IN THE HIGH COURT OF SWAZILAND

CASE NO.979/96

In the matter between:

DANETTE HIGGINS ZANDAMELA	APPLICANT
VS	
ISABEL ZANDAMELA (BORN GAMA)	RESPONDENT
FOR THE CORAM :	J.M. MATSEBULA J
FOR THE APPLICANT :	MR. HOWE
FOR THE RESPONDENT :	MILLIN & CURRIE

JUDGMENT

05/07/96

On the 23rd April, 1996 Applicant moved a Notice of Motion for a variation order which was made an Order of Court from an agreement of settlement on 30th April 1993 after the parties obtained a decree of divorce. In that order the Applicant was ordered to contribute a sum of E400.00 per month towards the maintanance of the minor child of the marriage.

It was also part of the order of agreement that Applicant would pay an escalation rate of 10% per annum first increase to take effect on 1st January 1994.

In the present application Applicant applies to have the said order varied to provide that he pays a contribution sum

of E150.00 per month instead of the original E400.00 per month agreed upon. The application is opposed by the Respondent.

The matter was argued before me on the 28th June 1996.

I do not propose to give a detailed account of circumstances under which a party may successfully apply for a variation order. The application here, as in rescission of judgment is based on the party applying showing "a good cause" for a variation, a good has been described in some similar cases as one that "may be a cause other than the financial means of either of the spouses" see in this regard ROOS 1945 TPD 84@ 88. I may just hasten to add that the above description does not attempt to give a comprehensive definition of good cause".

The onus of making out a case is on the party who applies for the variation of the Order of Court.

WHITELY 1959(2) SA 148(E). If the party fails to satisfy the court as to the special conditions constituting a good cause the application will be dismissed LAASER VS YEATMAN 1956(1) PH B 2(C).

In casu, in June 1992 Respondent's attorneys had already written to Applicant's attorneys complaining that the offer

of E400.00 per month offered by the Applicant was inadequate and wanted E620.00 instead. Apparently through negotiations the amount of E400.00 per month was finally accepted. The court also refers to "annexure DZ8" whose contents show certain additional amounts having been paid by the Respondent in order to augment the E400.00 per month agreed upon to initially by the parties. I am mentioning these because the court over and above considering the merits of the present application, can mero motu consider the interests of the minor child and in doing so go ahead and make an order which in the circumstances serves the interests of the minor child.

The court is in agreement with Mr. Fine that the Applicant has not been candid with the court in its application. To mention but a few such instances:-

a) Applicant has not come out clearly in his affidavits how much he earns so that the court can then determine his expenses against his earning;
b) He has been advised not to divulge how much the new spouse earns - the court is left in the dark in this respect;
c) DZ 3 is challenged by the Respondent and no attempt has been made to establish its authenticity - nor has there been documentary evidence attached to substantiate the contents of DZ 3;
d) DZ 9-M details certain payments per credit card

facility. This does not assist the court as the court is left in the dark how the balance of E4 336,06 has been brought forward.

The court finds that the Applicant has not made out a case on a balance of probabilities. The court dismisses the application with costs. The court is not prepared to order costs to be on an attorney and client scale.

J.M. MATSEBULA

JUDGE