

IN THE HIGH COURT OF SWAZILAND

Manzini City Council Workers Representative Council - Applicant

v

Workers representative Council 1st Respondent

Acting Deputy Sheriff for the district of Manzini 2nd Respondent

Coram. S.W. Sapire, A C J

For Applicant: Mr. P. Flynn

For Respondent: Mr. A. Shabangu

Civ. Case No. 567/1997

JUDGMENT

(05/03/97)

This is an application by the Manzini City Council which arises out of an attachment which has been made at the instance of the first Respondent by the second Respondent.

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The attachment was made in terms of a writ which purports to be issued by the Industrial Court, and is signed by the Registrar of the Industrial Court addressed to the Sheriff of Swaziland or his Deputy.

The Sheriff or his Deputy is required to take in execution movable property of the Applicant to satisfy a judgment of the Industrial Court.

The Sheriff of Swaziland or His Deputy is appointed in Terms of the Sheriff's Act of 1902 and which is an Act creating the office of the Sheriff and regulating his duties.

Section 4A of the Act as emended reads:

"Where the Civil Service Board appoints a Sheriff he shall by himself or his deputy appointed by him and duly authorised under his hand and seal and for whom he shall be responsible during his continuance in such office execute all the sentences, judgments, writs, summonses, rules, orders, warrants Court demands and processes of the High Court and shall make a return of the same together with the manner of execution thereof to such Court to the Registrar thereof and the Plaintiff or Defendant or other representative attorneys may have an office copy of the process with the return thereto at the costs of the party applying for same"

. In dealing with the question of the execution of orders of the Industrial Court one looks at Section 12 of the relevant act which is the Industrial Relations Act Number 1 of 1996. The Section reads:

"12.1 - An order of the Court made under this Act and the directing the payment of money or delivery

of any property shall be enforceable by execution in the same manner as an order of the High Court."

An execution of an order in the High Court is carried out only by the Sheriff duly appointed or his Deputy. As we have seen such a Sheriff can only execute a writ issued by the High Court. Section 12.1 quoted above must be read as conferring the authority and duty upon the Registrar of the High Court to allow the issue of process of the High Court to enforce judgments of the Industrial court.

The logical position therefore is that if there is a Plaintiff in the Industrial Court who obtains an order in his favour for the payment of money in order to get

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that order paid he would have to have a writ issued on that judgment or order but the writ would have to be issued by the Registrar of the High Court because it is only a writ of the High Court that may be executed by a Sheriff. This being so clearly the execution which has been levied .by the first respondent in this matter and the attachment which has been made by the second respondent is invalid and has to be set aside.

1. The order which I therefore make is that the so-called warrant of execution dated 13th February, 1997 ordering; the second respondent to attach assets of the applicant is set aside and the attachment made pursuant thereto is declared null and void.
2. The second respondent is ordered to immediately release all moveables attached by him pursuant to such so called writ of attachment, and
3. The first Respondent is to pay the costs of this application.

S.W. SAPIRE

ACTING CHIEF JUSTICE