

IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 2132/98

In the matter between

PRO-SALES (PTY) LTD	APPLICANT
And BRIAN TSABEDZE	RESPONDENT
Coram	SB. MAPHALALA - J
For Applicant	MR. MOTSA
For Respondent	MRS. MATSE

RULING

(06/11/98)

This is an application brought by notice of motion for an order that the vehicle registration SD 713 AN, being a Nissan 2.0L custom attached under order issued in Case No. 2132/98 in possession of the Deputy Sheriff be handed to applicant. The respondent has filed an opposing affidavit where he raised a point in limine which is the immediate concern of this ruling. The preliminary point raised is that the applicant is not authorized to represent the applicant in these proceedings in so far as such was never resolved by a meeting of directors of the applicant. It appears from the papers filed that applicant and respondent are the only Directors of the company. The applicant holds 99% shareholding and respondent shares 1% nominal shareholding.

The matter came for arguments on the 26th October 1998 where Mrs. Matse argued that applicant is a legal entity and thus a company resolution to sue in these proceedings should have been filed to give it "loci standi in iudicio". (Refer to Joubert on The Law of South Africa (Vol IV) page 67).

Mr. Motsa for the applicant contended that there is a plethora of authority of this court to the effect that an affidavit duly sworn suffices. He referred me to case of M & F Marketing (Pty) Ltd vs Intercon Construction (Pty) Ltd - Civil Case No. 3493/94; -National Housing Board Tenant's Association vs National Housing Board, Human Settlement Authority, Attorney General - Civil Case No. 977/92 where Hull CJ cited with approval the case of Mall (Cape) (Pty) Ltd vs Merino Ko-operasie BPK 1957 (2) S.A. 347 © to the proposition that "as a matter of law the annexing of a resolution is not essential..."

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In view of the principle of stare decisis I am bound to follow the earlier decision in this matter and hold in favour of the applicant.

I thus dismiss the point raised in limine. The costs to be costs in the cause.

S. B MAPHALALA

JUDGE

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