OF OATHS**

**Lucas Dlamini**  
Attorney - High Court - Swaziland  
Commissioner of Oaths  
Ex-officio  
Cell: 7664 2616





**IN THE HIGH COURT OF SWAZILAND  
HELD AT MBABANE**

**CASE NO. 1403/16**

In the matter between:-

**MAKHOSAZANE EUNICE SACOLO**

**(NEE DLAMINI)**

1<sup>st</sup> Applicant

**WOMEN AND LAW SOUTHERN**

**AFRICA-SWAZILAND**

2<sup>nd</sup> Applicant

And

**JUKHI JUSTICE SACOLO**

1<sup>st</sup> Respondent

**MINISTER OF JUSTICE AND**

**CONSTITUTIONAL AFFAIRS**

2<sup>nd</sup> Respondent

**ATTORNEY GENERAL**

3<sup>rd</sup> Respondent

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**SUPPORTING AFFIDAVIT**

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I, the undersigned;

**COLANI HLATJWAYO;**

Do hereby make oath and state as follows:-

1.

1.1 I am an adult female Swazi of Mbabane, Hhohho Region. My deposition is based on my actual knowledge, and I believe all statements to be correct and true. The facts herein deposed are based on my personal knowledge and I believe them to be both true and correct. Where I make legal assertions, I do so on the advice of my representatives, and I believe and accept them to be correct.

1.2 I am the current National Director of the 2<sup>nd</sup> applicant. I depose to this affidavit in my capacity as such.

## 2.

2.1 The 2<sup>nd</sup> applicant is a non-profit making organization and is duly registered in terms of the company laws in Swaziland and it was registered on the 31<sup>st</sup> March, 2003.

2.2 Key functions of the 2<sup>nd</sup> applicant include providing information on women's legal rights, improving research skills of women's law researchers, and representing and defending disadvantaged and abused women in any court of law in Swaziland. The mission statement of the 2<sup>nd</sup> applicant is "*to further the advancement of legal situation of women in Swaziland*"

2.3 In its endeavor to achieve its objectives, the 2<sup>nd</sup> applicant provides free legal aid and legal education. It also lobby for legal

reforms which include sensitizing men and local leaders on women's issues.

3.

3.1 The 2<sup>nd</sup> applicant has joined in these proceedings to support the 1<sup>st</sup> applicant because it believes that the 1<sup>st</sup> applicant's rights are seriously infringed. In addition to the 1<sup>st</sup> applicant, all Swazi women are affected by the legislative provisions which are inconsistent with the Constitution. Moreover, this inconsistency and conflict of the law disrupts the 2<sup>nd</sup> applicant's ability to accurately advise and educate Swaziland women of their rights.

3.2 2<sup>nd</sup> applicant have assisted the 1<sup>st</sup> applicant in her marital problems by providing counselling and helping her to go to court in response to abuse by her husband. Her situation continues to worsen. I confirm the contents of her affidavit regarding the abuse perpetuated by her husband and same endorsed by the doctrine of marital power, as well as Sections 24 and 25 of The Marriage Act of 1964. The 2<sup>nd</sup> applicant therefore fully support of the application before court.

4.

The 2<sup>nd</sup> applicant also notes the hardships that are brought about by Section 24 and 25 of The Marriage Act of 1964. Women are prohibited from inheriting in terms of Swazi Law and Custom; this is discriminatory. Making property rights of Africans being governed by Swazi Law and Custom is tantamount to depriving the women of any right to the property. In addition, the marital power of the husband deprives women the opportunity to deal with property. This is regardless of who purchased or acquired such property.

5.

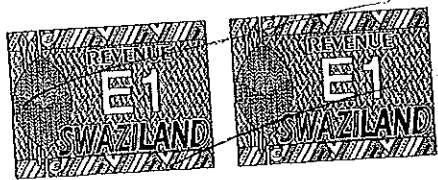
Due to the prevalence of discrimination and inconsistencies within the legislative provisions, the provisions of the Constitution, and the continued failure of Parliament to pass legislation to ameliorate the situation, there is no alternative remedy that will effectively redress and prevent the violations outlined above. Therefore, the honorable court must intervene.

**WHEREFORE** I humbly submit that I have made a case for the relief sought and may it please the court to grant the order sought.

.....*[Signature]*.....

**DEPONENT**

**THUS SIGNED AND SWORN** before me at **MANZINI** on this the.....day of .....*[Signature]*....., **2016**, the deponent having acknowledged that he knows and understands the contents of this affidavit.



.....*[Signature]*.....

**COMMISSIONER OF OATHS**

**Sipho Gumedze**  
ATTORNEY-AT-LAW  
Commissioner of Oaths  
Ex-officio

# IN THE HIGH COURT OF SWAZILAND

**HELD AT MBABANE**

Case No; 1403/16

In the matter between:

**MAKHOSAZANE EUNICE SACOLO (NEE DLAMINI)** Plaintiff

And

**JUKHI JUSTICE SACOLO**

1<sup>st</sup> Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL**

2<sup>nd</sup> Respondent

**AFFAIRS**

3<sup>rd</sup> Respondent

**ATTORNEY GENERAL**

## RETURN OF SERVICE-APPLICATION


IT IS HEREBY CERTIFIED:

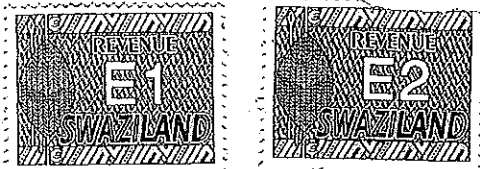
That on the 12<sup>th</sup> August, 2016 at approximately 09:10hrs, I served the above court process by delivering a copy thereof with the 1<sup>st</sup> Respondent personally at Mdzimba Army Barrack at the 1<sup>st</sup> respondent's place of employment, in the Manzini District, after exhibiting the original and explaining the nature and exigency of the said Court process in terms of the High Court Rules.

### **SHERIFF CHARGES/EXPENSES**

Description	Tariff	Qty	Amount
Registration and return	20.00	1	E 20.00
Service	40.00	1	E 40.00
Travelling	3.00/km		E201.00
Post & petties			E6.00
VATE			E 0.00
<b>Total</b>			<b>E267.00</b>

TO: **M. S DLAMINI LEGAL**  
(Plaintiff's Attorneys)  
C/O Mngometulu Attorneys  
4<sup>th</sup> Floor, Mbandzeni House  
**MBABANE**

  
Bongani Ndwandwe  
Deputy Sheriff Manzini 76435103



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO: 1403/16

In the matter between:

MAKHOSAZANE EUNICE SACOLO (Nee DLAMINI)

APPLICANT

and

JUKHI JUSTICE SACOLO

1<sup>st</sup> RESPONDENT

MINISTER OF JUSTICE & CONSTITUTIONAL  
AFFAIRS

2<sup>nd</sup> RESPONDENT

ATTORNEY GENERAL

3<sup>rd</sup> RESPONDENT

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NOTICE OF INTENTION TO OPPOSE


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BE PLEASED TO TAKE NOTICE that the 1<sup>st</sup> Respondent hereby enters his Notice to oppose the Application. FURTHER TAKE NOTICE that the 1<sup>st</sup> Respondent has appointed the offices of FAKUDZE ATTORNEYS, as the address at which he shall accept services of all notices and documents in these proceedings.

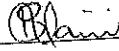
DATED AT MANZINI ON THIS THE 16<sup>th</sup> DAY OF AUGUST 2016.

  
\_\_\_\_\_  
FAKUDZE ATTONREYS  
(1<sup>st</sup> Respondent's Attorneys)  
C/o Justice M. Mavuso & Co.  
1<sup>st</sup> Floor, Mlonyeni Building  
Dzeliwe Street  
MBABANE

TO: THE REGISTRAR OF THE  
HIGH COURT  
MBABANE



AND TO: M.S DLAMINI LEGAL  
(Applicant's Attorneys)  
C/o S.M Mngometulu Attorneys  
4<sup>th</sup> Floor, Mbandzeni House  
MBABANE

  
Received copy hereof this 16<sup>th</sup>.....  
day of August 2016.