

THE HIGH COURT OF SWAZILAND

PHINDILE GAMEDZE

Applicant

And

THE GOVERNMENT OF SWAZILAND

Defendant

Civil Case No. 1774/98

Coram ,S.B. MAPHALALA-J

For the Applicant: IN ABSENTIA

For the Defendant: MISS N. VILAKATI (Attached to the Attorney General's Chambers)

JUDGMENT

(03/03/2005)

[1] The matter was set for trial pursuant to Rule 56 (3) and (4) (a) of the High Court Rules and allocated for hearing on the 23<sup>rd</sup> - 24<sup>th</sup> February 2005. When the matter was called on the 23<sup>rd</sup> February 2005 at 9.30am, there was appearance for the Defendant and no appearance for the Plaintiff. The Defendant proceeded to invoke Rule 39 (3) of the Rules of this court.

[2] Rule 39 (3) thereof reads as follows:

"If, when a trial is called, the Defendant appears and the Plaintiff does not appear, the Defendant shall be entitled to an order granting absolution for the instance with costs, but may lead evidence with a view to satisfying the court that final judgment should be granted in his favour and the court, if so satisfied, may grant such judgment."

[3] The above-mentioned scenario is known in legal parlance as the comparuit default of the Plaintiff (see Erasmus, Superior Court Practice, Juta B1 - 290 and the cases cited thereat).

[4] In the circumstances I allowed Defendant to lead evidence with a view to satisfy the Court that final judgment should be granted in its favour. Indeed Miss Vilakati led the evidence, of three witnesses who are police officers.

[5] The facts of the matter are that the Plaintiff has instituted action proceedings for the payment of the sum of E30, 000-00 in respect of claim 1 alleging that she was wrongfully and unlawfully and without any justification detained by the Lobamba Police from the 13<sup>th</sup> December 1997 to the 15<sup>th</sup> December 1997 and as a result of the arrest she was injured in her good name and reputation; deprived of her liberty and endured hardship and suffering. On Claim 2 she seeks for payment of the sum of E50, 000-00 for assault she was subjected to by the Lobamba Police whilst in their custody. She alleges that the police assaulted her by striking her with sjamboks all over the body, by striking her on the face with clenched fists and by kicking her, thereby inflicting severe injuries upon her. By reason of the said assault and indignities thereof she suffered great pain, and was confined to bed for a month and thereafter suffered nervous shock making it impossible to attend to her business.

[6] The defence preferred by the Defendant in its plea and further confirmed by the three police officers who gave evidence is that Plaintiff was arrested in terms of the provisions of the Criminal Procedure and Evidence

Act in that the police acted on a reasonable suspicion in arresting and detaining her in that she was found together with a suspect, one Khazi Mkhwanazi who had allegedly committed an armed robbery and a double murder at or about Mountain Inn in Mbabane on or about 1997. On the assault in Claim 2 the evidence of the three police officers is that Plaintiff was slapped on the face and kicked at the time of the arrest by one Bheki Jele who was supposedly infuriated by finding his girlfriend, the Plaintiff, with the suspect that the police had come to arrest. Such assault was immediately stopped by the police who separated the two. All in all, Defendant denies liability in this matter and Plaintiff was put to the strict proof thereof.

[7] In the circumstances of the case and on the basis of the evidence led by the Defendant I am satisfied that final judgment should be granted in Defendant's favour and I thus grant absolution from the instance with costs.

S.B. MAPHALALA

JUDGE