



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 225/2017

In the matter between:

THE GABLES

Applicant

And

**SIYAKHOKHA INVESTMENTS (PTY) LTD t/a
MATRIX COMPUTER WAREHOUSE**

Respondent

Neutral citation: *The Gables v Siyakhokha Investments (Pty) Ltd t/a Matrix Computer Warehouse (225 /2017) [2017] SZHC 80 (21st April 2017)*

Coram: M. Dlamini J.

Heard: 07th April 2017

Delivered: 21st April 2017

Summary: On 16th February 2017 the applicant was granted interim orders for perfecting a landlord's hypothec. It now seeks confirmation of the *rule nisi*. The arrear rentals are set at E122,158.61. The application is opposed on the ground of *res judicata* and failure to make full disclosure.

The parties

[1] The applicant is Gables (Pty) Ltd, a company duly registered in terms of the Company laws of Swaziland and having its principal place of business at the Gables, Ezulwini area. It lets and hires premises to tenants (the Gables).

[2] The respondent is defined as:¹

“4. The Respondent is SIYAKOKA INVESTMENTS T/A MATRIX COMPUTER WAREHOUSE, a company duly registered and incorporated in terms of the company laws of the Kingdom of Swaziland having its principal place of business at Shop No.40, The Gables / Galleria Shopping Centre, Portion 119, a Portion of Portion 60 of Portion 21 of Farm 51, Hhohho, Ezulwini.”

The parties' contentions

The Gables

[3] In its founding affidavit, the Gables averred that on or about 25th October 2010 it concluded a contract to lease its premises with Matrix for monthly rentals of E80-00 per square metres. This contract expired on 30th September 2015. Thereafter the parties engaged on a month to month lease agreement for similar terms as the 2010 agreement.

¹ see page 9 para 4 of the book of pleadings

[4] From the period July 2016, Matrix failed to pay rentals on regular basis. Arrear rentals summed up to E122,158.61. The Gables gave notice of the breach in order for Matrix to remedy it. However, Matrix failed. The Gables attached a correspondence marked G3 as evidence of notice.

[5] The Gables then prayed for attachment of certain goods in lieu of payment of arrear rentals and other charges; ejectment of Matrix; interest on the sum of E122,158.61 at the rate of 9% *tempore more* and costs of suit at attorney own client scale.

Matrix

[6] Matrix has deposed in answer:

“The applicant’s papers are fatally defective as the matter is now res judicata.”

[7] It then expatiates:²

*“3. The very same cause action [sic] seeking exactly the same prayers and the very same premises was brought, on the very same papers under case number 1681/15. Therein the applicants cause of action was based on arrears of E179,710-32. I beg leave of court to refer to a copy of the said application attached hereto and marked CJ1. It too served under a certificate of urgency and was brought on an ex parte basis. An interim order was issued on the 5th November 2015. I beg leave of court to refer to annexure CJ2 attached hereto being a copy of such interim order. On the 13th November 2015 the said order was confirmed by the court. I beg leave of court to refer to a photo static copy of the Judges File in the said regard attached hereto and marked CJ3. The Court has already granted the orders that applicant seeks in the present proceedings. The issues are therefore **res judicata** and have already been decided.”*

² at page 53 para 3

Principle on res judicata

[8] The rationale behind the plea of *res judicata* is as propounded by **Phipson**³

“[T]here should be an end to litigation and on ground of hardship to defendant that he should not be vexed twice for the same cause.”

[9] **Voet** as quoted by **Greenberg J**⁴ stated of the reason for the rule:

“[T]o prevent inexplicable difficulties from arising out of discordant and may be mutually contradictory judgments on account of one and the same matter in dispute being again and again brought forward in different actions.”

Determination

The issue before me is very crisp. Is the applicant's *matter res judicata*?

[10] Matrix deposed that the sum claimed of E122,158.61 is a balance from arrear rentals claimed under case number 1681/15 for the sum of E179,710.32. To prove this assertion, Matrix attached the pleadings under Case No. 1681/15.

[11] A perusal of the founding affidavit under Case No. 1681/15 reflect as follows:⁵

“From the month of July 2011 the Respondent has defaulted in paying its monthly rentals regularly or has not paid them at all for the premises it occupies. The respondent is currently in arrears with its rentals in the sum of E179,710.32 (One Hundred and Seventy Nine Thousand Seven Hundred and Ten Emalangeni Thirty Two Cents) for Shop No. 40. The Gables / Galleria Shopping Centre, Rem

³ in Law of Evidence 7 Ed 350 at 399

⁴ See *boshoff v Union Government* 1932 TPD 345

⁵ see page 70 para 14 of book of pleadings

60 (a Portion of Portion 60 of Portion 21) of Farm 51, Hhohho, Ezulwini.”(my emphasis)

[12] Clearly the above averment by the Gables under Case No. 1681/15 is totally different from the present cause of action as in the present matter the Gables claim:⁶

“From the month of July 2016 the Respondent has defaulted in paying its monthly rentals regularly or has not paid them at all for the premises it occupies. The respondent is currently in arrears with its rentals in the sum of E122,158.61 (One Hundred and Twenty Two Thousand One Hundred and Fifty Eight Emalangen Sixty One Cents) for Shop No. S025M. The Gables / Galleria Shopping Centre, Rem 60 (a Portion of Portion 60 of Portion 21) of Farm 51, Hhohho, Ezulwini.” (my emphasis)

Annexed hereto and marked “G2” is a copy of the Applicant’s statement showing unpaid rentals by the Respondent.”

[13] It is therefore totally misleading for Matrix to depose in the present matter.⁷

“4. There was no need for the present application since all that applicant should have done was simply to execute the remaining extent of the payment under the said case 1681/15. As can be noted, the respondent was evicted from the premises and new lease was issued in its favour. I have actually been paying of the sum that was sought of E179,710.32 in gradual instalments as was agreed between the parties. The reason the above sum has now reduced to the alleged E122,158.61 is due to the fact that indeed I have been paying gradually. To the above end the applicant is not entitled to create a unnecessary multiplicity or duplicity of court process and even more in doing so on an urgent and ex parte basis and without divulging such information for the courts benefit.”

⁶ see page 16 para 14 of book of pleadings

⁷ see page 53 para 4 of book of pleadings

[14] Worse still, Matrix chose to answer generally and failed to address each and every paragraph of the Gables founding affidavit in terms of the Rules of this Court. There being no dispute on the amount claimed and that the present claim arose in July 2016 and not July 2011, I enter the following orders:

1. The *rule nisi* granted on 16th February, 2017 is hereby confirmed;
2. The lease agreement concluded by the parties herein is hereby confirmed as cancelled;
3. Respondent is ordered to pay applicant:
 - 3.1 The sum of E122,158.61;
 - 3.2 Interest thereon of 9% per annum *a tempore more*;
 - 3.3 Costs of suit.



**M. DLAMINI
JUDGE**

For Applicant: W. Maseko of Waring Attorneys

For Respondents: T. Ndlovu of MTM Ndlovu Attorneys