



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 1248/ 2011

In the matter between:

ESTHER DLAMINI	1st	Plaintiff
ELIJAH DLAMINI	2nd	Plaintiff
MUMCY DLAMINI	3rd	Plaintiff

And

HILLSIDE PRIMARY SCHOOL	1st	Defendant
THE SCHOOL MANAGER	2nd	Defendant
THE CHAIRPERSON	3rd	Defendant

Neutral citation: *Esther Dlamini & 2 Others v Hillside Primary School & 2 Others(1248/2011) [2014] SZHC232 (23rdSeptember 2014)*

Coram: M. Dlamini J.

Heard: 15th July2014

Delivered: 23rdSeptember, 2014

Action proceedings – claim for balance of unliquidate debt – defence that School Principal failed to get consent of School Committee or do handover – Turquand rule applicable – outsider fully entitled to presume that a corporate’s procedures have been complied with

Summary: By action proceedings, the plaintiffs are seeking for payment of the sum of E38,726.69. The defendants refute the sum claimed on the basis that the claim is based on goods sold and delivered at the instance of the Principal of 1st defendant and not at their instance.

Evidence

[1] In asserting their claim, the plaintiffs led *viva voce* evidence of a number of witnesses. **Mr. Elijah Maswazi Dlamini**, 2nd plaintiff identified himself as a Pastor of A.M.E. (African Methodist Episcopal) Church. Having taken oath, he informed the court that in 2003, he agreed with 1st defendant as represented by the Principal **Mr. Mdluli**, that members of his Church would sew uniforms for the 1st defendant. **Pastor Paul Mavundla**, the Pastor of 1st defendant was part of the agreement. They duly sewed and delivered the said uniforms in installments. In 2004, they received part payment of the sum of E900.00.

[2] He was cross examined on who was present when the sale agreement was concluded. He maintained what he stated in his evidence in chief. He was also asked as to who represented the 1st defendant and he stated that the Deputy Principal was also present including the Principal. It was his evidence that **Pastor Mavundla** was the one who introduced them to the Principal, **Mr. Mdluli** following that they were only known by **Pastor Mavundla**. He pointed out that they did not have any meeting with the School Committee.

[3] The second witness was **Mr. Paul Mgcibelo Mavundla**. He took the oath and told the court that he knew the plaintiffs. In 2003 they approached him requesting that he introduce them to 1st defendant for purposes of requesting

for permission to sew and sell uniforms to 1st defendant. He obliged. The teacher granted plaintiffs' request. The teacher was the Principal, by the name of **Mr. Mandla Numeri Mdluli**. **Mr. Mdluli** informed them that the uniform would be sold at school and money be deposited into school account. A cheque would be drawn from this account in order to pay them. In 2004, plaintiffs were given a cheque of E900.00 and he saw the cheque which was in the name of 1st defendant as drawer. This cheque had more than one signature. The signatures belonged to the Chairman and the Principal. The Chairman was **Mr. Tsabedze**.

[4] Concerning the balance as the goods summed up to E20,000.00 he was involved in negotiation. He learnt that the school had many debts and that it undertook to pay plaintiffs later preferring to pay other debts first.

[5] In cross examination, he stated that there were many meetings held with 1st defendant pertaining payment of the balance. When quizzed on how he became aware of payment of E900.00, he responded that he was shown the cheque by plaintiffs as he introduced them to defendants. He was asked as to who should a person approach in order to do business with 1st defendant and he said that it should be the Principal. He was aware that the Principal was dismissed following the Auditors' report for misappropriation of the school funds.

[6] The next witness was 3rd plaintiff who informed the court on oath that 2nd plaintiff was her husband while 1st plaintiff her sister-in-law. She informed the court that as they were in the business of sawing, they approached **Mr. Mavundla** requesting him to take them to 1st defendant's Principal. The Principal granted them the right to supply uniform at 1st defendant. They duly supplied the uniform. In 2004, they were paid the sum of

E900.00. When they requested for the balance, they were told that the school was swimming in debts. The balance due was the sum of E20,335.00. The amount claimed in the summons is inclusive of interest.

[7] She was also cross examined. She informed the court that she did not have a child at the school and therefore did not see receipts given to purchasers of the school uniform from school. When they were given the green light to sell the uniforms to 1st defendant, present were the Secretary and the Principal. The uniforms were delivered to 1st defendant via **Pastor Mavundla** because they received the order to supply through him. She recalled very well that the cheque of E900.00 was collected by **Pastor Mavundla** and he gave it to 1st plaintiff. When asked as to whether he knew the procedures to be followed when obtaining business with 1st defendant, she stated that one had to speak to the Principal. It was put to this witness that they wrongly entered into an agreement with the Principal as he had no mandate to grant them permission to do business with 1st defendant. She responded that such would be the first of its kind.

[8] It was her evidence that after failing to secure further payment, they went to the Deputy Principal who undertook to speak to the Principal in order to pay. She was cross examined as to who the drawer of the cheque of E900.00 was and she responded that it was 1st defendant.

[9] The fourth witness on behalf of plaintiffs was **Mr. Siphon Fana Tsabedze** who on oath informed the court that he knew plaintiffs and saw them coming to school and delivering uniforms to the Principal. He was Chairman since 2002 to 2008. He was never involved in the agreement to have the uniform sold and delivered to 1st defendant. He narrated the events that led to the school uniform being delivered. He stated that there

was a parents' meeting where parents complained that the school uniform was not uniformed in terms of colour. It was resolved that one supplier should be secured in order to supply the school uniform. While they were still scouting for the supplier, they saw uniform being delivered at the school. They enquired from the Principal, who informed them that the uniform was being delivered by plaintiffs who were church members of the school. The Principal would pay for the school as this uniform was to be put aside. He said that he could not remember who was the drawer of the cheque of E900.00.

[10] He was aware that plaintiffs were complaining about failure to be paid the balance. A meeting by the School Committee was arranged and the Principal quizzed on why the plaintiffs were not paid. The Principal responded that they should leave the matter to him. By this response, he assumed that the Principal meant that he would settle the debt. The Chair or his deputy co-signs with the Principal. When asked in chief as to who was to bear the debt, he responded that he was not certain between the 1st defendant and the Principal who said that the matter should be left with him.

[11] The last witness was **Mr. Albert Mandla Fanana Mdluli** who on oath revealed that he was the Principal of 1st defendant from 2002. He knew the plaintiffs who were members of church. They approached 1st defendant to sell uniforms. They subsequently delivered uniforms. A cheque of E900.00 was paid from the school coffers. **Mr. Esau Zwane** became schools Manager and took over the finances of the school. He undertook to pay plaintiffs. However, he decided to dismiss the Chair and his deputy for the school committee. On 22nd March 2009, he called him to a meeting and informed him that after the meeting he would give him the cheque due to

plaintiffs. However, this was not to be so as he too was fired in that meeting.

[12] He was quizzed on whether there was an agreement between the 1st defendant and plaintiff entered before the plaintiff delivered the uniforms. He stated that there was. He denied that he ever said the issue of plaintiffs' payment should be left to him. On the payment of E900.00 he stated that the signatories were for the Chair, **Mr. Tsabedze** and himself. He was asked as to the reason for failure to pay plaintiff since 2003 to 2009 when he was fired. He explained that when he took over the office of Principal, he found the 1st defendant swimming in debts. He began to liquidate the debts and requested recent creditors to join the queue. He was asked on how he receipted school uniforms and he said he used receipt book supplied by the Government and the schools secretary was responsible for receiving payment of the said uniforms from parents.

The plaintiffs then closed their case. The defendant called a number of witnesses in rebuttal.

[13] The first witness DW1 was **Esau Ncola Zwane** who testified under oath. He informed the court that he was 1st defendant's Manager since November 2008. At that year, PW5 was the Principal. The School's Committee consisted of **Mr. Siphon Tsabedze** as the Chair, **Miss Cynthia Dlamini**, the vice Chair, **Mr. Vusi Motsa**, **Mr. Vusi Ndwandwe** and **Mr. William Dlamini** as members. His evidence revealed that when he took over office, there were a number of irregularities observed. As a result, PW5 was suspended pending investigations. An audit report revealed that there were a number of payments to people who had not actually supplied or done any work for the school. This was inferred from the non-availability of

supporting documents. Subsequently, PW5 was hauled before the Teaching Service Commission to answer to the audit report. He was finally dismissed from the Teaching Service. The term of office for the Schools Committee members came to an end and new members were elected. They were never fired as testified by PW5.

[14] He was fully aware of the matter before court as the plaintiff approached him for payment of school uniform supply. He informed them that he could not arrange for their payment as they were not reflected in the list of 1st defendant's creditors. On this, he handed the school's financial report and referred the court to the list of creditors. Further, as the plaintiffs' debt dated 2003 to 2004, he could not assist by reason that in terms of the schools regulation, every debt must be liquidated either that year or the following year of its incurrence. He did, however, take the matter to the School's Committee. PW5 who was present in the meeting responded that the matter should be left with him. He understood PW5 to be saying that the money for the school uniforms was not in the school coffers. The School Committee further informed that they did not have any agreement with plaintiffs to supply the school with uniforms.

[15] On cross examination he revealed that the debts found were both current and backdated. He gathered from the parents that uniform was purchased from 1st defendant and that there was no evidence that the money was deposited into the school's coffers. There were no records for the year 2003 to 2004 as reflected in the financial report. He was further quizzed as to what evidence was needed in respect of the school uniform. He responded that the committee had to acknowledge an agreement between 1st defendant and plaintiffs. When asked on the evidence that the school made

part payment for the uniforms supplied by plaintiff by cheque of E900.00, he stated that he never saw the cheque but only a receipt from plaintiffs.

[16] The next witness was **DW2, Vusi Eric Ndwandwe**. On oath, he identified himself as a former member of 1st defendant's Committee, a position he held since 2003 to 2013.

[17] He was the Chair from 2008 to 2013. He became aware of the present matter in 2009. DW1 informed him of the plaintiffs' claim. When they wanted to deliberate on the matter, PW5 suggested that they should leave the matter with him. He further told the court that there was no meeting where the 1st defendant agreed to have the uniform supplied to it.

Under cross examination he informed the court that he was not aware of any part payment to plaintiffs.

[18] DW3, **Sibongile Florence Sibisi** took the oath. She had a child attending school during 2003 to 2004. As a parent she was aware that uniform was purchased at school and payment made to the Secretary. In 2009, she became a member of the School Committee. They deliberated on plaintiffs' debt as committee members and PW5 said the matter should be left with him.

Cross examination was along similar lines as DW2.

Common cause

[19] PW2 in his evidence informed the court that he accompanied the plaintiffs to 1st defendant where they conversed with PW5 the then Principal of the school who agreed to have the uniform supplied. DW3 confirms that there

was uniform sold at school and payment was received by the school secretary. PW4 who was the school committee's chair during the period of supply, also testified that he saw uniforms delivered at the 1st defendant. The delivery of this uniform was after they had deliberated with the school committee and agreed that a single supply of uniform should be sourced.

Adjudication

[20] From the evidence of defendants, it is clear that they do not dispute that plaintiffs supplied 1st defendant with uniforms. DW3 and PW4, the former Chair of 1st defendant stated that during the relevant period of 2003 to 2004 they witnessed purchasing of school uniforms from school.

[21] The evidence adduced on behalf of plaintiff that they received part payment of the sum of E900.00 in a form of cheque, the drawer was 1st defendant with the school chair's signature and that of the Principal of 1st defendant stood unchallenged as all the witnesses on behalf of defendant informed the court that they could not deny or confirm such evidence. This evidence stands to be admitted as plaintiff produced a receipt against that cheque. PW2, the Pastor of 1st defendant, was adamant in his evidence that he saw the cheque in favour of plaintiffs and the drawer was 1st defendant. PW5 and PW4 appended their signatures.

[22] The defendants' defence is that as a school committee they were not consulted by the Principal before engaging the plaintiffs. DW1 stated that they had deliberated on the issue of payment but they were still in the process of formulating schools' regulations. Most of the defendants' witnesses informed the court that there was no hand-over of this debt and thus they were declining to liquidate it.

[23] Assessment of the evidence adduced on behalf of defendants point to the direction that had the Principal, **Mr. Mdluli** obtained their consent for the supply of the uniforms, alternatively did a hand-over of the plaintiffs' debt or rather had **Mr. Mdluli** not informed the School's Committee to leave the matter with him, they would have paid. All the irregularity shown by defendant is associated with **Mr. Mdluli**, the Principal of the 1st defendant. No misnomer is directed to the plaintiffs.

[24] **Royal British Bank v Turquand (1856) 119 ALL ER 886** also reported **(1843-1860) ALL ER 435** is a case that give rise to the **Turquand** Rule. The facts of the case are that the defendant under bond incurred a debt of £2,000. A deed of settlement was signed by two directors. Refusing to discharge the deed, the defendant argued that there was no resolution of the company to enter into the deed of settlement. The court held to the effect that an outsider has a right to presume that the corporate internal procedures were complied with. Similarly *in casu*, the attestation by defendants that the Principal failed to get the School Committee's consent for plaintiffs to supply 1st defendant with school uniforms is in law without merit. The plaintiffs were equally entitled to presume that the Principal would obtain the necessary consent. The plaintiff could not foresee that the Principal who is part of the school's committee of the 1st defendant would commit any irregularities. They are in view of the **Turquand** rule entitled to be paid as the irregularities suggested by defendant cannot be apportioned to them.

[25] Lastly, one must point out that although not so clearly articulated, the defendant seem to inform the court that by the Principal advising the School Committee to leave the matter to him, this was tantamount to Principal admitting liability in his personal capacity. Even if one were to

assume that the Secretary received cash sales and money deposited into the coffers of **Mr. Mdluli**, this would not exonerate the defendant from paying the plaintiffs. The basis is that the evidence shows that at all material times the plaintiff supplied 1st defendant with the uniforms. 1st defendant paid a sum of E900.00 but failed to liquidate the debt. If for a second one were to accept that money was received by the Principal in his personal capacity, the remedy for defendant was certainly not to refuse to pay plaintiffs. They are expected to pay plaintiff and then sue the Principal provided their testimony that the Principal pocketed the money from the sale of the uniforms is anything to go by.

[26] In the circumstances I find in favour of plaintiffs. The evidence led on *quantum* is that the defendants owe the sum of E20,335.00 as the sum of E38,726.69 was inclusive of interest.

[27] I therefore enter the following orders.

1. Plaintiffs' cause of action succeed;
2. Defendants are ordered to pay plaintiffs the sum of E20,335.00 jointly and severally, one to absolve the other;
3. Interest at the rate of 9% per annum;
4. Costs of suit.

**M. DLAMINI
JUDGE**

For Plaintiffs : **L. Simelane of Khumalo Ngcamphalala Attorneys**
For Defendants : **T. Mavuso of Motsa Mavuso Attorneys**