



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 2472/2008

SWAZI NATIONAL ASSEMBLIES OF GOD

Applicant

And

DSG INVESTMENTS

1st Respondent

CROWN PROPERTIES (PTY) LTD

2nd Respondent

RJS PERRY

3rd Respondent

Coram

S.B. MAPHALALA - J

For the Applicant

MR.

NGCAMPHALALA

For the 1st and 2nd Respondents

MR. N. SHONGWE

For the 3rd Respondent

Advocate P. Flynn

(Instructed by R.J.S.

Perry)

UDGMENT

3rd October 2008

[1] Serving before court is an application for setting aside the effect of a letter purported to be a Notice in terms of a Deed of Sale signed by the Applicant and 1st Respondent and formally cancelling the said Deed of Sale. Applicant further seeks an order that 1st and 3rd Respondents pay Applicant the sum of E150, 000-00.

[2] The Applicant is Swazi National Assemblies of God a church duly registered within the laws of the country operating at Mbabane.

[3] The 1st Respondent is DSG Investments (Pty) Ltd a company dully registered in accordance with the company laws of Swaziland operating from Shop No. 3 Miller's Mansion, Mbabane.

[4] The 2nd Respondent is Crown Properties (Pty) Ltd a company duly registered in accordance with the company laws of Swaziland operating from SEDCO Complex, Industrial

Sites Matsapha, cited as the agent of the 1st Respondent.

[5] The 3rd Respondent is R.J.S Perry, a law firm operating from 2nd Floor Development House Swazi Plaza, Mbabane.

[6] The Founding Affidavit of one Mduduzi Magongo who has been authorized to make this affidavit on behalf of the Applicant by virtue of a resolution of the executive committee of the Applicant taken on the 25th June 2008 is filed. In the said affidavit the material facts in this dispute are outlined. Various annexures are attached in support thereto.

[7] All the Respondents oppose the application and have filed the relevant affidavits in support thereto. In the Opposing affidavit of the 1st Respondent by one Bheki Gina two points in *limine* have been raised as well as an answer

on the merits of the case.

[8] The first point raised *in limine* is that Applicant should have foreseen that the issue arising between the three Respondents would result in disputes of fact. The use of motion proceedings to recover a money claim as set out in Applicant's affidavit is clearly an inappropriate form of proceedings.

[9] The second point *in limine* is that no valid grounds to bring this application on a Certificate of Urgency have been given. The grounds set-forth are speculative in nature and no evidence is attached to the application in support of the allegations put forward.

[10] In arguments before me the parties argued both the points *in limine* and the merits of this case. Therefore I shall first address the preliminary objections and thereafter proceed with the merits of the case if I overrule these points

in limine.

[11] The first argument pertaining to the first point *in limine* by the Respondents is that no valid grounds have been laid by the Applicant on urgency as the grounds set forth are speculative in nature and no evidence is attached to the application in support of the allegation put forward.

[12] The Applicant avers that urgency has been proved at paragraph 23 and 24 of the Founding Affidavit. On the other hand Respondents have taken the view that no valid grounds of urgency have been set forth, those advanced are speculative in nature. In this regard the court was referred to the cases of *Mangala vs Mangala 1967 (2) S.A. 415* and that of *Luna Meuber Vervaardigers vs Markin and Another 1977 (4) S.A. 135*.

[13] In view of the fact that this matter was heard when the court was about to take its recess I have come to the

considered view that the issue of urgency is no longer live in view of the time that has elapsed. In the circumstances I will consider the application as one in the long form.

[14] The second point which is the first point in the 1st, 2nd and 3rd Respondent's Answering Affidavit is that Applicant should have foreseen that the issue arising between the three Respondents would result in disputes of fact. The use of motion proceedings to recover a money claim as set out in Applicant's affidavit is clearly an inappropriate form of proceedings.

[15] Having considered the arguments of the parties it appears to me that the point *in limine* raised by the Respondents that *in casu* there are disputes of fact is correct. In arguments before me Counsel for the Applicant conceded the point but argued that these disputes of a fact are not material to this case. I disagree with Counsel in this

respect that this dispute of fact is at the heart of the controversy between the parties. These disputes of fact are reflected in paragraph 4 and 18 of the 1st Respondent's Answering Affidavit. The principles of law in this regard have been stated in the celebrated case of *Room Hire Co. (Pty) Ltd vs Jeppe Street Mansions (Pty) Ltd 1949 (3) S.A. 1155* and are apposite.

[16] It would appear to me that this application ought to be dismissed on the authority of *Room Hire (supra)* as this dispute ought to have been foreseen by the Applicants. Further, it would appear to me that the 3rd Respondent is correct that prayer (b) and (d) seek orders which clearly cannot be granted because prayer (b) refers to an act already performed by the 1st Respondent. The letter is not a decision or finding of a person or body which is capable of being set aside. The letter makes a statement and demand and communicates those matters. The court is able to

interpret and indeed to determine the legal effect of the letter but it is impossible to “set aside” a letter which has been written and sent.

[17] Prayer (d) seeks an order in terms of which both 1st and 3rd Respondents are required to pay the amount. An order framed in such a manner cannot be effected.

[18] It would appear to me further that there was no legal justification whatsoever for instituting legal proceedings against the 3rd Respondent and in the premises the proceedings against RJS Perry are abusive.

[19] In the result, for the afore-going reasons the application is dismissed with costs.

S.B. MAPHALALA
PRINCIPAL JUDGE