

IN THE HIGH COURT OF SWAZILAND

a/Aldon Shabalala

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Alson Kosi Shabalala

vs

The Swaziland Government

The Nhlngano Magistrate

Civ. Case No. 2618/95

Coram

S.W. Sapire A C J

For Applicant

PR. Dunseith

For Respondent

Attorney General

JUDGMENT

(4/7/97)

The applicant seeks to review the proceedings in the Subordinate Court of the District of Shiselweni held at Nhlngano. The proceedings which the applicant seeks to review were commenced by the issue of a summons by the Swaziland Government. The summons claims ejectment of the applicant from certain immovable property being farm No. 61 Hluti in the district of Shiselweni.

The applicant was served with a copy of the summons in 1994. A copy of the summons is

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attached to the founding affidavit marked "A". The applicant claims however that the officials who handed the summons to him did not explain what the document was and how he was expected to react thereto.. The applicant is an uneducated and illiterate person and claims not to have known that the document served on him was a summons to court. In view of the conclusion to which I have come, I make no observations on these allegations.

Apparently nothing transpired after the service of the summons until a writ of eviction dated the 20th October 1994 was served on the 27th July, 1995 by an officer of the Nhlngano Magistrate Court. The applicant was evicted from the property on the same date.

After the applicant had been evicted from the farm in question his house was demolished by Government workers.

The applicant has since enquired at the Surveyor General's Office and his search there indicates that the land upon which he dwelt did not belong to the Swazi government but is and had, at the relevant time, been owned by the Ingwenyama in Trust for the Swazi Nation. The point which the applicant

makes therefore is that the respondent did not have locus standi to seek his ejection from the property on the grounds that the respondent was the owner thereof and that the applicant was in possession thereof adversely to the respondent's rights of ownership.

The applicant alleges that the respondent knew that it was not the owner of the property when it made the misrepresentation to the court, by so alleging in the summons, and that on this ground alone the proceedings should be set aside.

The applicant also raises a further point and that is that the Magistrate Court of Nhlanguano did not have jurisdiction to grant an eviction order as the value of that occupation is far in excess of E2 000.00.

The summons of which a copy is annexure "A" to the founding affidavit makes no allegations as to the value of the occupation of the property.

It is for the plaintiff as dominus litis who elects to bring his claim in an inferior court to allege facts in the process by which the proceedings are instituted which indicate that the forum chosen has jurisdiction to hear the claim.

In the Republic of South Africa and in relation to Section 29 of the Magistrates Court Act

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which confers jurisdiction in respect of causes of action, it has been held that in order to bring an action for ejection in the Magistrate Court it is necessary to allege in the summons that the clear value to the occupier of the premises does not exceed the amount which is the upper limit of the court's jurisdiction.

See Van Duyn n.o. vs Marks 1914 T. P. D. 243 @ 246 where Gregorowski J said

"In a Case in the Magistrate's Court for the restoration of any property it is necessary to state the value of the property, so that it appears ex facie the record that the claim is not beyond the jurisdiction of the court".

There are other cases however where it has been assumed that it is for the defendant to raise the question of jurisdiction and for him to establish facts upon which the challenge to jurisdiction is founded

See Durban City Council v Kadir 1971(1)SA 346 (N) at 336 which was referred to with approval in Gallman v Dombrowsky 1973 (2) SA 261 (C)

In a concurring judgment in the latter case Van Wyk J said

"I agree. I merely wish to add that in this case it was assumed that the onus was on the defendant to establish that the value of the right of occupation exceeded R1 000. It was not necessary for the purposes of this appeal to decide the question of onus. Speaking for myself I feel that a great deal can be said in favour of a point of view that, in matters of this kind, the onus rests on the plaintiff. But, as I said, it was not necessary for the purposes of this appeal to go into that matter. "

From this I infer that in neither of the two cases was it part of the ratio decidendi that the onus of proving lack of jurisdiction was on the defendant.

In another case

SOS-KINDERDORF INTERNATIONAL v EFFIE LENTIN ARCHITECTS 1991 (3) SA 574 (NM) with reference to lack of jurisdiction in respect of the person, as opposed to lack of such jurisdiction in respect of the cause of action, Frank J said

"Where the summons does not disclose facts to show that the Court has jurisdiction no relief can be claimed ex facie such a summons Thus in Rieckhoff v Jacobs 1967 (1) SA 680 (W) Trollip J stated the rule as follows, at 682A:

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'The principle now generally accepted is that a summons citing a peregrine defendant must allege facts showing that the issuing Court has jurisdiction, otherwise it is bad.'

Where, ex facie the summons, the Court does not have jurisdiction default judgment cannot be granted. This is so because

'... if appearance were not entered and if the Court were asked to grant a default judgment, it would find itself in the position of being asked to give judgment against a person who had not submitted to jurisdiction and in respect of whom, ex facie the summons, it would appear that the Court did not have jurisdiction'.

Kikillus v Susan 1955 (2) SA 137 (W) at 138G; Dowson & Dobson Industrial Ltd v Van der Werf and Others 1981 (4) SA 417 (C).

The particulars of claim in this matter did not contain an allegation that there was an order to attach property of the defendant ad confirmandam jurisdictionem. The judgment by default was thus erroneously granted.

The general rule seems to be that a judgment, without jurisdiction in the Judge pronouncing it, is ineffectual and null."

In terms of section 16 of the Magistrate's Courts Act, No. 66 of 1938 as amended the subordinate court whose proceedings are now reviewed has jurisdiction in respect of causes of action where the claim or value of the matter in dispute does not exceed two thousand emelangeneni. A litigant who chooses to bring his claim in that court must allege facts in the summons, from which prima facie at least it appears that the court has jurisdiction.

In the present case in view of the lack of any sufficient allegations to establish jurisdiction the court was not entitled to assume such jurisdiction and the order for ejectment made is prima facie something which as a creature of statute it was not empowered to do.

This court has the power to review the proceedings of all the inferior courts. Where an inferior court has prima facie acted beyond the limits of its jurisdiction those proceedings must be set aside.

Accordingly the application will succeed and the following order is made.

The judgment for the eviction of the applicant from farm no 61 in Nsalitshe, Shiselweni granted by the Subordinate Court for the District of Shiselweni in case no. 49 of 94 is hereby set aside and the 1st respondent is to pay the costs of this application.

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S.W. SAPIRE

ACTING CHIEF JUSTICE