

IN THE HIGH COURT OF SWAZILAND

CASE NO. 2377/96

In the matter between

DETECTIVE SERGEANT JOHN S. DLAMEVI

APPLICANT

vs

SIMON MAMBA

RESPONDENT

In Re:

SIMON MAMBA

PLAINTIFF

vs

DETECTIVE SERGEANT JOHN S. DLAMEVI

DEFENDANT

CORAM

S.B. MAPHALALA A J

FOR APPLICANT:

MR T. MASUKU

FOR RESPONDENT:

MR M. MAVUSO

RULING FOR SETTING ASIDE OF A GARNISHEE NOTICE

(17/10/1997)

The applicant in this matter has brought an application by way of motion for an order in the following terms:

1. Setting aside a Garnishee Notice issued by the Registrar of this Court dated the 11th July, 1997.

a: Simon

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2. Rescinding and/or setting aside judgement granted by this court on the 21st March 1997, in favour of the Respondent and rescinding any further step taken by the Respondent on the strength of such judgement;
3. That an interim order with immediate effect, be and is hereby granted in respect of prayer I hereof, returnable on a date to be determined by the court;
4. That the Respondent be and is hereby ordered to file his answering affidavit, if any, on or before 22nd October, 1997.
5. Costs of the application in the event the Respondent opposes the application, and;
6. Granting such further and/or alternative relief as may to the court seem fit.

The matter came before me on the uncontested motion of the 10th October, 1997 where Counsel for the applicant made a number of submissions in support of his client's case. The thrust of his contention is that the Respondent in affecting the Garnishee Order on his client did not comply with

the Rules of the court, viz Rule 45 (13) (h) of High Court Rules which reads thus:

"Whenever a return has been made to a writ of execution, that the officer charged with the execution has been unable to find sufficient property subject to attachment to satisfy the amount of the writ or whenever a judgement debt remains wholly or in part unsatisfied after the expiration of twenty-one days from the date of the judgement, the judgement creditor may by notice call upon the judgement debtor or, where the judgement debtor is a body corporate, any Director, Manager, Secretary or other similar officer thereof, or any person purporting to act in any capacity, to appear before the court on a day fixed by such notice, and to produce such documents as may reasonably be necessary, in order that the court may investigate the financial position of the judgements debtor".

Mr Masuku for the Applicant contends that in the present case this was not done. His client got a shock of his life to see from his salary advise (marked J86) that a sum of E1,000 had been deducted from his salary of the month of September, 1997.

Further that Rule 35 (13) (k) should have been followed. The import of this Rule is that whenever the court is of the opinion that the debtor is able to satisfy a debt by instalment out of his earning, it may order for payment of such debt by instalments.

a: Simon

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Furthermore, Mr Masuku directed the court's attention to a judgement of this court by Sapire A C J in the case of Reynold Sibhie Baartjies VS Stanbic Bank of Swaziland Limited. Central Bank of Swaziland Case No. 500/94 where the learned A C J propounded as follows after an extensive analysis of the interpretation of the South African Rules dealing with this matter and our Rules which are worded in a similar fashion;

"My conclusion is, therefore, that salary, earning and emoluments can be attached in execution only (my emphasis) under the provisions of paragraph (j) and (k)...."

Clearly, in the case in casu that has not be done by the Respondent.

Mr Mavuso for the Respondent gave a feeble attempt to argue in his client's favour with little effect.

The only point which merits mention which he advanced is that the applicant has not shown urgency as contemplated by the Rules of this court. However, in my view, the defect is cured by paragraphs 26 and 27 of the Applicant Founding Affidavit which reads in seriatum as follows:

26. "I submit that the matter is urgent on the grounds that money is being unlawfully attached from my salary and I am unable to meet my financial obligations as a result of such attachment;

27. The attachment is causing me serious financial handicaps and I submit that I cannot in the circumstance be granted substantial relief at a hearing in due course ".

In the premise, I hold as follows:

1. Setting aside a Garnishee Notice issued by the Registrar of this Court dated the 11th July, 1997, as an interim order with immediate effect;

a Simon

2. Grant leave for the Respondent to file his Answering Affidavit, if any, on or before the 22nd October, 1997.
3. Costs to be the costs in the course

S. B. MAPHALALA

ACTING JUDGE.