

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 1724/06

In the matter between:

V.J. AGRICULTURAL PRODUCTS
(PTY) LTD

PLAINTIFF

AND

MDZIMBA MEMBERS

DEFENDANT

CORAM: MAMBA J

FOR PLAINTIFF: MR. P.M. SHILUBANE

FOR DEFENDANTS: MRS. KHUMALO

RULING (on exception)

23rd July, 2008

[1] The Plaintiff in its amended particulars of claim aver that it is the registered owner of Portion 3 of Farm Number 954 situate in the District of Hhohho and that the Defendants are in unlawful occupation of the said property. As a result of this unlawful occupation, the Plaintiff has filed this action for the eviction of the Defendants from the property.

[2] In their defence the Defendants admit that they are in occupation of the property and have raised a special plea that

- (i) the plaintiff is the owner of the property
- (ii) they, the Defendants, are banumzane or farm dwellers
- (iii) the property in question is a farm as defined in the Farm Dwellers

Control Act Number 12 of 1982, read together with Legal Notice Number 96 of 1983: and that consequently this court has no jurisdiction in terms of the said Act to evict them from the property

and they have also raised what is essentially 3 pleas; namely:

- a) That they own the property in question, notwithstanding its registration in the name of the Plaintiff. They acquired ownership of this property through the process of acquisitive prescription as they have resided on the farm for more than 30 years without let or hindrance:
- b) The land was allocated to them by the Mdzimba Royal Kraal or Urnphakatsi.

The land falls under and is part of the Mdzimba Royal Kraal or Urnphakatsi and as such can not be owned by the Plaintiff;

[3] The Plaintiff has excepted to this plea complaining that it is vague and embarrassing inasmuch as whilst the plea based on acquisitive prescription is made as an alternative plea to the special plea based on the provisions of the Farm Dwellers Control Act such a plea is inconsistent with the plea that the property in

question was allocated to the Defendants by the Urnphakatsi or even that the property is not a farm and therefore these other pleas should be at least pleaded in the alternative as well.

[4] In response the Defendants accept that their pleas, apart from the special plea, are mutually inconsistent but submit that they are entitled to plead in this manner in good faith for the purposes of aiding justice". In support of this the Defendants have quoted the case of **WHITEHEAD'S TRUSTEE v VAN EYK (1884) 4 EDC 4 AT**

8 where Barry JP is recorded to have said that

"the proper view of the case seems to be, that several pleas ought to be allowed to be pleaded together although they are inconsistent if they are required bona fide, and appear to be necessary to meet real justice of the case."

[5] I have not had access to the full judgment referred to herein and therefore I do not know the particular facts of that case - upon which the judgement was based. However, the general rule is that inconsistent defences or pleas should be raised in the alternative. I can see nothing wrong in a pleader offering as many alternative pleas as there are available to him to meet the real justice of his case. A plea is, however, embarrassing and therefore exceptionable if several inconsistent pleas are not pleaded in the alternative. Justice is aided where the plea is such that the pleader's opponent and the court is informed, in an

unambiguous manner, the nature of the pleader's case that he has to meet or answer. This cannot, in my respectful view, be the case where several mutually inconsistent pleas are filed. On the other hand, I see no prejudice at all on a pleader who wants to plead several mutually inconsistent pleas being ordered to file all such pleas in the alternative.

[6] In the present application, the defendants may not, unless pleaded in the alternative, plead that the relevant property is or belongs to the Mdzimba Royal Kraal and at the same time plead that they are the owners thereof through acquisitive prescription. And the allocation by KuKhonta - that is to say, by allotment by the Umphakatsi, is not the same as, and is inconsistent with ownership through acquisitive prescription.

[7] The defendants argue that the exception seeks to muzzle them and prevent them from fully ventilating their defences herein. Far from it. The exception taken and the resultant order I made, does not direct them on what to say but directs them how not to say that which they want to say, in order not to prejudice the plaintiff in the conduct of its claim.

[8] In casu the Defendants were ordered to amend their plea within 7 days of the order, such that the mutually inconsistent pleas, like that based on the Farm Dwellers Control Act, are pleaded in the alternative.

[9] Both parties were in agreement with my ruling that the rule 30 application filed by the plaintiff should give way to the exception. It was therefore not argued and or pursued by the plaintiff.

MAMBA J