IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE   Civil Case No: 351/16

In the matter between:

TREVOR SIBUSISO DLAMINI   :   **APPLICANT**

In re:

TREVOR SIBUSISO DLAMINI   :   **APPLICANT**

And

KDG LOGISTICS   :   **1ST RESPONDENT**
THE ROYAL SWAZILAND POLICE   :   **2ND RESPONDENT**
THE ATTORNEY GENERAL   :   **3RD RESPONDENT**

Neutral Citation   :   Trevor Sibusiso Dlamini vs. KDG Logistics, Royal Swd. Police &
                         the Attorney General. (351/16) [2016] SZHC 202 (13/10/ 2016)

Coram   :   MABUZA –J

Heard   :   29/7/2016

Delivered   :   13 OCTOBER 2016

SUMMARY

The Applicant (an incola) moved an application *ad fundandam jurisdictionem* against the 1ˢᵗ Respondent (an peregrinus) – The Applicant obtained an interim order which included a prayer for costs on an attorney client scale – The interim order lapsed – The Applicant now seeks costs – The Court unable to entertain the Applicant as interim order lapsed and was not revived.

[1]   In this matter the applicant described himself as an adult Swazi male of Mbabane. The 1ˢᵗ Respondent was described as a peregrine company whose full and further particulars were unknown to the Applicant but was believed to be carrying on business in Durban in the Republic of South Africa. And that it has its motor trucks traveling to Swaziland on a regular basis.

[2]   On the 16ᵗʰ November 2015 at about 9.30 hours at or near Bahai, along MR3 public road a motor vehicle WSD 318 BM Audi driven by the Applicant Trevor Dlamini, a Swazi adult male collided with motor vehicle HPB 616 MP driven by Doctor William Thwala an employee of the 1ˢᵗ Respondent.

[3] Investigation by the police revealed that the negligent driving by the driver of vehicle HPB 616 MP was the cause of the accident.

[4] As a consequence of the accident the Applicant's motor vehicle was severely damaged. The Applicant naturally needing to be compensated could not sue the 1st Respondent because the latter is a foreign company even though the cause of the action arose within Swaziland.

[5] In other words the 1st Respondent is in legal terminology described as a peregrinus and this Court has no jurisdiction over it. The Applicant being a local resident is described as an incola.

[6] The 1st Respondent has trucks which do business in Swaziland and in order to bring the 1st Respondent under the jurisdiction of this Court, the Applicant had to move an application before this Court for the attachment of one of the 1st Respondent's truck. This practice is in legal parlance referred to as attachment *ad fundandam jurisdictionem* or attachment to found jurisdiction by this Court.

[7]   The purpose of an attachment *ad fundandam jurisdictionem* is, to found jurisdiction and, secondly, to provide an asset in respect of which execution can be levied in the event of a judgment being granted in favour of a Plaintiff see **Yorigami Maritime Construction Co. (Ltd) v Nissho – Iwai Co. Ltd** 1977 (4) SA 682 (C).

[8]   In *casu,* the Applicant launched an *exparte* application under a certificate of urgency for an order attaching all movable goods belonging to the 1st Respondent found within the Kingdom of Swaziland for purposes of founding jurisdiction of the above Honourable Court and to serve as security for a claim contemplated against the 1st Respondent.

[9]   The application was heard on the 22 February 2016. The Court granted an interim order in favour of the Applicant returnable on the 11th March 2016.

[10]   The order reads as follows:

1.   Dispensing with the procedures and manner of service pertaining forms and time limits prescribed by the Rules of the above Honourable Court and direct that the matter be heard as one of urgency.

2.   Condoning the Applicant for non-compliance with the said Rules of

Court.

3.   Pending finalizing of this application and with interim and immediate relief.

    3.1   That the Deputy Sheriff is directed to attach and keep to his safe custody all movable goods belonging to the Respondent that are found within the Kingdom for purposes of founding jurisdiction of this Court and serve as security for the claim.

4.   A *rule nisi* hereby issue calling upon Respondent to show cause on the March 2016 as being the return date, why Orders 3 and 3.1 above shall not be made final.

5.   Costs of this application at attorney and client scale.

[11]   Subsequent to that, the 1st Respondent through its attorneys of record negotiated with the Applicant's attorneys to furnish security in lieu of the attached truck.   As the parties could not agree on the amount, the 1st Respondent launched an application to have the Court decide the issue.

[12]   The Court fixed the amount of security in the amount of E80,000.00 (Eighty thousand Emalangeni) which the 1st Respondent paid and the truck was released.

[13] What was left for the parties to do was to confirm the interim order on the return date on the basis of the security furnished, thereby confirming the jurisdiction of the above Honourable Court over the 1st Respondent. However, on the day the matter came before Court, the issue of the interim order in favour of the Applicant was never addressed and therefore it lapsed and was never revived.

[14] There is no application before me to revive the interim order referred to in paragraph 10 hereinabove. Counsel for the Applicant stated that the issue before me was that of costs sought by the Applicant in respect of the application to found jurisdiction. Counsel for the 1st Respondent also agrees that this is the only issue for determination by this Court.

[15] However, the difficulty that this Court faces is that the interim order which had incorporated the order as to costs lapsed and was never revived nor was it confirmed. The debate for costs was appropriate at revival or confirmation and not before me.

[16] I find therefore that my hands are tied as I have no jurisdiction at this juncture to determine the issue of costs until the rule has been revived.

[17] I accordingly make no order on the matter as argued by learned counsel before me on the 29th July 2016.

_____

Q. M. MABUZA

JUDGE OF THE HIGH COURT

For the Applicant   :   Ms. T. Maziya

For the Respondent   :   Mr. B. Phakathi