IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NUMBER 46640/09

DATE: 11 DECEMBER 2009

NOT REPORTABLE

In the matter between:

SAZI SONWABISO NGCAI **PLAINTIFF**

And

MINISTER OF FINANCE **FIRST DEFENDENT**

LIZETTE LABUSCAHGNE **DEFENDENT**

JUDGMENT

TLHAPI AJ

[1] The plaintiff issued a provisional sentence summons against the defendants for failing to honour a promissory note. The first defendant was called upon to pay immediately to the plaintiff an amount of R1 000 000 000 together with interest at the rate of 15 5% as from the date of delivery of the summons. The summons was served by the sheriff on the defendants on 5 August 2009.

[2] The Cause of action reads:

"Cause of action arose within the jurisdiction of this Honourable Court in that on the 22 May 2009 at Ministry of Finance 17th Floor, 240 Vermeulen Street. Pretoria, the Plaintiff presented a Demand draft-Promissor Note (

annexed herein) to the 2nd Respondent. Lizzette Labuscahgne, who was acting within the course and scope of his employment at Ministry of Finance (i.e. Processing N.R.F transactions). The promissory note was dishonoured by non-acceptance or non-payment.

The plaintiff herein invoke ACT 181 (3) Constitution of R.S.A 1996 which states on Auditor General that other organs of state, through legislative and other measures, must assist and protect these institutions to ensure independence, impartiality, dignity and effectiveness of these institutions. The plaintiff further invokes ACT 181 (4) of R.S.A Consitution of 1996 which states on the Auditor General-No person or organ of state may interfere with functioning of these institutions.

[3] The promissory note reads:

PROMISSORY NOTE [DEMAND DRAFT]

I Sazi Sonwabiso Ngcai [Successor], Highest and Executive Organ of State [R.S.A.] I.D. No. […..........] which observes 'International Cusctomary Law' Deemed through 'Schedule 6 of Constotion of R.S.A. of 1996 and Prospectus of Mr Ngcai on official Mandate and tactily endorsed by Presidency (R.S.A.) Hon President Thabo MbeKi Ref Registrar 174913 + President of Senate Parliament of Australia Australia Hon. Senatore Alan Ferguson s office (See. E-mail of Thu July 31, 2008 @ 09:43 'Acknowledged on Prospectus of Mr SS Ngcai)+ Royal Proclamation Agreement with Founder & Trustee Member South African Institute of Government Auditors & On Agency & On Delegation through Act 238 Constitution of R S.A of 1996 Ex- Auditor General Mr W.Z. Yako (See Prospectus)

N.B. Promissory Note has a Legal Guarantee from South African Defence

Force (SANDF) by Joint Operational Tactical Headquaters' [Intelligence - JTA] [Eastern Cape] See. Prospectus.)

ORDERS: A bank and or Minister of Finance [R.S.A.] I through Act 213 (2i B Constitution of R S.A of 1996 to make a direct withdrawal/charge fo^f Expenses and Income for 2009-2010 from;

Sum: R1 000 000 000 from National Revenue Fund (N.R.F.)

Account name: [….................]

Bank: [….................]

Branch Code: [….................]

Street Address: [….................]

Swift Code: [….................]

Account Number: [….................]

First Allow for Transactional Charges thereafter Deposit/Pav Balance @

Bank [….................]   Branch [….................]

Account Type: [….................] Account Number:[….................] Account name [….................]

On Demand “

[4] The Director-General and Accounting Officer of the first defendant, Mr EL Kganyago ('Kganyago) deposed to the opposing affidavit. Points in limine were raised that the plaintiff was not entitled to follow the provisional sentence summons route in that:

1 The summons was materially defective factually and legally unsustainable;

2 The promissory note annexed to the summons was not a liquid document and not a valid negotiable instrument contemplated in the Bills of Exchange Act 34 of 1964.(‘the Act’) for the following reasons;

2.1 the document was not signed by tne defendant or ms agent or government authority who had authority to withdraw funds from the National Revenue Fund, the withdrawal of such an amount from the National Revenue Fund had to be preceded by a budgetary process as envisaged in terms of section 213 of the Constitution and section 27 of the Public Finance Management Act 1 of 1999;

2.2 the document did not indicate any acknowledgement of debt which was unconditional and was for a fixed amount;

3 The plaintiff lacked the necessary locus standi in that he failed in the summons, to set out the basis upon which he holds the purported promissory note.

4 The piaintiff invoked Sections 181 (3) and (4) of the Constitution but did not explain why these provisions support his case;

5 The promissory note anc prospectus attached to the summons were a compilation of incomprehensible documents;

[5] The defendants denied that they were in any way liable for payment of the amount demanded;

[6] Before proceeding with any submission in regard to this matter, the court, in my view, is expected first to establish and satisfy itself that the provisional sentence summons and the document annexed to such summons and upon which the plaintiff relies for the grant of an order conforms to the requirements of rule 8 of the Rules of Court In this instance the court should further satisfy itself that the document annexed to the summons is what it purports to be a promissory note as contemplated in section 87 of the Act. This is aptly put in In Harrowsmith v Ceres Flats (Pty) Ltd 1979 (2) SA 722 (T) at 728 C-D and Van der Walt v Eiendomsreg (Edms) Bpk 1986 (2) SA 461 (T) at 465 D-H.

“The theory behind provisional sentence ;s that it is granted on the presumption of the genuineness of the legal validity of the documents produced to the Court. The Court is provisionally satisfied that the creditor will succeed in the principal suit. The debt disclosed in the documents must therefore be unconditional and liquid (zuiwer en klaar or liquid). It is proved either by an admission of the debtor or considered as acknowledged by him.”

[7] The defendant correctly submitted that the plaintiff did not have the necessary locus standi because the provisional sentence summons failed to set out the basis upon which the plaintiff held the promissory and the said promissory note' annexed was not a liquid document. It did not comply with the requirements of the Act.

1 Section 87 (1) of the Act defines a promissory as

“A promissory note is an unconditional promise in writing made by one person to another, signed by the maker and engaging to pay on demand or at a fixed or determinable future time a sum certain in money to a specified person or his order or to bearer,"

The plaintiff s 'promissory note' did not comply with the provisions of section 87(1). It was not a document where any one of the defendants had promised to pay the plaintiff at a fixed time and on demand a certain amount of money It is not a liquid document. Plaintiff is the author of the purported promissory note. He cannot be the author and beneficiary (payee/ drawee) thereof at same time.

2 Section 87(2) of the Act provides

"An instrument in the form of a note payable to maker s order is not a note within the meaning of this section unless and until it is endorsed by the maker,"

The 'promissory note' was not endorsed by any of the defendants.

3 Section 88 of the Act provides

"A note is inchoate and incomplete until delivery thereof to the payee or bearer"

The 'promissory note' was not delivered to the plaintiff by any of the defendants and no allegation in this regard is mentioned in the provisional sentence summons. The action can theiefore not succeed

[8] In the premises the following order is given:

'The provisional sentence is dismissed with costs'

TLHAPI, V

(ACTING JUDGE OF THE HIGH COURT)