IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 1254/99

IN THE MATTER BETWEEN:

JAN SITHOLE APPLICANT

AND

SWAZILAND TELEVISION AUTHORITY 1st RESPONDENT

SENATOR QUEEN MOTSA 2ND RESPONDENT

CORAM : MATSEBULA J

FOR APPLICANT : MR. DUNSEITH

FOR 1st RESPONDENT : MR. MAMBA

JUDGEMENT

25/05/99

This matter first came before Sapire C. J on a certificate of urgency. After some preliminary arguments by the respective Counsel it became obvious that the Chief Justice would have to listen to the certain alleged broadcast by first and second respondents before making any ruling on the matter. The broadcast was said to have been made in the SiSwati language. The Chief Justice not being conversant in the SiSwati language then referred the matter to a Judge who would be conversant in the SiSwati language.

The notice of application prayed for the following relief:

a) waiving the usual requirements of the Rules of the Court regarding the form, notice and service of applications in view of the urgency and hearing of the matter as one of urgency;

b) interdicting and restraining the first respondent from re-broadcasting or in any way publishing the programme known as ASIKHULUMISANE which was previously broadcast on a Sunday 16th May 1999, pending the determination of an action to be instituted by the Applicant against the Respondents claiming a final interdict and damages;

c) directing and ordering the first respondent to deliver to the Registrar of the above Honourable Court all recordings and copies of the programme referred to in prayer (b) above pending the determination of the action referred to in prayer (b) above;

d) interdicting and restraining the second respondent from publishing false and/or defamatory statements concerning the applicant pending the determination of the action referred to in prayer (b) above;

e) costs;

f) in the event this Honourable Court granting a rule nisi in terms of prayers (b), (c), and (d) then an order that such prayers shall operate as an interim orders with immediate effect pending the final determination of this application;

g) further and/or alternative relief.

The application was accompanied by the affidavit of the applicant himself.

Mr. Dunseith who is representing the applicant served the Notice of the Application on the two Respondents in the afternoon of the 20th May 1999. Prayer (a) also seeks the court to waive the usual requirements of the Rules of Court regarding forms, notice and service of the application in view of the urgency of the matter. This means that the application can even be served at hours which under normal procedure would not be allowed. The point taken by Mr. Mamba on behalf of the first Respondent which is to the effect that insufficient time had been allowed first Respondent in terms of the notice of application it having been served on first and second respondents on the 21st May, 1999 at 3 o'clock, can, in my view, easily be dispensed with under prayer (a), to which I have just referred. The Court, of course, takes into account the audi alterant partem Rule and accommodate other affected parties as far as is

humanly possible considering the urgency of the matter. The requirements for such a temporary relief are the following;

a) the right, which is the subject matter of the main action, should clearly be established or on reading of the papers a prima facie right should clearly be established;
b) that if the right is only prima facie established then there should be a well grounded apprehension of irreparable damage that the Applicant is likely to suffer if the relief were not granted and that he ultimately will succeed in establishing his right;
c) that the balance of convenience favours the granting of the interim relief;
d) that the Applicant has no other satisfactory remedy. (See in this respect STEEL AND ENGINEERING INDUSTRY FEDERATION AND OTHERS VS NATIONAL UNION OF MARBLE WORKERS OF SOUTH AFRICA VOL.2 1993 SALR 196 page 199 (g) to 205 (j)). In as far as the founding affidavit, the Applicant has averred that the 1st Respondent was going to re-broadcast the programme complained of on radio on the 22nd May 1999. Indeed Mr. Mamba for the 1st respondent confirmed this averment when I enquired if respondent will suffer any prejudice if it were to refrain from re-broadcast of the programme. Mr. Mamba informed the court that it was his instructions that the re-broadcast should go ahead at all costs, as respondent will suffer financial prejudice if it did not go ahead.

Having listened to the SiSwati language broadcast of the alleged broadcast complained of, I was satisfied that the requirements for the temporary relief had been satisfied. I granted the relief in the following prayers (a), (b), (c), (d), and (f). In respect of (b), I ordered that only the portion dealing with the applicant should not be re-broadcast. I ordered further that the Rule should be returnable on the 18th June 1999 as the two counsel had agreed on that date. This then is the written judgement after granting the orders on the urgent application.

J. M. MATSEBULA

JUDGE