

CIV/T/422/2009

IN THE HIGH COURT OF LESOTHO

In the matter between:

CHINESE EMBASSY

Plaintiff

vs

L. J. MASENA

1st Defendant

T. MOKOBORI

2nd Defendant

JUDGMENT

Coram: **Hon. Hlajoane J**

Date of Hearing: **30th August, 2012.**

Date of Judgment: **30th August, 2012.**

Summary

Plaintiff, the Chinese Embassy claiming damages for repair of vehicle as a result of defendants' negligence – Special pleas of locus standi in judicio and Lack of Power of Attorney – Special pleas upheld with costs.

Annotations

Books

1. **Herbstein and Van Winsen**-Civil Practice of the Supreme Court at P131

- [1] Plaintiff as a diplomatic institution has brought an action for damages against the defendants arising from a collision between its vehicle and that of the 1st defendant which at the time of the accident was being driven by the 2nd defendant.
- [2] The defendants in their plea raised a special plea that plaintiff has no *locus standi in judicio* to sue and be sued.
- [3] Defendants argued that Chinese Embassy is just a diplomatic office representing a group of Chinese. That it is not a legal entity which in law can sue. That it is the Ambassador which can rightly represent the embassy not the embassy which comprises of staff of different levels.
- [4] The defendants also argued that there has been no power of Attorney filed so that the case is not properly before Court.
- [5] In response to the point of embassy having no *locus standi*, plaintiff referred the Court to page 131 of **Herbstein and Van**

Winsen¹ where the general rule has been stated and the exceptions to it on agents.

- [6] The general rule being that an agent cannot sue personally for a credit or upon a debt due to his principal. But exceptions to the general rule being amongst others where though known to be an agent has agreed to be personally liable – or where he is the only known or ostensible principal – or where by usage of trade or the general course of business the agent is authorized to act as owner although his character is known – where agent has a special interest in the property.
- [7] Plaintiff also argued that the Court can take a judicial notice of the fact that all countries are represented by their embassies. So that an embassy can be taken as an agent that can sue as an exception to the general rule.
- [8] To say an embassy has a legal status to sue is like saying the Law Office has a legal status to represent government in all civil litigation. But we know that it is the Attorney General who can sue and be sued on behalf of government not the Law Office as that is only an office comprising of staff of different levels.

¹ Civil Practice of the Supreme Court P.131

- [9] Hence why I upheld the special plea on the ground that the embassy has no legal status to sue and be sued. It is not a legal entity but an office with staff.
- [10] On the question of lacking Special Power to sue, plaintiff has filed at page 8 to 10 of the record, documents entitled Special Power to sue and defend, and letter of Entrustment. The letter of entrustment is still by the Chinese Embassy which sought to entrust one Mr Zhu Jianzheng, an Embassy attache' to sign Power of Attorney.
- [11] As can be seen from the above it is still the Embassy which has entrusted another person to sign Power of Attorney. The two points are still interrelated. So that in the absence of any proper Power of Attorney filed, the proceedings must be taken as not being properly before this Court.
- [12] These were the reasons why the Court upheld both special pleas with costs.

A. M. HLAJOANE
JUDGE

For Plaintiff: Adv. Loubser

For Defendants: Mr Ratau

