

IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 1266/99

In the matter between

NEDBANK (SWAZILAND) LIMITED

APPLICANT

And MICHAEL J. TEMPLE

RESPONDENT

Coram

S.B. MAPHALALA – J

For the Crown

MR. MAGAGULA

For the Defence

MR. SIMELANE

JUDGEMENT

(25/06/99)

Maphalala J:

The matter came before me on the uncontested roll of the 18th June, 1999 where counsel for the applicant moved an application for a confirmation of a rule nisi that was issued by Masuku A J on the 24th May, 1999. The effect of that rule was as follows:

1. That the Deputy Sheriff for the district of Hhohho be and is hereby empowered and authorised to attach, all movables assets found to be on the premises at Portion 204 of Farm No. 2 Mbabane and to retain same under his attachment pending the outcome of a rule nisi referred to in 3 below.
2. Interdicting and restraining the respondent from removing any of the items attached by the Deputy Sheriff

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3. That a rule nisi issue calling upon the respondent to show cause on the 4th June 1999 before the court why?

3.1 The order referred to in 1 above should not be made final pending the outcome of an action to recover arrear rentals to be instituted by the applicant against the respondent.

3.2. The respondent and all those holding through or under him should not be ejected from the premises.

- 3.3. The respondent should not pay the costs of this application.

The respondent has not filed any opposition to the confirmation of the rule. In fact, Mr. Simelane for the respondent indicated that respondent has no objection to the confirmation of the rule save that they oppose the grant of prayer 3.2 which pertains to ejection. The reason advanced by Mr. Simelane for this opposition is that applicant had already issued summons as per prayer 3.1 which include a prayer for ejection. Their view was to file their intention to defend and subsequently a plea particularly on the issue of ejection and now they find themselves in an invidious situation in that the reason they have not filed opposing papers in this application was because they were intending to defend the issue in the action proceedings.

Mr. Magagula for the other side submitted that the prayer for ejection in the summons was inadvertently inserted and applicant intended to amend same and have it removed.

Mr. Simelane in answer to that is that applicant ought to effect the proposed amendment before they can be granted an order in terms of prayer 3.2 of the order of the court dated the 24th May 1999.

In my view the justice of the matter seem to be in favour of the respondent.

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I thus confirm the rule nisi granted on the 29th May 1999, in respect of the other prayers and that the issue in respect of prayer 3.2 be postponed sine die.

S. B. MAPHALALA

JUDGE