IN THE SUPREME COURT OF APPEAL OF SWAZILAND

CIVIL APPEAL NO. 40/2006

In the matter between

JOSEPH SIBANDZE **APPELLANT**

Vs

VUVULANE IRRIGATION FARMERS ASSOCIATION CO. LTD **RESPONDENT**

Coram: Steyn JA

Tebbutt JA

Banda JA

For the Appellant: MR. S. C. DLAMINI

For the Respondent: MR. S. HLOPHE

JUDGMENT

[1] This appeal calls for a decision on a single simple issue. This is, were the monies admittedly advanced by the appellant to the respondent a loan, or were they with the consent of the appellant, applied to the payment for a share in the respondent. Between 17th September 1991 and 21st January 1997 according to him, the appellant had lent to the respondent a total sum of E20110 ostensibly for running the affairs of the respondent and for purchasing equipment for the respondent. This amount is not disputed by the respondent.

[2] On 24th March 2000 the appellant issued a combined summons against the respondent claiming the sum of E20 110 as money lent which the respondent was refusing to pay. The High Court, after hearing evidence from both parties, dismissed the claims with costs. It is against that judgment that the appellant now appeals to this court.

[3] According to the respondent^ May 1990 it was decided at Vuvulane that people who were eligible to join the respondent should become members and should pay certain sums of money to the respondent's bank to enable it to operate its affairs and also to buy machinery. It is alleged that the appellant was one of the members who made that decision. The appellant's total payments came to the sum of E20 110. Loan agreement forms were produced in the lower court by the appellant to support his version.

[4] The respondent alleged that in 1995 members sitting in general meeting decided that all the loans which members had made to the respondent should be converted into a payment for one share. He submitted that the appellant was a party to the decision which authorized the respondent to do so. The appellant disputes that he was aware of the meeting and has argued that if the meeting was held at all, he was not aware of it and that he had not agreed that the money he had contributed to the respondent should be converted into a payment for one share in the respondent.

[5] It is significant to note, however, that the appellant's last payment of E4110 was made in 1997 two years after the resolution had already been passed. It is also significant to observe the fact that the sum of E4110 actually brought the appellant's payments to a total of E20 110 in accordance with the resolution. What

is also important is that there was no date of repayment as other loan forms had shown. It should be further noted that the E1 10 was his membership subscription. There can be no doubt that the appellant must have known, when he made his last payment, that he was not making any loan to the respondent.

[6] We have carefully considered the evidence which was placed before the court below. There can be no doubt, and we are able to find, that a notice was given which informed all members that an Annual General Meeting would be convened on 15th June 1995 at 10.00am. We find that as a result of that notice out of a total of membership of 207 members 197 attended the meeting 7members apologised and 3 were absent. It is therefore clear to us that it would not have been possible for so many people to attend if the notice of the meeting had not been sent.

[7] The appellant does not deny that he is a member of the respondent and he also does not deny that he is a shareholder in the respondent. And it was not possible for him to deny that fact as a share certificate in his name was produced in the lower court and which he accepted was his. The appellant's professed ignorance of his membership of the respondent was patently false.

[7] The meeting which was attended by 197 members unanimously resolved that every member should pay E20, 000 in full payment of one share. It is to be noted that the resolution was arrived at after lengthy discussions. That resolution which was taken by such a decisive vote clearly bound the appellant. We are satisfied that the learned judge in the lower court had sufficient facts to support his finding. There is no merit in this appeal and it is dismissed with costs.

R. A. BANDA

JUDGE OF APPEAL

I agree

J.H. STEYN

JUDGE OF APPEAL

I agree

P. H. TEBBUTT

JUDGE OF APPEAL

Delivered in open court on the16th day of November, 2006.