



**THE HIGH COURT OF SWAZILAND**

**PROFESSOR DLAMINI**

Plaintiff

**And**

**THE ATTORNEY GENERAL**

**Defendant**

Civil Case No. 778/2004

Coram  
For the Plaintiff For  
the Defendant

S.B. MAPHALALA - J  
MR. P. GWEBU  
MR. DLAMINI (Attached  
to the Attorney General's  
Chambers)

**JUDGEMENT**

**(04/06/2004)**

Before court is an application for default judgment in terms of Rule 4 (2) of the High Court Rules.

The Plaintiff is suing the Swaziland Government for malicious prosecution in the sum of E250, 000-00. He also seeks interest thereon at 9% per annum a *tempore morae* and costs of suit.

The matter was set down for hearing at 0930 hours on the 7<sup>1</sup> May 2004.

When the matter was called after Counsel for the Plaintiff had made his submissions motivating the application Counsel for the Defendant made submissions against the granting of the default judgment. The Defendant has not filed any opposition in this matter.

The argument advanced by Counsel for the Defendant from the bar is that the Attorney General has not been served with the summons in this matter, hence they have not filed opposing papers. The argument is that nowhere in the summons is it reflected that the Attorney General received the summons. It was submitted in this regard that the stamp of the Attorney General would have been made on the summons to show that service has been effected. Counsel for the Defendant further argued that the Deputy Sheriffs return filed of record is not conclusive proof that proper service has been effected.

Counsel for the Defendant however, could not advance any legal authority to support the position adopted by the Defendant save to say that this was general practice.

On the other hand Counsel for the Plaintiff argued that the Deputy Sheriffs return was *prima facie* proof of service and would in the present case constitute proper service.

The above therefore is the issue for determination in the present case.

Service of process is governed by Rule 4 of the High Court Rules. Rule 4 (1) provides that service on the person to be served of any process of the court directed to the Sheriff and any documents instituting application proceedings shall be effected by the Sheriff or Deputy Sheriff or in the case of a document instituting application proceedings by an attorney or any person in his employ.


Rule 4(10) provides that in every proceeding in which the Government is defendant of respondent the summons or notice instituting such proceedings, shall be served at the office of the Attorney General, Mbabane.

In the instant case the above-cited rules have been complied with by the Plaintiff. The Deputy Sheriff's return filed of record is *prima facie* evidence of service.

According to the authors *Herbstein et al, The Civil Practice of the Supreme Court of South Africa, 4 ED* at page 303 the return not being conclusive but merely *prima facie* evidence of service, proof that there has been no or insufficient service will be allowed, although the maxim *omnia praesumuntur rite acta* applies to a return of service, and the clearest and most satisfactory evidence will be required to rebut this presumption and to impeach the return.

In the present case no evidence of any nature has been advanced to rebut the presumption and to impeach the return. Therefore, I am constrained to hold that service in *casu* is good in law.

In the result I dismiss the point raised by the Defendant with costs. The Plaintiff is to make further submissions on the *quotum* of damages for the malicious prosecution.

  
S.B. MAPHALALA  
JUDGE