

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 208/2001

In the matter between:

INSIKA TRADING (PTY) LIMITED

APPLICANT

and

PHINDZA DLAMINI

RESPONDENT

In re the ex parte Application

PHINDZA DLAMINI

APPLICANT

and

INSIKA TRADING (PTY) LIMITED

RESPONDENT

CORAM

KENNETH NKAMBULE

: JUDGE

DAN MANGO

: MEMBER

GILBERT NDZINISA

: MEMBER

MR. P.R. DUNSEITH

: FOR APPLICANT

MR. SICELI DLAMINI

: FOR RESPONDENT

RULING

15/10/01

Applicant seeks an order setting aside an order issued by this court on 6th August 2001. The application was brought exparte and the court granted an order for the attachment of goods pending finalisation of the main application brought by the respondent/applicant before court.

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In his submission Mr. Dunseith for the applicant told the court that the applicant is an incola registered in Swaziland. A certificate of incorporation has been attached as Annexure 'A'. He therefore states that the application is totally defective.

In his submission Mr. Dlamini for respondent stated that though the company is registered in Swaziland the directors are of South African Origin and if they close down the applicant would suffer prejudice as there would be no property to satisfy the judgement of the court.

According to Hebbstein and Van Vinsen the civil practice of the superior courts in South Africa third edd at page 782, an attachment ad fundadem jurisdiction is an attachment of the person or property of one who is domiciled and resident in a foreign country in order to make him amenable to the jurisdiction of the court. The effect of the attachment is either to confirm the jurisdiction which the court already has in the suit between the parties, or, in certain cases to afford it a jurisdiction in the matter which it would not otherwise have had.

In this instance I agree with Mr. Dunseith that this applicant was incompetent in the instant case because Insika Trading (Pty) Ltd is a company registered in Swaziland in terms of the Company Act. It is therefore an incola of Swaziland.

Under circumstances the exparte order granted by this court on 8th August 2001 under Case No. 208/2001 is hereby discharged.

No order as to costs.

Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)