

IN THE INDUSTRIAL COURT OF SWAZILAND
HELD AT MBABANE

CASE NO. 365/2005

In the matter between

PETRUS MKASI

Applicant

and

THEMBUMENZI MAVIMBELA

1st Respondent

FORTUNATE HLATSHWAYO

2nd Respondent

BHEKI MAVUSO

3rd Respondent

In

THEMBUMENZI MAVIMBELA

Applicant

and

P. RAMUNTU FREIGHT SERVICES (PTY) LTD Respondent

FOR APPLICANT: W. MKHATSHWA

FOR RESPONDENTS: M. NDLOVU

J U D G E M E N T - 7/09/07

1. The nature of the Applicant's claim and the issues in dispute are described in the court's ruling on points in limine delivered on 22 August 2007.

2. The question for determination is whether the Applicant is the lawful owner of the movable goods attached by the 3rd Respondent in execution of a writ against P. Ramuntu Freight Services (Pty) Ltd.

3. The goods were attached in premises rented in the name of the company. Prima facie, movables in leased premises belong to the lawful occupier of the premises. The Applicant bears an evidential burden to establish on a balance of probabilities that he is the owner of the attached goods.

4. The Applicant alleges on oath that he is the owner. He says that he occupied the premises leased by the company because he is a director, but he provided his own household furniture and goods. There is nothing inherently improbable in such an arrangement.

5. The Respondents dispute the Applicant's ownership of the movable goods, but are unable to provide more than a bald denial of ownership and a demand for documentary proof.

6. In reply to the latter demand, the Applicant has furnished account enquiry printouts from Lewis Stores, Manzini which reflect the Applicant as purchaser of certain furniture items namely:

Restonic Saturn bedroom suite Rossini

lounge suite- 3 piece - tan Ballentine

bedroom suite - 3 piece Vanessa twin

bedroom suite - 1 piece

Ballentine dining room suite - 9 piece

Orea side table - titanium (x2)

Orea coffee table - titanium

Whirlpool refrigerator

Bella Donna bedroom suite- 3 piece

Rosa Bedroom suite - 2 piece - oak

Monaco dining room suite - 5 piece

Cleo bedroom suite - 4 piece

Sansui home theatre

Maxipedic bedroom suite

Wall unit - silver tubular

KIC Fridge

Hisense Colour TV

Toronto Sleeper

TV aerial kit.

7. We are satisfied that the Applicant has established his ownership of the above items.

8. The Deputy-Sheriff has not filed any notice of attachment with an inventory of goods attached, as he is required to do in terms of the rules of court. We are unable to ascertain which of the above items were attached and removed. It is clear that whichever of the above items were attached in execution must be restored to the possession of the Applicant.

9. The Applicant did not furnish documentary proof of his ownership of the movables until he filed his replying affidavit in these proceedings. In our view the Deputy-Sheriff was entitled to attach the goods he found in premises rented by the company and to retain possession of the attached goods until he was shown convincing evidence that the goods did not belong to the judgment debtor. In the circumstances, we do not consider that an adverse costs order against the Respondents, or any of them, is warranted.

10. We make the following order:

- (a) The 3rd Respondent is ordered to forthwith deliver such of the movables listed in paragraph 6 of this judgement as he attached in execution, to the possession of the Applicant at House No. 3, Sidvokodvo Railway Houses.

(b) The wasted costs of the execution are to be costs in the execution against P. Ramuntu Freight Services (Pty) Ltd, the judgement debtor.

(c) No order is made in respect of the costs of this application.

The members agree.

PETER R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT