



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No: 3387/02

In the matter between:

SAMUEL LANGA

Applicant

VS

MBABANE CITY COUNCIL

Respondent

Neutral citation: *Samuel Langa vs Mbabane City Council*
(3387/2002) [2012] SZHC 198 (17th
September 2012)

Coram: **MAPHALALA PJ**

Heard: **22ND OCTOBER 2007**

Delivered: **17TH SEPTEMBER 2012**

Summary: *The Defendant applied for absolution from the instance at the close of the Plaintiff's evidence. The evidence of the Plaintiff proved the Defendant's defence that Plaintiff's motor vehicle was removed in a well publicized campaign. The court finds in favour of the Defendant and dismissed the action with costs.*

The Application

[1] At the close of the evidence of the Plaintiff the Defendant's attorney applied for absolution from the instance. The court has heard the evidence of two witnesses for the Plaintiff then he closed his case. I shall outline a summary of the evidence of each witness in the following paragraphs and thereafter the arguments of both parties in the matter. Finally, my analysis of the evidence and my conclusions thereon.

[2] First of all I wish to apologise profusely to both parties for the delay in issuing judgments in this case where arguments were heard in 2007. The court record in this matter went missing in my Chambers and in the past years this Court was faced with a serious backlog of cases causing such unfortunate delays.

The chronicle of the Plaintiff's evidence

[3] The first witness was the Plaintiff himself who outlined at length the circumstances of this case which are pertinent to his claim. He testified that in September 2000 his motor vehicle was taken by officers of the City Council. That they destroyed the motor vehicle which was an Isuzu registered number SD 203 PH and was a 1982 model. That it was cream white in colour and its value when he bought it was E10,000.00.

- [4] He testified that he never saw the officers of the City Council taking the motor vehicle. He reported the incident to the police. He applied for the return of the motor vehicle or its value to the sum of E10, 000.00.
- [5] PW1 was then cross-examined searchingly by the attorney for the Defendant Mr. Z. Jele. It was put to him that the officers of the City Council were removing all the scrap vehicle in the vicinity of the location. The Plaintiff's motor vehicle was one of those motor vehicles which was removed in that campaign. This was a well publicized campaign that involved the residents of the area. Plaintiff stated that he did not know anything about this campaign.
- [6] PW1 was cross-examined about whether he knew one Hadebe who featured prominently in the saga of the motor vehicle.
- [7] The second and last witness for the Plaintiff was one Vusimuzi Zinde who also resided at the same location at Msunduza with the Plaintiff. He testified that he knew the Plaintiff's motor vehicle and that on the 25th September, 2000 he saw officers of the City Council who came to the location and took the Plaintiff's motor vehicle which was crushed and later taken away.

[8] PW2 gave evidence on the circumstances in which the Plaintiff's motor vehicle was taken by officers of the City Council. He was not aware of the campaign to clean the location. This was the extent of his evidence and he was also cross-examined at the some length by the attorney for the Defendant. It emerged from the cross-examination by defence attorney that the Plaintiff's motor vehicle was stationary at Mobeni for a period of 6 (six) months. This is the extent of the Defendant's cross-examination of this witness.

[9] The Plaintiff then closed his case and the attorney for the Defendant then applied for absolution from the instance.

The application for absolution from the instance

[10] The gravamen of the argument of the Defendant is stated in paragraph 5 of the Defendant's plea that the essential element has not been proved that the motor vehicle was removed "forcibly or unlawfully."

[11] On the other hand the attorney for the Plaintiff took the position that Plaintiff has made a case. It is common cause that the Defendant's officer took the motor vehicle as a scrap therefore there is a case to answer.

[12] The attorney for the Plaintiff cited the textbook by *Herbstein and van Winsen, The Civil Practice of the Supreme Court of the*

South Africa, 4th Edition at pages 681-682 and the cases cited thereto to the effect that the court has a discretion in the matter.

The court's analysis and the conclusions thereon

[13] Before delving on an analysis of the Plaintiff's evidence I wish to digress a bit and outline the legal position in cases of this nature. The authors *Herbstein (supra)* at page 681 put the position of the law in the following terms:

“After the Plaintiff has closed his case the Defendant, before commencing his own case, may apply for the dismissal of the Plaintiff's claim. Should the court accede to this, the judgment will be one of absolution from the instance. The lines along which the court should address itself to the question whether it will at that stage grant a judgment of absolution have been laid down in the leading case of *Gascoyne v Paul & Hunter*, which contains the following formulation:

‘At the close of the case for the Plaintiff, therefore, the question which arises for the consideration of the Court is, is there evidence upon which a reasonable man might find for the Plaintiff? ...The question therefore is, at the close of the case for the Plaintiff was there a *prima facie* case against the Defendant Hunter; in other words, was there such evidence before the Court upon which a reasonable man might, not should, give judgment against Hunter?’

It follows from this that the court is enjoined to bring to bear the judgment of a reasonable man, and

'is bound to speculate on the conclusion at which the reasonable man of [the court's] conception not should, but might, or could, arrive. This is the process of reasoning which, however difficult its exercise, the law enjoins upon the judicial officer.' "

[14] In the present case it is common cause that the motor vehicle was taken by the officers of the Defendant as a scrap. There is also damning evidence of the Plaintiff's own witness Vusimuzi Zinde.

[15] Vusimuzi Zinde who testified that the said motor was lying as scrap for two to three months. That it was broken for six months before the Town Council took it from where it was parked.

[16] This piece of evidence in my assessment dealt a death knell to the Plaintiff's evidence that the said motor vehicle was regarded by Plaintiff's own witness to be immobile for six months.

[17] It is also clear that in the vicinity of the location the City Council was conducting a cleaning up campaign which was well publicized.

[18] On these facts, I cannot say that the Defendant has a case to answer. The evidence adduced so far does not show that the

motor vehicle was removed “forcibly” or “unlawfully.” On the evidence it appears to me that it has been abandoned where the officers of the Defendant towed it away.

[19] In the result, in the exercise of my discretion I rule that the Application from the instance succeeds with costs.

STANLEY B. MAPHALALA

PRINCIPAL JUDGE

FOR THE PLAINTIFF : MR. S. BHEMBE

FOR THE DEFENDANT : MR. Z. JELE