

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.2122/99

In the matter between:

STANLEY MATSEBULA

APPLICANT

AND

AARON MAVTMBELA

DEFENDANT

CORAM

: MATSEBULA J

FOR THE APPLICANT

: MR. MDLADLA

FOR THE DEFENDANT :

JUDGMENT

29/10/99

On the 3rd September 1999 the Applicant/Defendant brought the application for the following relief:

1. That the rules pertaining to service be dispensed with and the matter be heard as one of urgency;
2. Staying any writ of execution which may have been issued against it;
3. Rescinding the Order of this above Honourable Court made against it and dated 6th August 1999;
4. Costs of this application;
5. Further and/or alternative relief.

The Applicant deposed to an affidavit in support of its application. The application for a stay of the writ of execution and that of the rescission of the judgment is based upon the provisions of Rule 42(i) (a) which reads as follows:

"an order or judgment erroneously granted in the absence of any party affected thereby" may be rescinded or varied.

According to the submissions made by Mr. Mdladla on behalf of the Applicant the error in the grant of the default judgment is based on the return of service. It was Mr. Mdladla's contention that the Deputy Sheriff misrepresented the truth about the personal service on the Applicant and the dates of such service.

Mr. Mdladla said that Applicant had not been served personally and the dates were all wrong. The Applicant's affidavit is so contradictory that Mr. Mdladla was at pains in explaining away the contradictions. At the end of the day it became very clear that this was a matter which ought to have been brought by action and not by application.

The Respondent on the other hand referred the court to the return of service whose contents clearly indicate no anomaly whatsoever. The correctness of the return of service is supported by the affidavits of the Deputy Sheriff and an employee of his.

"I, the undersigned Ted Rowbeny do hereby make oath and say-

1. I am the Deputy Sheriff of the District of Hhohho. The facts deposed herein are within my personal knowledge and are true and correct:
2. On the 19th July 1999 I did serve the summons in the above matter on the Defendant/Applicant at Sandla location in Mbabane, District of Hhohho.

3. I submit that Lindiwe Matsebula (the Matsebula lady referred to in Applicant/Defendant's affidavit) is one of my employees at Lumber Security Services and she accompanies me around when serving summons for the sole purpose of advising those people sought to be served as to what I am saying since in most instances they usually have a difficulty in hearing what I am saying when explaining the nature and exigency of the summons.

3.1 I further submit that in this particular matter the said Lindiwe Matsebula played the abovementioned role and nothing else.

Similarly, I will also read the affidavit of Lindiwe Matsebula which reads as follows:

"I, the undersigned Lindiwe Matsebula do hereby make oath and say that-

1. I am an adult female Swazi and employed by Swaziland Lumber Security Services. The facts deposed herein are within my personal knowledge and are true and correct:
2. I have read the affidavit of Ted Rowberry and confirm its contents in so far as they relate to me.

2.1 In, particular, I confirm that I never served the Summons in the above matter but only assisted in having Mr. Rowberry heard when explaining the summons. "

I have been unable to find any error which could have led the Court to grant the default judgment.

In the result, I dismiss the application with costs.

J. M. MATSEBULA

JUDGE