

IN THE HIGH COURT OF SWAZILAND

Civil Case No. 2265/2007

NGAJANE DLAMINI

Applicant

And

LOMAFA INVESTMENTS (PTY) LTD

1st Respondent

DEPUTY SHERIFF FOR THE DISTRICT OF

SHISELWENI PAT JELE N.O.

2nd Respondent

In Re:

LOMAFA INVESTMENTS (PTY) LTD

Applicant

And

NGAJANE DLAMINI

Respondent

Coram: S.B. MAPHALALA – J

For the Applicant: MR. Z. JELE

For the Respondent: MR. T. MLANGENI

JUDGMENT20th July 2007

[1] In this application the Applicant has filed a Notice of Motion under a Certificate of Urgency for an order in the following terms:

1. Dispensing with the normal and usual rules of court relating to notice, time limits, service and procedure and enrolling this matter as one of urgency.

2. That a rule *nisi* do hereby issue calling upon the Respondents Lomafa Investments (Pty) Limited, to show cause on or before the 20th of July 2007 why an order in the following terms should not be issued and made final:

- 2.1. Rescinding and setting aside the order of court issued on the 6th of July 2007 in so far as it relates to the issue of costs;
 - 2.2. Setting aside the bill of costs and writ of execution issued pursuant thereto in respect of this matter;
 - 2.3. Directing that the sheriff for the District of Shiselweni, Mr. Pat Jele return forthwith the nine herd of cattle attached by him on the 14th of July 2007;
 - 2.4. Setting aside the attachment made by the Deputy Sheriff for the District of Shiselweni;
 - 2.5. Granting costs on the scale as between attorney and own client;
3. That the orders under paragraph 2 above, operate as interim orders pending the finalization of the matter.
4. Granting further and/or alternative relief.

[2] The application is founded on the affidavit of the Applicant who has also filed pertinent annexures thereto. In the said affidavit the Applicant related at some length the historical background of the dispute between the parties. This is indeed a long standing dispute between the parties centering around a farm owned by one Sam Kuhlase where Applicant enjoys a usufruct.

[3] For present purposes the court is called upon to grant an interim order to restore the *status quo ante* between the parties. The Respondents oppose the granting of this interim order stating that the Applicant in his papers is blowing hot and cold in that in paragraph 4.6 and 4.7 of his Founding affidavit he has told a blatant lie to the court and therefore the court in its discretion should not listen to him.

[4] In order to establish this state of affairs as stated by the Respondent it is important in this judgment to look at these offending paragraphs to see whether indeed the court ought to refuse this application.

[5] Paragraph 4.6 of the Founding affidavit states the following:

4.6 During the course of the preparations of the funeral and on Wednesday the 27th of June 2007, court papers were served on my home indicating that I had to appear in court on the 29th of June 2007.

[6] In paragraph 4.7 the following is deposed:

4.7 I did not immediately see this application as I was busy with the funeral arrangements and in any event, I am not literate and therefore would have required to have someone explain to me the contents of the application. I may however state that at the time, I was in a state of confusion owing to the bereavement, the complicated logistics with regards to the arrangements of the funerals well as the financial burden that I was under.

[7] The crux of the argument by *Mr. Mlangeni* for the Respondent is that the above-cited paragraphs are akin to what applies in the principle of "clean hands" in that they show that Applicant is not candid with the court as what is reflected in those paragraphs is not what happened when the Applicant was served with the papers in this matter.

[8] I have considered the arguments of the parties in this regard and I am persuaded by the arguments by *Mr. Jele* for the Applicant that the Respondent's claims are ill founded. I agree with him that there is nothing untoward in these paragraphs even when they are read against the version given for the Respondent from the bar by Counsel.

[9] In the circumstances and on the basis of what I have said above in paragraph [8] of this judgment I have come to the considered view that the point raised by the Respondent is without merit and it is accordingly dismissed. Costs of the point *in limine* reserved to the main application. In the meantime a rule *nisi* is to issue in terms of prayer 2 of the Notice of Motion. Furthermore, Respondent to file opposing affidavits in

accordance with the Rules of court.

S.B. MAPAHALALA

JUDGE