

IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 873/99

IN THE MATTER BETWEEN:

LANSDOWNE HOUSE LIMITED

Applicant

And

INALDA MARILDA ANTONIO

1st Respondent

ANTONIO'S FAMILY TRUST

2nd Respondent

CORAM

: MASUKU A. J.

FOR APPLICANT

: MS. N. E. GWIJI

FOR RESPONDENT

: MR. L. R. MAMBA

RULING

By Notice of Application dated 19th May, 1999, the above named Applicant applied for inter alia:-

- (i) An Order granting Applicant leave to file an amended resolution to read thus:-

Although it is not mention in the Notice of Application, as required by the Rules of Court, Affidavits in support of the Application were filed by one Richard Alexander and the Applicant's Attorney.

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The raison d'etre for filing this application is that in its Founding Affidavit the Applicant annexed a resolution which empowered the Applicant to institute an action before this Court for ejectment of the 1st Respondent and further authorised the said Richard Alexander to sign all documents necessary to give effect to the resolution and no further.

On the strength of that resolution, the Applicant proceeded to move an application for the following relief:

1. Waiving the usual requirement of the rules of Court regarding notice and service of applications in view of the urgency of the matter.
2. Directing the Deputy Sheriff for the District of Manzini to attach the 1st Respondent's movable assets on Lot No. 316, Swallow Road, District of Manzini to perfect Applicant's hypothec, pending finalisation of two actions by Applicant against 1st Respondent namely:

- (i) An action for payment of unpaid rentals and;
- (ii) An action for the ejectment of 1st Respondent from Applicant's Plot No. 316, Swallow Road, District of Manzini.

3. Costs to be costs in the cause.

4. Further or alternative relief.

It is common cause that the Resolution did not empower the Applicant to perfect its common law hypothec which it moved. Upon realising the inevitable difficulty that it will face regarding the challenge to its authority to apply for prayer 1 in particular, the Applicant has moved the application granting it leave to file the amended resolution which will encompass the prayer perfecting its common law hypothec.

According to the Affidavits filed by the Applicant's representatives, the reasons for filing the

inadequate resolution lay on the Applicant's attorney, whom it is alleged was given instructions to draft the resolution and in the process omitted to cover the

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aspect relating to the landlord's hypothec. This inadvertence is acknowledged by the Applicant's Attorney and she has personally tendered costs consequent upon this application.

Mr. Mamba, on the other hand opposed this application for leave to file a proper resolution on the grounds that it is doubtful whether a meeting was ever held by the Applicant where a resolution was passed to institute the proceedings. Mr. Mamba challenged the Applicant to produce the minutes of that meeting in which the resolution was taken to institute the present proceedings.

In the case of MALL (CAPE) (PTY) LTD v MERINO KO-OPERASIE BPK 1957

(2) SA 347, it was stated that artificial persons, like the Applicant herein, can function only through the instrumentality of agents and can take decisions by passing of resolutions in the manner prescribed by its constitution. Therefore, less reason exists to assume that from the mere fact that proceedings have been brought in its name, that these proceedings have in fact been authorised by the artificial person concerned.

In this instant case, that hurdle is overcome because the resolution has been annexed. The only difficulty is that the resolution did not entitle the Applicant to enforce its common law hypothec.

In my view, cogent reasons have been advanced for the non-inclusion of the aspect relating to the hypothec and it is abundantly clear that it had been the Applicant's intention to have the hypothec enforced but for the inadvertence on the part of the Applicant's attorney. This inadvertence must not however affect the Applicant in being granted the relief that it has with a fixed and settled intention set out to obtain. It is worth noting that the Applicant's attorney, has properly tendered the costs occasioned by this application personally.

There is no prejudice that will be suffered by the Respondent if an amended resolution is filed and which prejudice cannot be balmed by an order for costs. I also point out that the resolution presently filed was not attacked by the Respondents in the Answering Affidavit.

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I thus grant the order as prayed. Costs for this application for amendment must be borne by the Applicant's attorney.

T. S. MASUKU

ACTING JUDGE