

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 249/2000

In the matter between:

RICHARD DLAMINI

APPLICANT

and

GUARD ALERT SECURITY

SERVICES (PTY) LTD

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

FOR APPLICANT:

B.DLAMINI

FOR RESPONDENT:

D. MADAU

JUDGEMENT

29/11/02

Applicant seeks an order rescinding and/or setting aside the judgement of this court issued on the 29th August 2000.

According to applicant on or about 20th June 2000 a windscreen of a vehicle owned by one Nkosinathi Mhlanga, and parked at Tracar Filling Station in Manzini was damaged by the respondent.

The respondent was arrested on the 5th July 2000 and was released on the following day after having paid bail on charges of malicious injury to property. The applicant then received a letter of demand from the owner of the motor vehicle's attorney, Mahlalela and Associates demanding the sum of E900- for the damages to the vehicle windscreen.

According to the applicant on the 27th July 2000 and after an enquiry had established and confirmed the guilt of the respondent, the respondent signed an admission of guilt acknowledgement. The respondent was acknowledging that he had wrongfully damaged the windscreen. According to applicant the respondent requested the company to deduct a sum of E900-from his salary. This was to be taken in instalments of E150- per month - until the full balance of the cost of the damage had been paid.

The applicant started deducting the amount as per agreement. On 30th August 2000, applicant received a letter from respondent's attorneys Mlangeni and Company, enclosing a court order in respect of a restraint order in favour of respondent - restraining the applicant from effecting unlawful deductions from the salary of respondent.

According to the applicant he was not aware of any court papers served on him before this court order.

According to Mr. Scott-Long's affidavit, it would seem that the court papers were served on the applicant in its Manzini Office. The Manager in the Manzini Office forwarded the papers to the Mbabane office.

According to applicant it would seem that the papers were either misplaced or lost in the Mbabane office.

On the contrary the affidavit of service made under oath by Babhekile Dlamini, the articulated clerk in the office of Mlangeni and Company states clearly that she served the papers by leaving copies at Guard Alert Security Services with Mr. Scott-Long who is Guard Alert General Manager, who was in the company of Mbuso Mavimbela, the Manzini branch manager.

It is therefore, clear that Mr. Scott-Long was aware of the court process because personal service was effected.

It is also clear that failure to oppose the court application was due to Wanton disregard of the rules of court.

Regarding the question of whether applicant has a bona-fide defense to the respondent's claim; The applicant argues that the deductions were lawful and at respondent's instance. Further that the respondent signed an admission of guilt, requested and consented to the company deducting E150-a month for six months in order to settle the debt of E900-.

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In this regard the applicant brought witnesses. Applicant witness No. 1 told the court that the respondent was stationed at Tracar. While working there a certain customer came and parked his motor vehicle in a no parking area. Respondent tried to tell him to remove the motor vehicle from where he had parked it. The customer refused. The issue drew the attention of petrol attendants who said respondent should leave the customer alone as the customer was their friend. The customer left the car and went away.

Respondent and the petrol attendant continued with the argument until the petrol attendant grabbed respondent button and assaulted him (respondent) with it. In retaliation the respondent took a stone and threw it to the petrol attendant, but the stone hit and damaged the windscreen of the customer's car.

Respondent was arrested and released on bail on the following day. According to the applicant witness No. 1 the respondent reported for duty and requested that the applicant company pay the claim that had been filed by the lawyers of the owner of the damaged motor vehicle. This is when he was required to sign an acknowledgement of debt. He promised to pay the amount in instalment. The amount was E900- and he had to pay six instalments of E150- per month.

Respondent told the court that he never signed the admission of guilt document. The signature appearing in the document according to respondent is not his. Respondent brought witnesses who told the court that they never saw him signing the document.

The principles upon which the court acts in applications such as the present were considered by Nathan C.J. in a survey of South African decisions on the matter in the cases of MSIBI V MLAULA ESTATE (PTY) LTD, MSIBI V G.M. KALLA AND COMPANY. 1970/76 SLR 345. It is clear from these cases that an applicant in a case such as the present must:

- (a) Give a reasonable explanation of his default and show that he was not in willful default.
- (b) Show that his application is bona-fide and not made with the intention of merely delaying the plaintiff's claim.

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- (c) Show that he has a bona-fide defense to the plaintiffs claim.

The applicant sets out that he was not in willful default and attributes the default to the fact that the Manzini office was served with the papers. This court has found out that in fact the process was served to

Mr. Scott-Long personally. He cannot turn around and say he was not in willful default. It is the finding of this court that the applicant has not given a reasonable explanation of his default.

For the foregoing it is clear that the application is not bona-fide and as such it is made with the intention of merely delaying the respondent's claim.

On a careful consideration of the application, I have come to the conclusion that the applicant has failed to satisfy the requirements necessary to entitle him to the relief sought. The application for rescission fails.

Members concur.

KENNETH P. NKAMBULE

JUDGE -INDUSTRIAL COURT.