

IN THE HIGH COURT OF SWAZILAND

Civ Case No. 199/93

In the matter between

Catherine Bothnia & 6 others

Vs

Attorney General & Another

Coram: S.W. Sapire ACJ

For Applicant Mr. L. Khumalo

For Respondents Adv. Fine

Judgment

(21/8/96)

The Umbutfo Defence Force is encamped on some land, of which the Plaintiffs are the registered owners, for a long long time. The Defence Force's claim to be on the land is based only on an alleged agreement with the previous owner of the property, now deceased, from whom the present Plaintiffs inherited the property.

The terms of the agreement are vague in the extreme. If it had been intended in terms thereof to constitute a perpetual right to occupy the property, the agreement should have been in writing.

Without such a written agreement no real right in the property can be said to rest in the defendant.

The Plaintiffs have issued summons claiming ejectment and damages. Through some rather startling negligence in the office of the Attorney General the matter was not properly attended to, and a default judgment was entered not only for ejectment of the defendant from the premises but also for the payment of damages. As far as the payment of damages is concerned, it is common cause that the judgment should not have been entered.

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There was no evidence either in writing or oral to establish the amount claimed and it was a complete oversight that such a judgment was entered.. That judgment will be rescinded forthwith.

As far as the judgment for ejectment is concerned it does not appear to me that there is any good cause for disturbing it. However gross the negligence on the part of the Defendant's Attorney may have been, I may have been inclined to rescind the judgment in order to afford the defendant an opportunity to advance an arguable defence to the plaintiff's claim disclosed in the affidavit. But the affidavit does not disclose any defence to the claim for ejectment.

It is a simple matter. The Defence Force are on the property belonging to the applicant without any right to be there. The ejectment order must stand.

If it is in the national interest that the Defence Force should be on that particular property, the land can

be expropriated or it can be bought from the Plaintiffs. But in negotiating with the Plaintiffs the Government has been dragging its feet for years and years and there is no reason why at this stage the judgment should be set aside.

I accordingly rescind the order that the 1st and 2nd Defendants are to pay damages in lieu of rent in the sum of E2 000 per month from the 10th of June to date of payment. The order for ejectment will stand.

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As most of the time spent arguing this application or devoted to the latter issue and it was common cause that rescision was to be granted on the former, the unsuccessful applicant will have to pay the costs.

S.W. SAPIRE

ACTING CHIEF JUSTICE