



IN THE SUPREME COURT OF ESWATINI

HELD AT MBABANE

CASE NUMBER:19/26.....

In the matter between: -

ESWATINI LITIGATION CENTRE

1st Appellant

MZWANDILE BANELE MASUKU

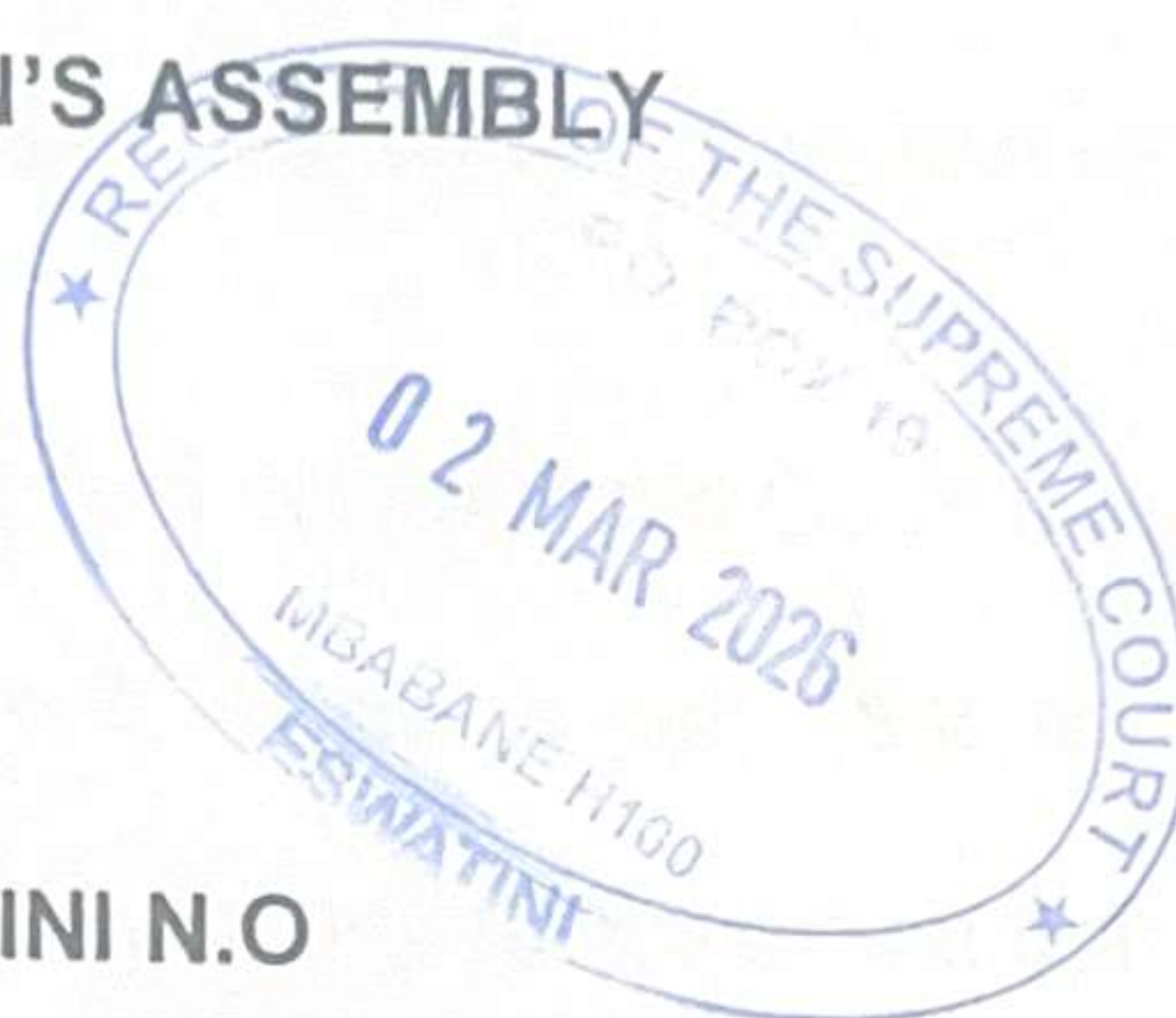
2nd Appellant

SWAZILAND RURAL WOMEN'S ASSEMBLY

3rd Appellant

MELUSI SIMELANE

4th Appellant



And

PRIME MINISTER OF ESWATINI N.O

1st Respondent

COMMISSIONER GENERAL OF CORRECTIONAL SERVICES

2nd Respondent

MINISTER OF HOME AFFAIRS

3rd Respondent

MINISTER OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION

4th Respondent

THE ATTORNEY GENERAL

5th Respondent

APPELLANTS' NOTICE OF APPEAL

BE PLEASED TO TAKE NOTICE that the above-named appellants hereby note an appeal against the whole of the Judgement of the Full Bench of the High Court constituted by Lords; Honourable Justice T. Mlangeni J, with agreement of Honourable Justice T. Dlamini and Honourable Justice B. Magagula in Case No. 1775/2025 delivered on 3 February 2026, in terms of which the learned Justices dismissed the appellants' application with no order as to costs.



TAKE NOTICE FURTHER that the findings against as well as the grounds of appeal are the following: -

1. In dismissing the appellants' case on the point of locus standi, the court *a quo* erred in fact and in law wherein at **paragraph 22** of its judgment it stated that "*...there is no need to interrogate the other issues that arise in the lis*".
 - 1.1. This Honourable Court will note that the Court *a quo* did not only deal with the *locus standi* aspect. At paragraph 16.2 to 16.3 of its judgment it delved into the issue of urgency to the extent that it ignored the contents at **paragraph 8 of the Founding Affidavit** indicating the date the deportees were allegedly brought into the Kingdom and further failed to juxtapose same with the date of instituting of the *lis*. The Court's finding demonstrates that it failed to partake in a holistic consideration of the Founding Affidavit and annexures.
 - 1.2. The Court misdirected itself in holding that it exercised its discretion judiciously in refusing to grant interim relief premised in terms of prayers 4 to 8 of the Notice of Motion prior to the date of arguments. The misdirection is centred on an unfounded reasoning that granting same would be tantamount to prejudging the outcome of the entire case, same expounded at **paragraphs 11 to 12** of its judgment. At most the key consideration at the time would be prejudice to the Respondents, which consideration we submit would have to be weighed with the relevant

constitutional provisions pertinent in the dispute. Further, it was not legally permissible for the court *a quo* to refuse the interim relief in the circumstances as same would have been either discharged or confirmed on the return date regardless of whether there was compliance or not.

- 1.3. The court *a quo* erred in law and in fact when in **paragraph 13**, it queried the appellants' request for an order directing the Prime Minister to produce/publish the agreement made between the State and the United States; and further queried in **paragraph 15 and 16** the factual basis for the relief sought on an urgent basis. The court *a quo* failed to consider the annexures mentioned in **paragraph 8** of the Founding Affidavit setting out clearly the presence of an agreement, the failure of the 1st Respondent to disclose the agreement to parliament and the public, and the presence in Eswatini of individuals deported from the United States. The Court in its epilogue takes judicial notice of these circumstances but still misdirects itself in refusing to order the respondents to furnish the agreement for a proper adjudication of the matter.
- 1.4. Clearly the court did venture into the other avenues beyond the point of *locus standi* with the implication *ex facie* in the judgment that the merits were indeed traversed.
2. The Court *a quo* misdirected itself in fact and in law by applying a stringent test to the doctrine of *actio popularis* as same amounts to denial of access to the

Courts. The provisions of section 2(2) of the Constitution of the Kingdom were canvassed at the hearing of the matter with regard *locus standi* inherent to every citizen to uphold and defend this social contract, therefore the requirement of personal injury is a stretch on the promotion and protection of our constitutional values and a progressive judgment was desirable owing to the nature of the case.

- 2.1. At **paragraph 17.6** the Court correctly noted that all the Appellants had *locus standi*. The inquiry should have ended there with the matter proceeding to the merits or grant of the orders sought in the absence of a rebuttal under oath.
- 2.2. The view that public interest litigation is foreign to our jurisdiction is misguided and a precursor to the demise of human rights litigation. Our Courts, even in this judgment sought to be assailed, occasionally refer to foreign authorities to develop and advance our jurisprudence.
- 2.3. The Court misdirected itself when it relied on case law which predated the Constitution to explain the common law doctrine of *actio popularis* when the Constitution itself imposed a duty on citizens to approach the court when the Constitution's provisions are violated. This duty applies to the entirety of the Constitution and does not, as the court *a quo* erroneously submitted in **paragraph 17** of the judgement only to persons who can show direct prejudice or injury. The Court further misdirected itself further

in failing to recognise that recent jurisprudence acknowledged a broader approach to *locus standi* in constitutional matters.

- 2.4. In essence the Court's interpretation of legal standing euthanised the doctrine of checks and balances, and government accountability to its citizens.

BE PLEASED TO TAKE NOTICE FURTHER THAT the appellants reserve the right to supplement or amend the notice or grounds of appeal.

WHEREFORE it may please this Honourable Court to grant an order setting aside the order of quo dismissing the application, and in its place, ordering the relief sought in the Notice of Motion.

DATED AT MBABANE ON THIS 19^h DAY OF FEBRUARY 2026.

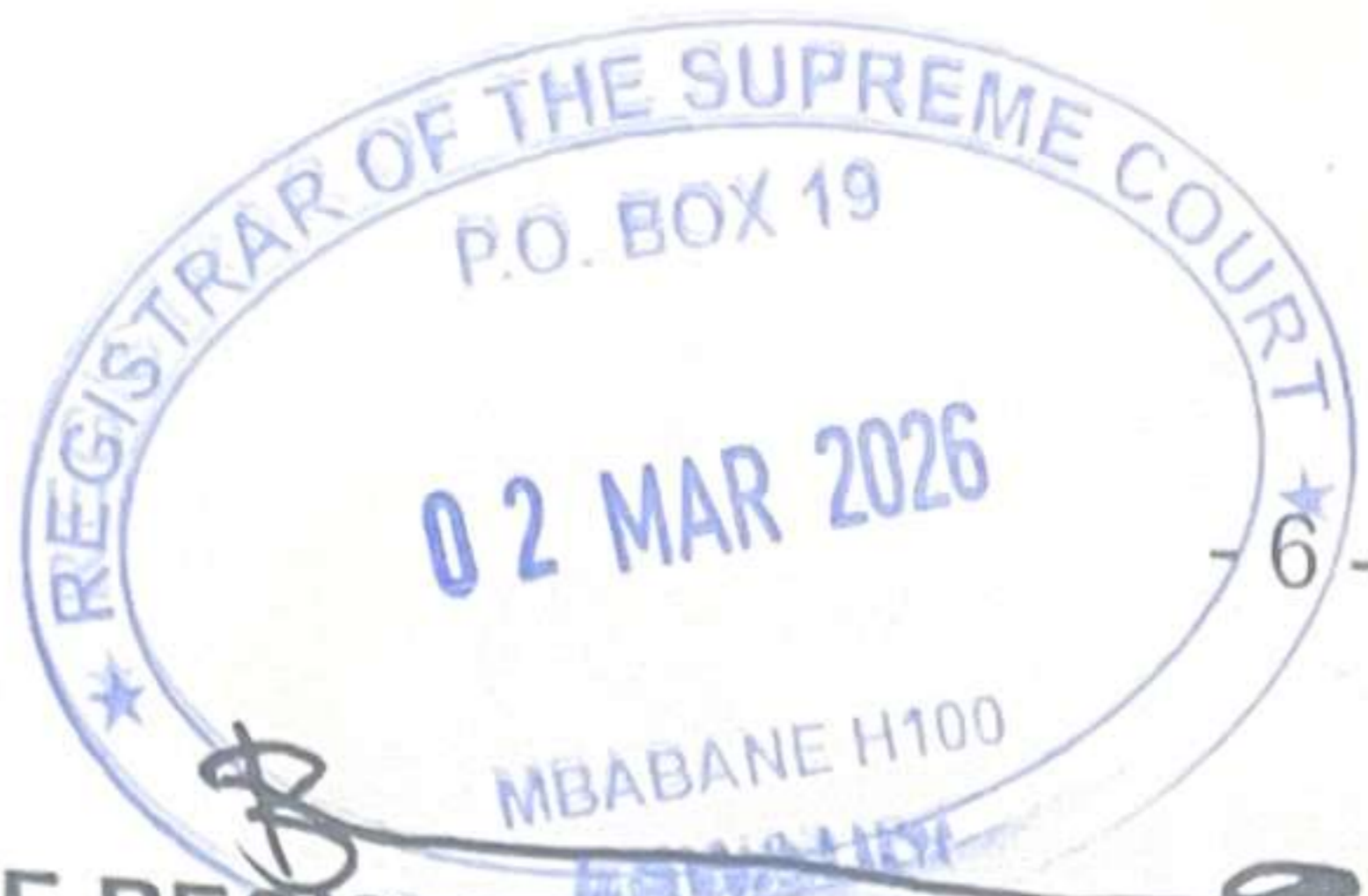

MKHABELA ATTORNEYS

(Appellants' Attorneys)

2nd Floor, Christel Building

Dzeliwe Street,

MBABANE



TO: THE REGISTRAR, SUPREME COURT

MBABANE

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AND TO: ATTORNEY GENERAL

(Respondents' Attorneys)

4th Floor, Justice Building

Usuthu Link Road

MBABANE



16:19