

**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 2813/05**

**In the matter  
between : PIET  
MTSETFWA AND  
LUKE MTSETFWA**

**PLAINTIFF  
  
DEFENDANT**

**CORAM  
FOR PLAINTIFF  
FOR DEFENDANT**

**MAMBA J  
MR. B. SIMELANE  
MR. M. MKHWANAZI**

## **JUDGEMENT - APRIL 2009**

[1] The plaintiff has sued his son, the defendant for the return of eight (8) goats plus their progeny. These goats were allegedly removed from the plaintiffs home and possession by the defendant on the 4<sup>th</sup> February, 2002 and had at the issue of summons in 2005 multiplied to forty (40). In the alternative, the plaintiff wants the defendant to pay to him a sum of E16,000-00 being the market value of the said goats.

The Defendant denied any liability towards the plaintiff. Defendant admits taking the eight goats from the Plaintiffs home but avers that these goats were his and he removed them from the plaintiffs home with the express consent of the plaintiff. When these goats were removed from the plaintiffs homestead, they were in the custody of the plaintiffs daughter. The plaintiff was away in South Africa on one of his long and frequent visits to that country.

The defendant, it is common ground, when he took away the goats from the plaintiffs home he had left his parental home and had established his own homestead at eMhlangeni area near Bhunya. The plaintiff remained at Mankayane. It is also common cause that before the defendant established his own homestead and whilst still living with his parents, he had purchased livestock of his own which he kept at his parental home under the name of the plaintiff, his father. The Defendant testified that he initially purchased sheep and these were eventually all used or disposed of by the plaintiff for his own use and without the consent of the defendant. The sheep were kept at Soko's place. The plaintiff, according to the Defendant, replaced the defendant's sheep by giving him a female kid (young goat). This was in the 1990s and the goat was kept at the plaintiffs kraal and under his name.

This goat and its (unspecified number of) offsprings or progeny were again alienated by the plaintiff without the consent of the defendant. The defendant testified that the plaintiff was a regular and frequent visitor to South Africa and on each of his visits there, he would either kill or sell one of the defendant's goats to facilitate his sojourn in South Africa.

After the defendant had set up his home at EMhlangeni, his parents came to his home and the plaintiff acknowledged to him that he had used his goats and sheep and that in return he was giving his only three goats that remained to the Defendant. The defendant accepted this arrangement and the plaintiff offered to deliver these goats and the defendant's cattle to the defendant's home. The plaintiff was worried that the goats were being killed by wild animals in the veld and there was no one to look after them. Indeed he delivered the cattle as promised and again proceeded on his trip to South Africa, leaving only his daughter at his home.

The plaintiff's sister then approached the defendant and advised him to take custody of the goats in question as she was not in a position to adequately look after them. She did this because she knew that the goats belonged to the defendant. Both of them (Defendant and his sister)

approached the Veterinary Assistant and caused the goats to be deregistered from the name of the plaintiff and transferred into the name of the defendant.

[6] It is common cause that when the plaintiff returned from South Africa and found that the defendant had removed the goats from his home, he lodged a complaint with the defendant. The family dispute was subsequently heard by the local elders or Libandla. What transpired during that hearing, according to the defendant, is that the plaintiff did not actually want the return of the goats to him but that he wanted the defendant to maintain or look after him - as he was now aged.

[7] Save that he lodged a complaint about the eight (8) goats being removed from his homestead, the plaintiff has virtually denied all the evidence by the defendant. He denied that the defendant ever purchased or owned sheep or goats. He did not, however deny his ownership of three cattle and how these were delivered to the defendant's home by him.

[8] Neither party called a member of the family or the Local Libandla to shed any further light on this dispute. The issue for decision in this case is whether or not the plaintiff ever transferred ownership of the goats to the



defendant. The Defendant's case is that he did. The plaintiff denies it.

[9] The plaintiff's case is that the eight goats belonged to him and were unlawfully taken away from his home by the Defendant.

[10] The Defendant on the other hand has given a blow by blow account or version of the family story pertaining the livestock in the family. His story was detailed chronological, logical and convincing. His version of the events and the tenor of his evidence, is much superior and more cogent and convincing than that of the plaintiff. One has to bear in mind the relationship between the parties herein and the fact that the accused is now an old man who, apparently needs someone to look after him. This, in my view lends support and credence to the defendant's evidence that this was the plaintiff plea before the Council of local elders.

[11] For the foregoing reasons, I ruled that the plaintiff has failed to discharge the onus of proving that the goats were, at the time of their removal, his and that he had not authorized the Defendant to take them. Each party was ordered to pay its own costs; the defendant though being the successful party not being entitled to its costs in view of its vague and too brief a plea. (The

plea was a bare and simple denial of ownership of the goats in question and an admission of taking the goats but with the consent and knowledge of the plaintiff).

**MAMBA J**