



THE HIGH COURT OF SWAZILAND

TISUKA TAKANGWANE

Applicant

And

MARTIN DLAMINI

Respondent

Civil Case No. 1914/2002

Coram

For the Applicant

For the Respondent

S.B. MAPHALALA – J

MR. A. LUKHELE

S.C. SIMELANE

JUDGMENT

(16/05/2003)

The Applicant has filed an application against the Respondent, seeking amongst other things, the eviction of the Respondent from certain premises and payment of certain monies said to be outstanding.

Subsequently the Applicant obtained an order by default against the Respondent. The Respondent then applied for and was granted an order for rescission of the judgement.

One point taken, in the application for rescission was that the Applicant had not shown in its papers that it had *locus standi* before the court.

The Applicant now seeks to renew the application on the same papers unamplified. It is now argued that in fact the Applicant does not have *locus standi* to sue or be sued, in that Applicant is neither a company, nor is it a statutory organization, nor can it be called a firm or sole proprietorship.

The gravamen of the Respondent attack is premised on a *dictum* by the Court of Appeal in the case of *VIF Limited vs Vuvulane Irrigation Farmers Association (Public) Company (Pty) Ltd and another Case NO. 30/2000 (unreported)* per Tebbutt JA as follows:

“It is well established that an Applicant must make the appropriate allegations in its launching or founding affidavit to establish its *locus standi* to bring an application”.

Mr. Simelane for the Respondent further directed the court’s attention to the cases of *Ben Scott & others vs Haneson 1980 (3) S.A. 1182 C* and that *Ben M. Zwane vs The Deputy Prime Minister and another, High Court Case No. 624* to buttress his point.

The essence of the Respondent’s contention is that the Applicant is described in the founding papers as a body corporate with full legal capacity and power to sue or to be sued, established by Royal Prerogative and having its head office at Lozitha. These allegations according to the Respondent, do not establish *locus standi* on the part of the Applicant, since there is no provision in our law for the establishment of corporate bodies by Royal Prerogative. These allegations are therefore empty in substance and do not establish *locus standi* on Applicant’s part.

Mr. Lukhele for the Applicant filed very comprehensive Heads of Argument *per contra*. It is *Mr. Lukhele’s* view that the Respondent’s objection is misconceived in two respects.

In the first place it lacks a factual basis. Indeed, the Respondent has not filed any answering affidavit to place in issue the various factual averments made on behalf of the Applicant in the founding affidavit, which must accordingly be accepted as being admitted. *Mr. Lukhele* went on in great length to outline the various averments pertinent to this point.

In the second place, it is contended, the Respondent's argument pay no regard to the fact that the Applicant is a public institution established by Royal Prerogative and derives its capacity *inter alia* to litigate from its status as a public body. To this effect he cited the cases of *Swaziland Government vs Njenje 1963 – 1969 S.L.R. 201 at 204* and *Njenje vs Swaziland Government 1970 – 1976 S.L.R. (1) Court of Appeal* and that of *Sachs vs Donges No. 1950 (2) S.A. 265 (a) at 275 – 276*.

These are the issues before me. I have considered them very carefully and it would appear to me that *Mr. Lukhele* for the Applicant is correct on the two points he has advanced *per contra*. Firstly, the Respondent has not answered the averments in paragraph 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6 of the Applicants founding affidavit which facts seeks to establish the Applicant's *locus standi*. The Respondent is deemed to have admitted this paragraph by not filing any answering affidavit. There has been no suggestion that the Applicant has lacked, for example, the contractual capacity to enter into the lease agreement or other agreements. He has also not alleged or laid any basis for suggesting that it lacked the capacity to own assets such as the leased premises in question. Having over many years accepted the benefits under the lease agreement with the Applicant, it can hardly lie in the mouth of the Respondent now to contend that the Applicant "is not a legal person".

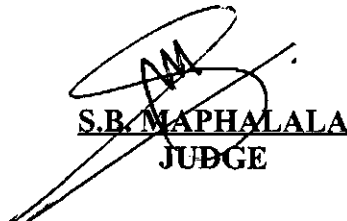
I agree with *Mr. Lukhele* that the legal objection not only lacks a factual and legal foundation but has been raised as a dilatory tactic to avoid the relief sought by the Applicant where he has raised no defence on the merits.

On the second point, viz the Applicant is a public body or institution which has been established by Royal Prerogative. Legislation expressly recognises that the executive authority of Swaziland shall vest in the King and that such authority may be exercised by the King directly or through officers or authorities. I refer to Section 69 (1) and (2) of the Establishment of the Parliament of Swaziland Order read with Section 10 (1) (b) of the Swaziland Administration Act 79 of 1950. See also Section 5 (3) of the Mining Regulations of 1948, as amended in terms of Notice 94 of 1976. It would also appear to me that Rule 14 of the High Court rules would be applicable in *casu*.

I agree in *toto* with *Mr. Lukhele* that the Applicant is accordingly a public body established by Royal Prerogative. It clearly has legal personality separate from that of the individual who compose it, and it has perpetual succession and is capable of owning (and in fact owns) property from those appointed to it.

In the result, the objection raised by the Respondent is dismissed with costs.

Judgment is accordingly granted in terms of prayer 4.1, 3.2 and 3.3 on the Applicant's application dated the 17th June 2002.



S.B. MAPHALALA
JUDGE