

IN THE COURT OF APPEAL OF LESOTHO

C OF A (CIV) NO.44/2019

HELD AT MASERU

In the matter between:

'MASEETSA

RAMARUMO

FIRST APPELLANT

SAKHU RAMARUMO

SECOND

APPELLANT

And

KHOTSO SELOMI

RESPONDENT

CORAM:

DR K E MOSITO P

P T DAMASEB AJA

M H CHINHENGO AJA

HEARD:

14 MAY 2020

DELIVERED:

29 MAY 2020

SUMMARY

Practice - Section 6 of the High Court Act - Jurisdiction of the High Court - Appeal upheld with costs.

JUDGMENT

K E MOSITO P

Background

1. This is an appeal against the order of the High Court (Monapathi J) handed down on 19 August 2019. The respondent approached the High Court by way of summons on 11 June 2018. The claim was for an order in the following terms:

- (a) Payment in the sum of thirty thousand Maluti (30,000.00) as per the parties' agreement dated 3 October 2017.
- (b) Interest thereon at the rate of 18.1% per annum.
- (c) Costs of suit on attorney and client scale.
- (d) Further and/or alternative relief.

Alternatively

- (a) Payment of thirty (30) sheep as per the parties' agreements dated 03 October 2017.
- (b) Costs of suit on attorney and client scale.
- (c) Further and/or alternative relief.

Alternatively

- (a) Payment of Thirty-six (36) goats as per the parties' agreement dated 03 October 2017.
- (b) Costs of suit on attorney and client scale.

(c) Further and/or alternative relief.

2. The defendant filed a notice of appearance to defend. On 17 August 2018, the plaintiff (present respondent) filed an application for summary judgment. He sought an order in the following terms:

(a) That summary judgment be granted against the appellants in terms of the summons.

(b) That the defendants be ordered to pay the costs of the application.

(c) Further and/or alternative relief.

3. To the notice of application was attached an affidavit deposed to by 'Maselomi Selomi. In that affidavit, the deponent averred that she verified the contents of the summons and declaration and that the appellants, jointly and severally, are indebted to the respondent in the sum of Thirty Thousand Maloti (M30.000) on the grounds stated in the summons and, having undertaken to pay the said money on or before 28 December 2017. She further averred to the respondent's claim, being a liquidated amount in money to which she was a witness. She attached the appellants' undertaking dated 03 October 2017, which is to effect payment as stated in the respondent's summons and to which contents she positively swore.

4. The second appellant answered the application for summary judgment. In his answering affidavit, he *inter alia*, raised an issue as to the jurisdiction of the High Court to entertain the

matter. He averred that the cause of action falls within the jurisdiction of the Local and Central Courts. He therefore argued that it could not be brought directly to the High Court. He further averred that this is contrary to section 6 of the High Court Act 1978. He averred that the agreement was erroneously agreed upon by parties before consultation with one Thabang Ramarumo who was alleged to have fathered the child. He averred that when Thabang first met Matlakala Selomi, she was already pregnant. He further averred that Thabang Ramarumo was an adult when the alleged delict occurred thus he is responsible for his actions in law. He therefore prayed for the dismissal of the application.

5. The matter was set down for hearing on 02 April 2019. On 19 August 2019, Monapathi J handed down judgment in which he granted the application with costs.

Parties

6. Before highlighting the brief factual matrix for purposes of this case, it is prudent to briefly describe the parties. The respondent was the plaintiff in the High Court. He is a male Mosotho adult of Ha Lejone, Pelaneng Ha Ralithokoa in the Leribe district. The first defendant was 'Maseeta Ramarumo. She is a Mosotho female adult of Mahobong in the district of Leribe. The second defendant is Sakhu Ramarumo. He is also a male Mosotho adult of Mahobong in the district of Leribe, and a son to the first defendant.

The factual matrix

7. The facts of this case are that, the parties entered into a written agreement on 03 October 2017 aimed at enforcing a

customary law claim of seduction of respondent's daughter by the appellants' son. In terms of the said agreement, the appellants would pay to respondent six head of cattle as damages for their son's (Thabang Ramarumo) impregnation of the respondent's minor daughter (Matlakala Ramarumo).

8. In the said agreement, certain facts were agreed upon, to wit: that the appellants would pay six head of cattle as compensation for the impregnation of the respondent's daughter, by the appellants' son. If paid by money, one head of cattle would be worth Five Thousand Maluti (M5,000.00). If paid by means of sheep, one head of cattle would be equivalent to five sheep. If payment be made by goats, one head of cattle would be equivalent to six goats. The parties further agreed that, the respondent's daughter would remain in the respondent's custody.
9. It was a further term of the said agreement that these cattle for damages, in the amount of M30,000.00 or in the aforementioned form, would be paid to respondent on or before the 28th day of December 2017.
10. Failure by the appellants to comply with the agreement and to pay the respondent as agreed, it was alleged amounted to a breach of contract on the part of the appellants.
11. As indicated above, the High Court granted the summary judgment as prayed.

The appeal

12. The appellants were dissatisfied with the judgment of the Court *a quo* dated 12 June 2019. They therefore noted an

appeal to this court against the decision to grant summary judgment to the respondent. They presented four grounds of appeal before this Court. The first ground is that the court *a quo* erred in granting summary judgment “which is essentially a customary law matter.” The second ground is that the court erred in failing to apply the provisions of section 6 of the High Court Act, 1978. The third ground is that the court erred in failing to take into consideration that the parties’ main agreement was [about the payment of] six head of cattle, not liquid cash. The last ground is that the court erred in denying the appellants to liquidate the debt in any manner chosen by them as provided for under the agreement, that is: (a) cattle, (b) sheep, and (c) goats.

Issues

13. The following questions require determination:

- a. Whether the High Court erred in failing to apply the provisions of section 6 of the High Court Act, 1978.
- b. Whether the learned judge erred in denying the appellants to liquidate the debt in any manner chosen by them as provided for under the agreement, that is: (a) cattle, (b) sheep, and (c) goats.

The law

14. It is prudent to sketch the legal principles applicable to the resolution of this appeal. In Lesotho, the lowest customary court is the Local Court. The court in the hierarchy of customary courts which is superior to the Local Court is the Central Court. The Central Court hears appeals from the

Local Court and has original jurisdiction for claims of a greater monetary value than those of the Local Court.

15. Section 6 of the High Court Act provides that "[n]o civil cause or action within the jurisdiction of a subordinate court shall be instituted in or removed into the High Court save by a Judge of the High Court acting on his own motion; or with leave of a Judge upon application made to him in chambers and after notice to the other party."¹ It is common cause that no such leave was obtained. As Browde JA pointed out in *Mohaleroe Sello & Co v N Mphanya*,² section 6 of the High Court Act was clearly enacted in order to prevent the High Court from being swamped with litigation not meriting its attention. In *Nko v Nko*³ this Court held that the Local and Central Courts are also contemplated under section 6 of the High Court Act provision.

16. In *Tredoux v Kellerman*⁴ it was held that, a liquidated amount of money is an amount which is either agreed upon or which is capable of speedy and prompt ascertainment or, put differently, where ascertainment of the amount in issue is "a mere matter of calculation".

17. Rule 28 of the High Court Rules 1980, enables a plaintiff to apply to court for summary judgment in respect of four categories of claims: (a) on a liquid document; (b) for a liquidated amount in money; (c) for delivery of specified

¹ Section 6 of the High Court Act No.5 of 1978

² *Mohaleroe Sello & Co v N Mphanya*. C OF A (CIV) NO.35 OF 1995 at para 3.

³ *Nko v Nko* 1994 (LAC) 312.

⁴ Paragraphs 18 - 23. See *Santam Ltd v Ethwar* 1999 (2) SA 244 (SCA) ([1999] 1 All SA 252) at 253B - D.

immovable property; or (d) for ejection. In principle, an application for summary judgment is not competent where a claim is one for damages.

Consideration of the grounds of appeal

18. As indicated above, section 6 of the High Court Act provides that "[n]o civil cause or action within the jurisdiction of a subordinate court shall be instituted in or removed into the High Court save by a Judge of the High Court acting on his own motion; or with leave of a Judge upon application made to him in chambers and after notice to the other party."

14. The proceedings in the court a quo could not have been validly instituted without one or other of the requirements laid down in section 6 of the High Court Act being satisfied. It is common cause that the provisions of section 6 were not complied with. In particular, leave of the High Court was not first sought and obtained before the appellant's action was launched.⁵ In my opinion, the Court erred in entertaining this claim. It is common cause that neither of these events occurred. The case should therefore, in my view, have been brought not in the High Court but in the Local and Central courts.

Disposition

15. In light of my views on the jurisdictional ground of appeal, I find it unnecessary to deal with all the three grounds. I would therefore uphold this appeal.

⁵ *Linsta v Mahloko and Others* C of A (CIV) No.20 of 2002.

Order

16. In view of the above reasons, the following is ordered:

- (1) The appeal succeeds with costs.
- (2) The judgment of the High Court is set aside and replaced with one that reads: "The application for summary judgment is dismissed with costs."



DR K E MOSITO
PRESIDENT OF THE COURT OF APPEAL

I agree,



P T DAMASEB AJA
ACTING JUSTICE OF APPEAL

I agree,



M H CHINHENGO AJA
ACTING JUSTICE OF APPEAL

For the Appellant: Mr T MATOOANE

For the First Respondent: Adv T.A. LESAOANA