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SWAZILAND HIGH COURT

SWAZILAND GOVERNMENT

Plaintiff

MAZIYA Leo

1st Defendant

LEO INVESTMENT (PTY) LIMITED

2nd Defendant

Civ. Trial No. 550/2002

Coram

Sapire, CJ

For Plaintiff

For Defendant

Mr. P.M. Shilubane

JUDGMENT

(19/07/2002)

The plaintiff is the Government of Swaziland and claims payment from both defendants jointly and severally of an amount of E86 983.68 which is said to be the sum total of rental overpayments made by the Plaintiff to the Defendants who are alleged to have wrongfully collected these amounts from the plaintiff.

The particulars of claim attached to plaintiff's summons must first be examined. Paragraph 1 is the citation of the Plaintiff and does not require comment. Paragraph 2 is the citation of the 1st Defendant who is an individual; alleged to be

“carrying on business as Leo Investments (Pty) Ltd”. This is inaccurate. In so far as it may be proper or necessary to describe him by reference to his relationship to the 2nd Defendant he may be said to be a shareholder and/or a director of that company as the case may be.

It is also inaccurate when describing the 2nd Defendant to allege that the 1st Defendant owns it. The 1st Defendant may own some or all of the shares in the 2nd Defendant, but this fact is not relevant to the citation.

The allegation in paragraph 14 that the “defendants” at all material times owned the property identified as Portion 7 of Farm 180 Lubombo District is confusing unless it is intended to allege that the property was owned by them jointly in co-ownership. This would not appear to be the case. Again it is inaccurate and confusing to allege that the defendants were the lessors in terms of the three agreements that are annexed AG1, AG2 and AG3. In each case as can be seen on perusing the documents, the lessor is 1st Defendant alone. From this it follows that it is only the 1st Defendant who would have received any rentals from the plaintiff and it is difficult to see on these basis how the plaintiff can claim any money from the 2nd defendant which is the owner of the property. The plaintiff’s persistent failure to recognise the 1st and 2nd defendants as separate and distinct legal personae, apart from each other, gives rise to further inaccuracies and confusion.

Not of inconsiderable importance is the claim that both defendants jointly cannot be supported by the allegations in the particulars of claim.

The difficulties with the particulars of claim does not end there.

The essence of plaintiff’s claim is that it paid rentals, presumably to the first respondent who was the lessor, after the plaintiff had become owner of the properties to which the leases relate. It would seem from the summons and the particulars which had been attached thereto that the plaintiff claims to have become owner of the property by virtue of an expropriation. In support of this allegation certain annexures have been attached and it is quite clear that annexures attached do not relate to an expropriation at all. The notification, which was given to the defendants or either of them, was of the intention of the Government to use a portion of the properties for road making purposes. This in itself is not an expropriation. An expropriation does not take place under that act which deals with roads and an expropriation under the

expropriation act has to be alleged and proved before the ownership can be said to have been transferred. This in essence is the exception that has been taken and in considering it in relation to the summons as a whole the exception must be upheld. Accordingly the exception is upheld with costs and the plaintiff is given a period of 14 days from today¹ within which to amend its summons otherwise the case will be dismissed.



SAPIRE, ÇJ