NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA
[TRANSVAAL PROVINCIAL DIVISION]

CASE NO: 34772/2007

DATE: 25 JUNE 2008

In the matter between:

DUMISA MBUSI DLAMINI APPLICANT

and

SWAZILAND DEVELOPMENT AND SAVINGS BANK RESPONDENT

J U D G M E N T

PHATUDI [AJ]

[1] The Applicant, Dumisa Mbusi Dlamini appearing in person, brought this application seeking relief against the Respondent, Swaziland Development and Savings Bank, in the following terms:

"1. Directing and Ordering the Respondent to pay the Applicant an amount of R11 million together with interest thereof calculated at 15.5% per annum.

2. Costs of suit"

[2] At commencement of the hearing, I enquired from the Applicant if the application has been served on the Respondent because the Sheriff's return of service was not on file. He impressed on me that the Respondent was duly served. He then handed in from the bar the Return of Service that indicated that the application was served on the Respondent on the 18 September 2007.

[3] On perusal of the file, I noted that this matter was first enrolled for 5 September 2007 as per Notice of Motion. Subsequent thereto, the matter was at irregular intervals removed and reinstated from the roll up to and including the 14 May 2008. On the 6 June 2008, the case was set down on the unopposed roll.

[4] I further noted that the Respondent was not served in all those Notices of Set Down including the one for 6 June 2008. On enquiring from

the Applicant as to why the latter Notice of Set Down was not served on the Respondent, the Applicant indicated that as this is an unopposed application, the Respondent need not be served with the Notice of Set Down save for the initial Return of Service.

[5] At the time this application ought to have been heard (5 September 2007), the Respondent was not served with the papers. I further noted that' with the second Notice of Set Down (12 September 2007), that the Respondent was not yet served with the application. At the time when the Respondent was served (18 September 2007), the application had already been removed twice from the roll.

[6] Considering the "history" of this applications' set down, I find that the Respondents were not duly served with the application especially with the date of hearing. The date on the Notice of Motion indicated that the matter will be heard on the 5 September 2007. The Respondent was notified of the Applicants' intention of instituting this application some 13 odd days after the initial date of hearing. Subsequent thereto, no Notice of Set down by Applicant was served on the Respondent.

[7] The Applicant alleged in his founding affidavit that:

> *"4.1 In 2003 a fraudulent sequestration application was instituted against me, the Applicant in these proceedings. In the aforesaid application a court order was attached marked annexure J."*

Annexure J is described in the index as "Respondent unsigned Judgment of E11,260,905-23 accepted as a cause of insolvency in sequestration application by Bertelsmann J and Kruger AJ before the above Honourable Court."

[8] On perusal of Annexure J set out on pages 68-73 of the record, I noted that' to be a Judgment of Full Bench of the High Court of Appeal of Swaziland which was dated 3 December 1999. I, based on the Applicants' allegation in his founding affidavit, (paragraph 4.1) I find the said judgment not being the Court order for the "fraudulent sequestration application."

[9] The said Judgment is still valid and subsists as it was never rescinded.

The Applicant ought to have first rescinded the said Judgment prior to seeking the "refund" of the money as claimed in his Notice of Motion.

[10] Now that the Applicant brought about the issue on "fraudulent sequestration application", I then ask myself if the Applicant has been sequestrated or not. I infer from his Founding Affidavit that he is or may have been sequestrated. In the event the Applicant was so sequestrated, fraudulently or not, then the Applicant is not proper before this court.

[11] It is trite that an insolvent litigant has no *locus standi in judicio*.

[12] It appears from the Applicant's Founding Affidavit that he has been "fraudulently sequestrated." There is no indication on the affidavit before me if the Applicant was rehabilitated from the "fraudulent sequestration" or, whether such Court Order was rescinded due to its "fraudulent" status.

[13] In the absence of the information to the contrary, I find that the Applicant is unrehabilitated insolvent and thus has no *locus standi* to

institute this application in his personal capacity.

[14] I, as a result of the foregoing, came to the conclusion that this application cannot succeed on the basis that:

[14.1] The Respondent were not properly served; and

[14.2] The Applicant does not have the *locus standi* to institute this application in his personal capacity.

[15] I accordingly make the following order:

THE APPLICATION IS DISMISSED,

NO ORDER AS TO COSTS.

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AML PHATUDI
Acting Judge of the High Court