

IN THE HIGH COURT OF SWAZILAND

CIVIL TRIAL NO.833/96

In the matter between:

MDUMO TITUS MLANGENI: PLAINTIFF

AND

MAPOPI MAMBA DEFENDANT

CORAM : MATSEBULA J

FOR PLAINTIFF : MR. MLANGENI

FOR DEFENDANT : MR. NXUMALO

JUDGMENT

23/12/96

By summons issued on 9th April 1996 and signed by an officer of the Registrar of the High Court with proper revenue stamps affixed there on but without a date stamp, Plaintiff sues defendant for five head of cattle Plaintiff is suing in capacity as curator (not stated whether bonis or ad litem) since no point has been taken by the defendant the court will rest the matter there Plaintiff's affidavit discloses that the late Msolwa Mamba had sisaed 25 head of cattle with defendant during August 1992 and that the deceased had died in August 1993 and left the cattle in the custody and care of the defendant After the death of the defendant his family retrieved 20 head of cattle leaving 5 head of cattle. The plaintiff states that since then there has been some progeny of the 5 head of cattle whose number has not been disclosed.

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It is plaintiff's averment that, notwithstanding the demand for the return of the remaining cattle Defendant refuses to deliver to plaintiff. Plaintiff therefore prays as follows

- i. delivery of the five head of cattle,
- ii. its progeny over a period of 3 years:
- iii. costs of suit including costs of application dated 28th March 1996 (iv) further and/or alternative relief.

On 3rd May 1996 defendant entered an intention to defend and filed its plea on 15th August 1996 it simultaneously raised a point in limine to the effect that the matter before court was res judicata as it served before a chief's council which had appropriate jurisdiction to hear the matter ought to have been brought before any court on appeal. Firtly it is unheard of that a chiefs court will sit as the Swazi National Court and try cases whose decisions become that of the Swazi National Court and therefore be regarded as being res judicata.

There is therefore no merit in the point of limine raised. Annexure 1 therefore is not a judgment which can be regarded as constituting a judgment which is res judicata. The position of chiefs and their jurisdiction was set out in the case of BHUTANA MAKHUBU VS. CHIEF NHLOKO ZWANE CIVIL CASE NO.7/1990 by Rooney J unreported. The learned judge referred to Section 4 of the Swazi

became law on the 1st January 1951. Section 6(1) of the act deals with performance and obligations by His Majesty the Ingwenyama and the chiefs under the Act and Section 10 deals with administrative matters to be adjudicated upon Section 13(i), (ii) prescribes penalties which the chiefs may hand down. The maximum of which being a fine of E50.00 or an imprisonment for 6 months or both.

The Swazi Courts Act makes provision for bringing persons who disobey the Ingwenyama in Libandla and by necessary implication the chiefs in Libandla to be brought to the courts established in terms of the Swazi Courts Act whose judgments are judgments of a court.

The chiefs on the other hand are empowered in terms of Section 6(i) of the Administration Act to generally maintain order and good governance among the Swazis residing in their respective areas of jurisdiction. This empowerment however is a far cry from the claim that they have a court jurisdiction in terms of the Courts Act of 1950.

I would therefore dismiss the point in limine with costs. The main action is referred to evidence.

J.M. MATSEBULA

JUDGE