

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO- 2409/98 12

V

THE MATTER BETWEEN

LEO WILSON MCABANGO MAZIYA

APPLICANT

Vs

RHINO HOLDINGS (PTY) LTD

1st RESPONDENT

MAGISTRATE LINDIWE NKAMBULE

2nd RESPONDENT

CORAM

: MATSEBULA J

FOR THE APPLICANT FOR THE RESPONDENT

JUDGEMENT 12/03/99

This is a matter which the Applicant brought under a certificate of urgency requesting the Court to grant it the following prayers:-

1. That the Order granted by 2nd Respondent against Applicant at the Manzini Magistrate" Court be stayed forthwith.
2. That the grant of prayer (1) above operates with immediate effect as an interim order pending the finalisation of the matter.
3. That a rule nisi be granted with a return date to be stated by the Court, calling upon the Respondents to show cause why.

(a) An Order granted by 2nd Respondent should not be reviewed and set aside.

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(b) Why 2nd Respondent should not dispatch the record of proceedings within 14 days of receipt of the Court Order to the Registrar of the High Court.

(c) Why prayers (a) and (b) should not be made final.

(d) Why the Respondents should not be made to pay for the costs of this application.

The notice of motion was accompanied by an affidavit of the Applicant. According to Applicant in his affidavit he had instituted legal proceedings against the 1st Respondent for-

- (a) cancellation of a lease agreement between the parties and;
- (b) payment of a sum of money amounting to E55,000.00;
- (c) ejectment and;
- (d) costs.

This application was opposed by the 1st Respondent and in a subsequent application for a summary judgement by the Applicant, the application was dismissed.

The Applicant states in his affidavit that thereupon he had an argument with the 1st Respondent resulting in the Applicant dispoiling the 1st Respondent of the keys to the leased premises. 1st Respondent then filed an urgent application for spoliation and succeeded, the application gave the premises back to the 1st Respondent. The Applicant notwithstanding the result of that rule of spoliation and notwithstanding the result of the that rule went ahead and further filed an urgent

application at the Magistrate's Court. This application was involving the same subject matter pending at the High Court. I do not propose going into the merits of what happened at the Magistrate's Court hearing suffice it that what Applicant did in taking the matter pending at the High Court to the Magistrate's Court was highly unethical ab initio and the Magistrate having been informed of this would not have entertained the application.

This Court takes a very serious view of the unethical behaviour of the Applicant who was was throughout the occurrence of this case represented by legally qualified attorneys.

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The Court dismisses the application and orders Applicant to pay costs for the 1st Respondent on an attorney and client scale.

J. M. MATSEBULA

JUDGE

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