

THE HIGH COURT OF SWAZILAND

SAMUEL MFELANE S. HLATSHWAYO

Applicant

Vs

BARCLAYS BANK OF SWAZILAND LIMITED

1st Respondent

THE SHERIFF OF THE HIGH COURT OF SWAZILAND

2nd Respondent

Coram

S.W. SAPIRE, CJ

For Applicant

P. M. SHILUBANE

For Respondent

L.N. KHUMALO

JUDGMENT

(22/10/99)

The applicant applied as a matter of urgency to this court for an order staying the sale in execution by public auction of the applicant's property . The order or stay was to have been an interim order pending a further application for the rescinding of a default judgment in terms of Rule 42(1) A of the Rules of Court. The applicant also sought an order for costs in the event of the respondent opposing the same. The respondent, which is the bank, opposed the granting of this relief and an argument was heard after which I reserved judgment.

The applicant alleges that the judgment against him was erroneously sought and erroneously granted by the Court. His grounds are multiple but as will be seen, all equally without merit.

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The first ground for the relief claim was that the summons was never served on the applicant. The summons was served at the domicilium citandi chosen by the applicant in terms of the bond on which the action was founded. This ground clearly cannot be maintained..

The second ground is that there is no nexus between the mortgage bond and the suretyship. It is difficult to understand what this means but clearly the mortgage bond was passed to secure all the applicant's liabilities to the first respondent including liabilities arising from suretyships undertaken by the applicant on behalf of third parties. It is in this manner that the applicant's liability in the present case arose. The second point must similarly fail.

The third ground is that there is no breach of the mortgage bond. This too is a specious and insupportable assertion. It is common cause that the principle debtor is indebted to the bank and that he is in default. This being so there is no need to allege a breach of the mortgage bond and in fact no breach has occurred. All that has happened is that the applicant has failed to pay its obligation arising from the suretyship, which is secured by the mortgage bond.

The fourth point was that no demand was made. There is no need for a demand in these circumstances. Even if demand were necessary the summons would serve as the same.

The fifth ground is that no monies were lent to the applicant. This is an irrelevant assertion because the obligation arose from monies lent to the third party.

In the circumstances there is no basis upon which this application can succeed and the application is dismissed with costs.

S.W. SAPIRE, CJ