

IN THE HIGH COURT OF SWAZILAND

CASE NO. 1815/95

In the Matter between

SONDELANI MTHUPHA

APPLICANT/3RD RESPONDENT

VS

ELDAH MNISI

RESPONDENT/1ST APPLICANT

IN RE:

ELDAH MNISI

1ST APPLICANT

SOLOMON DLAMINI

2ND APPLICANT

VS

CHAIRMAN OF THE ROAD

1ST RESPONDENT

TRANSPORTATION BOARD ATTORNEY GENERAL

2ND RESPONDENT

SONDELANI MTHUPHA

3RD RESPONDENT

CORAM:

S.B. MAPHALALA - AJ

FOR APPLICANTS:

MR D. MADAU

FOR RESPONDENT:

MR J. MAGAGULA

RULING ON RESCISSION OF JUDGEMENT

(17/07/97)

The applicant made an application by notice of motion for rescission of judgement in terms of Rule Section 31 (3) (B) of the High Court Rules. The order which is sought to be rescinded was granted by this court on the 20th June, 1997. The applicant applies for an order in the following terms:

1. 1Condoning the non-compliance with the rules.
2. Setting aside the judgement/order granted in favour of the Respondent/First applicant as

a: eldah

against the Applicant/Third respondent.

3. Granting further and/or alternative relief.

The Respondent opposes the application for rescission and raised a number of points in limine which

were argued on the 7th July, 1997.

The Respondent filed opposing papers and contended that the application is fatally defective. That it should be dismissed at such for the following reasons:

3.1. Although brought on a certificate of urgency the application fails to comply with requirement of Rule 6 (25) (b) of the Rules of this court in that the applicant has failed to set out explicitly the circumstances which render the matter urgent and why the applicant could not be afforded substantial redress at hearing in due course.

3.2. The applicant fails to allege and set fourth his defence on the main application.

3.3. The applicant does not allege that there was nor does he set our any error in granting of the order of the 20th June, 1997.

3.4. The applicant does not set out sufficient reasons of his failure to appoint a new address after the withdrawal of his then Attorneys, Shilubane Ntiwane and Partners.

Mr Madau replied to the points raised by the respondent in limine. He submitted that the applicant has complied with Rule 6 (25) (b) of the High Court rules as applicant clearly states at paragraph 13 of his affidavit that he is prejudiced in that he now has a bus which does not have a permit yet he has to pay for it each and every month end as it is on lease. Mr Madau submitted that this clearly shows urgency.

On the second point raised in limine Mr Madau submitted that it is clear from applicant's affidavit what his defence is and what the issues are

These are the issues before me. I will start with the first point raised by respondent that applicant has not set out explicitly the circumstances which render the matter urgent and why the applicant could not be afforded substantial redress at a hearing in due course. I agree with Mr Magagula that the applicant has not shown that the matter is urgent by laying out circumstances in accordance with Rule 6 (25) (b) of the High Court Rules. (See also the case of Humphrey Henwood VS Maloma Colliery Limited and Attorney General - Civil Case No. 1623/94 where Dunn J gave an instructive analysis of the law in cases of urgency) The affidavit's of the applicant is lacking in this regard save for the assertion that the matter is urgent.

On the second ground the applicant has failed to set fourth his defence on the main application.

There is nowhere in his affidavit where applicant avers that he has a defence.

It is trite law that an applicant for rescission of a default judgement must show good cause and prove that he at no time renounced his defence (see Herbstein and van Winsen "The Civil Practice of the Superior Courts in South Africa and the cases cited thereat"). The applicant has merely invited the court to sift from his affidavit what his defence is. He must place before court sufficient evidence of his defence and this has not been done in accordance with principles of law governing such matters.

On the fourth ground the applicant does not allege that there was an error on the part of the court in granting the order for the court to invoke Rule 42 of the High Court Rules.

On the fifth ground the applicant does not set out sufficient reasons of his failure to appoint a new address after the withdrawal of his then Attorneys Shilubane Ntiwane and Partners. Rule 16 of the High Court Rules is clear as to what procedure should be adopted in a case of withdrawal of an Attorney.

For the reason I have advanced above, I am of the view that applicant's affidavit is so fatally defective for me to grant the application for rescission.

I thus dismiss the application for rescission with costs.

S. B. MAPHALALA

ACTING JUDGE