



**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

Civil Case No. 521/2008

BHEKANI MKHABELA

Applicant

And

SWAZILAND MEAT WHOLESALERS  
(PTY) LIMITED

1<sup>st</sup> Respondent

SIBONISO DLAMINI

2<sup>nd</sup> Respondent

Coram  
For the Applicant  
For the Respondent

S.B. MAPHALALA - J  
MR. B. SIMELANE  
MR. S.C. DLAMINI

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JUDGMENT  
19<sup>th</sup> February 2009

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[1] Before court is an application in the long form for an order directing Respondents jointly and severally one paying the other to be absolved to pay E38, 158 – 83 to Applicant.

In prayer (b) thereof that Respondents jointly and severally, one paying the other to be absolved pay costs of the application.

[2] The Founding Affidavit of the Applicant is filed being supported by an affidavit of one Muzi Manana. An annexure is filed thereto being a Slaughter Sheet from Swaziland Meat Wholesalers.

[3] The Respondent has filed a Notice of Intention to Oppose and later an Answering Affidavit. In the said affidavit three points *in limine* have been raised. Firstly, that the application is fatally defective because there has been a mis-joinder of the 2<sup>nd</sup> Respondent who acted herein throughout as the attorney for one Thoko Ivy Mkhabela (nee Magagula).

[4] The second point *in limine* is that there has been a non-

joinder of Thoko Ivy Mkhabela at whose instance the cattle were seized. The third point *in limine* is that there has been a non-joinder of the Deputy Sheriff who attached the cattle.

[5] The fourth point *in limine* was raised from the Bar when the matter came for arguments that there are serious disputes of fact.

[6] In my assessment of the arguments of the parties I have come to the considered view that the first three points *in limine* should be dismissed. On the first point Applicant was told that it is the 2<sup>nd</sup> Respondent who took the money, or that someone was sent by the 2<sup>nd</sup> Respondent to get the cheque.

[7] On the second point that what was taken from the 1<sup>st</sup> Respondent is the cheque in the amount of E38, 158-83 and

not the cattle as was the alleged instruction from Thoko Ivy Mkhabela. Thirdly, Applicant could not have joined a Deputy Sheriff he does not know as he was not told about him. Therefore the arguments of mis-joinder and non-joinder are misconceived.

[8] The only point *in limine* that has some merit is that of the disputes of fact. However, after considering the arguments of the parties I have come to the considered view that these disputes of fact regarding the ownership of the cattle and denial by the 2<sup>nd</sup> Respondent that he collected the cheque or that it is with him can be resolved through oral evidence. (see *Room Hire Co. (Pty) Limited vs Jeppe Street Mansion 1949 (3) S.A. 1155*).

[9] In the result, for the afore-going reasons I order that oral evidence be led on issues specified above in paragraph [8] of this judgment.

**S.B. MAPHALALA**  
**PRINCIPAL JUDGE**