

HIGH COURT OF SWAZILAND

CIVIL CASE NO.436/03

In the matter between:

SWAZILAND LUMBER SECURITY	APPLICANT
AND	
GOVERNMENT OF SWAZILAND	1ST RESPONDENT
MINISTER OF FINANCE	2nd RESPONDENT
ACCOUNTANT GENERAL	3rd RESPONDENT
ATTORNEY GENERAL	4th RESPONDENT
CORAM	MATSEBULA J
FOR APPLICANT	MR. MOTSA
FOR RESPONDENT	MR. DLAMINI

JUDGMENT

29th OCTOBER 2003

Under a certificate of urgency the applicant prays for the following relief:-

(a) that second and third respondents be committed to prison for 30 days for failing to comply with the court order

"Annexure TV see page 13.

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(b) Interest on the sum of E1394250-00 at the rate of 9% from the 30th May 2002 to final date of payment;

(c) Costs of this application at and own client scale;

(d) Further and/or alternative relief.

The applicant is accompanied by the affidavit of one Ted Robbery who it is common cause and he states that he is the director of the applicant.

Deponent states in paragraph 3 of his affidavit that on 10th March 2003 the respondents were ordered in an interim court order to pay the sum of E1394 250-00 as per contents of annexure T1 above.

This court order was served on respondents on 10th March 2003 and on 11th March 2003 4th respondent required of applicant to furnish it with an original order in order to effect payment. This request was duly complied with by applicant, see letter annexed hereto and marked "T3". "T3" is self-explanatory at page 16 of the book of pleadings.

Notwithstanding the undertaking in annexure "TS" respondent failed to comply with payment. Applicant had again through its attorneys this time around reminded the respondents in view of its dire financial

positions (see letter annexure 'TS" at page 19.

I may just pause here and say this delay having reached this time of Government's financial year has been occasioned by the respondents themselves. They had been advised by applicant's attorneys on the 18th March 2003 to pay by close of business payment which was in terms of a court order issued on 10th March 2003 and served on respondents on the same date. They never bothered to adhere to this matter - until the financial year arrived. I have been informed by Mr. Motsa that his client was finally paid by the respondents only on 27th

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March 2003 and that all that urgent application is about payment of interest based on the day when respondents were placed in mora in so far as they delay to pay after the court order was served on them and; also that they should be committed to prison in terms of a contempt of court for paying only on 27th March 2003 instead of paying forthwith.

It was Mr. Motsa's argument that respondents should have tendered interests from the 27th March 2003 when they paid in terms of the court order.

According to Mr. Motsa applicant was to be paid on May 2002 to February 2002 when applicant had rendered the services.

The payment made on 27th March 2003 applicant is not clear whether in terms of the order was fully complied with when this urgent application had already been moved i.e. the application for committal to prison for 30 days for failing to comply with court order annexure "T1".

Mr. Motsa has already indicated that he no longer insists on the respondents being committed to prison because they have since paid the principal amount owed. According to him he has moved the urgent application for an order as to prayer 3 and prayer 4.

Prayer 3 being interest on the sum of E1394 250-00 at the rate of 9% from the 30th May 2002 to date of final payment.

Prayer 4 costs of this application at attorney and client scale. Mr. Dlamini on the other hand contents that the court order was complied with on 28th March 2003. This order was a sequel to a notice of motion dated 27th March 2003.

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Prayer 3 and 4 asked the court to order interest on the sum of E1394 250-00 at 9% from the 30th May 2002 to date of final payment.

Prayer 4 costs of this application at attorney and client scale.

The court granted the order as prayed for in above named. The present application by applicant has arisen because the respondents have partially complied with the order. Therefore even though the principal debt owed has been paid the interest and costs which were also granted in terms of the court order has not. All that the applicant is asking this court to order the respondents is to pay the remaining unpaid order and also paid costs on a punitive scale i.e. attorney and client scale.

In my judgment I can see nothing wrong with that request unless the principal debt was paid the interest and the costs on the said punitive scale was also paid late. In that case the applicant can only ask for costs of this present application. Applicant cannot be allowed to have a second bite at the cherry. The payment on the 28th March 2003 was paid by respondents after numerous letters and telephone calls had been made to them. When finally they paid they ought to have done so completely in terms of the court order which they never challenged in any event.

I have read Mr. Dlamini's last line of his heads of argument i.e. that the applicant ought to have been granted the principal debt judgment and this ought to have been backdated to May 2002 because the court order was granted on 10th March 2003 and not in May 2002.

I do not understand how Mr. Dlamini can say in his heads that applicant had not asked for the prayers granted leading up to the date of granting the prayers. I have read the papers relating thereto and

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found that applicant had in fact so requested and in consequence the court granted the prayers. In the result I order the respondents to pay in terms of the present notice of motion. I do not wish to repeat what was said by this court leading to the grant of that order.

The defendants were in mora as of within a month from presentation of an invoice at the end of each month in respect of which services had been rendered (see Section 1.3 23rd January 2003).

However already on 25th January 2002 extension of services by applicant was rendered and on 23rd July 2002 respondent were said to be processing payments due to applicant Section 3 written by respondents.

Attorney General on 12th February 2003 advised that applicant be paid the principal debt and on 22nd October 2002 the Honourable Attorney General addressed a letter to the Minister of Finance (see Section 6). All the above advice by the office of the Attorney General was totally ignored by the respondents.

In the result I hereby grant prayers (3) and (4) of the notice of motion.

J.M. MATSEBULA

Judge