

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.1854/97

In the matter between:

BRIAN SIMILO L. MNCUBE                                          APPLICANT

and

DOROTHY JABU MNCUBE                                          RESPONDENT

CORAM :                                                                          MAPHALALA A J

FOR THE APPLICANT :                                                          MISS GWIDI

FOR THE RESPONDENT :                                                          MR. B. SIMELANE

RULING (ON URGENT APPLICATION)

26/07/97

The present application was launched and served on the Respondent under a certificate of urgency on Tuesday the 24th June 1994 with notice that it would be heard at 2.30pm Wednesday 1997. The relief sought by the Applicant is for an order in the following form:

a) Waiving the usual requirements of the rule of court regarding notice and service of application in view of the urgency of the matter;

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b) Directing the Respondent forthwith to return the minor children Nosimilo Kimberley Mncube and Palesa Connie Mncube to Applicant's custody;

c) In the event that a rule nisi is granted in terms of the above prayers that (a) and (b) above shall operate as an interim order with immediate effect;

d) Costs of the application;

e) Further or alternative relief.

Mr. Simelane for Respondent informed the Court that they were served with the papers late for them to file opposing papers, however, he raised a point in limine from the bar. The point being that there is no urgency in this matter. The Respondent left the matrimonial home with the children on the 14th June 1997. Plaintiffis rushing to Court after 10 days has elapsed to say the matter is urgent. Mr. Simelane referred the Court to 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. Respondent applies that Court should not disturb the status a quo of the parties by granting a rule nisi as prayer for by the Applicant to allow them to file opposing papers to the allegations raised by the Applicant. Mr. Simelane told the Court that noone will suffer prejudice in that matter as the child who is attending school is in Grade I is not likely to lose much in school.

Miss Gwidi for the Applicant strenuously oppose this and insist that her client is entitled to an interim order. She argued that at this stage they are applying for an interim order not a final order. The interest of the children should reign supreme over and above the parties. The application is merely to

protect the interest of the children.

This is the issue before me. I have to decide whether Applicant has supported his averment that

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the matter is urgent. On the submissions from the bar I fail to understand why the Applicant is bringing this matter to Court with a certificate of urgency after 10 days. Counsel for Applicant has not addressed the Court on this important aspect. What has changed to prompt him to launch this application? This is not clear from the papers filed by the Applicant. I take it to be a fact, as it has not been denied by the Applicant that Respondent left with the children 10 days ago. In the circumstances I rule that the Applicant has not shown that the matter is urgent for the observation I have just made (See HENWOOD (supra)).

I rule further that the present status a quo of the parties should maintain and Respondent to file opposing paper in this matter within 7 days from the date of this ruling. Thereafter, the matter to take in its normal cause.

S. B MAPHALALA

ACTING JUDGE

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