

IN THE HIGH COURT OF SWAZILAND

BARRYMORE SIBUSISO NKOSI

Vs

COMMISSIONER OF POLICE & ANOTHER

CIV. CASE NO. 2963/98

CORAM : Sapire CJ

FOR THE PLAINTIFF Phesheya Dlamini

FOR THE DEFENDANT Mrs. Shabalala;

JUDGMENT

(11/05/99)

This is an application made by the applicant in which he seeks condonation for non-compliance with the provisions of Section 2 (1) (a) of the Limitations of Proceedings Against the Government Act, 21/1972. The applicant has alleged that he is an adult male businessman of 1201 Section 2, Madadeni, Newcastle, South Africa. He sues the Commissioner of Police and has served the papers on the Attorney General. He also alleges that the Court has jurisdiction to hear his claim.

In paragraph 5 of the founding affidavit he alleges that on or about 25th December 1997 along Mbabane - Manzini road a collision took place between his motor vehicle a BMW5351 which was registered NN49457. The other vehicle involved in the collision was an Isuzu 2.8 motor vehicle bearing registration letter numbers SG 491 PO. At the time of the collision an employee of the first

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respondent whose full and further particulars are unknown to the applicant drove the other vehicle. The applicant also alleges that the accident which gave rise to damages suffered by him and which is the subject matter of his claim was caused by the negligence of the driver of the Police vehicle. The demand was made and it is alleged that on the 31st July, 1998 he caused a letter of demand to be sent by registered mail, he claims that due to the lack of knowledge of the laws of Swaziland regarding suing the Government the letter of demand was not correctly addressed to the 2nd Respondent being the Attorney General as required.

The letter of demand was also sent after the 90 (ninety) days prescribed by the terms of Section 2(1) (a) of the Limitation of Legal Proceedings against the Government Act had expired. This applicant claims was because he was ignorant of the provisions. He claims only to have become aware of the statutory provisions only when he was informed thereof in a letter to the applicant dated 7th October 1998, by local attorneys who were instructed as correspondents to proceed with the claim

The Limitation of Legal Proceedings Against the Government Act 21 of 1972, Section 2(l)(a) provides that no claim will be maintainable against the Government,

"Unless a written demand, claiming payment of the alleged debt and setting out the particulars of such debt and cause of action from which it arose, has been served on the Attorney General by delivery or by registered post: provided that in the case of a debt arising from a delict such demand shall be served within ninety days from the day on which the debt became due."

It is clear from these provisions that the demand which must be addressed to the Minister of the Department of the Government from whom the claim is made must be served on the Attorney General. A practice has been established in this Court of citing the Attorney General in all proceedings in which the Government is involved. This to me seems to be incorrect because the Attorney

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General is not a party to litigation. What is required in the Act is that the Attorney General be served but that the defendant is the appropriate Ministry represented by the Minister responsible for the amount, which is claimed. The applicant clearly did not comply with this provision as the demand made on the 31st July 1998 was addressed to the Commissioner of the Royal Swaziland Police but was not served on the Attorney General.

Furthermore the demand was to have been made in 90 days from the date on which the debt became due. In the present instance the debt became due was on the date of the occurrence of the accident accordingly the demand should have been served on the 24th of March.

The applicant alleges that his default was due to his being a peregrinus and unaware of the provisions of the Swazi law governing the situation. I was referred to a previous judgment Jomo Zwelithini Dlamini vs The Commissioner of Police and the Attorney General¹. I have reread the judgment in that case but do not find that anything I had said there is of assistance in deciding on the present application.

No authority has been quoted to me, which indicates that the fact that the applicant is a peregrinus and unaware of the provisions of the Act is a special circumstance justifying the grant of the relief claimed. There is no reason why peregrinus should be in a better position than an incola. On the contrary

GUARDIAN NATIONAL INSURANCE CO LTD V WEYERS² WEBSTER AND ANOTHER V SANTAM INSURANCE CO LTD³ would suggest that the opposite is true. In those cases ignorance of the law was held not to constitute a special circumstance

¹ Civ. Case No. 2096/95.

² 1988 (1) SA 255(A) E

³ 1977 (2) SA 874 (A) at 883 G

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I am therefore not satisfied that the applicant has shown as he is required to do that having regard to any special circumstances he could not have reasonably expected to have served the demand within the prescribed period.

The application must therefore fail and it is dismissed with costs.

S.W. SAPIRE

CHIEF JUSTICE