IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 1177/99

In the matter between

NONHLANHLA DLAMINI	APPLICANT
And	
MLANGENI & COMPANY	1st RESPONDENT
DUNCAN THRING	2nd RESPONDENT
Coram	S.B. MAPHALALA - J
For the Applicant	MR. T. SIMELANE
For 1st Respondent	MISS. ZWANE
For 2nd Respondent	NO APPEARANCE

RULING ON COSTS

(03/02/00)

Maphalala J:

The history of the matter is that on the 14th May 1999, a rule nisi was issued by this court for an order calling upon the respondent to show cause why they should not be directed and/or ordered to return to the applicant a motor vehicle a Toyota Hiace kombi registration no. SD 636 BG, they should pay costs of the application on an attorney and client scale and that the rule nisi operate as an interim relief with immediate effect. The sequence of events leading to the launching of this application is that under High Court Case No. 2921/98 the 1st respondent acted for one Mariel Strydom against one Bheki Dlamini. 1st respondent duly obtained judgement against the said Bheki Dlamini pursuant to which a writ of execution was issued.

Attorneys for the applicant gathered that in the process of executing the writ, Mr. Thring (2nd respondent) the Deputy Sheriff had seized and attached a motor vehicle, to wit, a Toyota Hiace with registration number SD 636 BG. 2nd respondent's attention was drawn to this fact. It appeared that the said motor vehicle belonged to the applicant as evidenced by the contents of the blue book attached to the applicant's papers.

These facts were communicated to the 1st respondent by letter from applicant attorneys dated the 10th May 1999, which intimated that in the event 2nd respondent does not release the said motor vehicle forthwith applicant shall proceed to move an application to set aside the attachment with an appropriate order for costs.

The 1st respondent filed an opposing affidavit in accordance with the rules of court.

It appears that the rule issued on the 14th May 1999, lapsed and it was neither confirmed nor discharged.

This matter came in the contested roll of the 20th August 1999, for the determination of costs. Mr. Simelane for the applicant contended that it was not necessary for applicant to be put to expenses to

move this application. Further that it was not necessary for applicant to file a replying affidavit. The nature of the circumstances leading to the launching of this urgent application justifies the grant of costs on attorney/client scale. The 1st respondent is to blame in this matter. To support his point Mr. Simelane directed my attention to the following authorities:

- Joubert LAWSA (Vol III) at page 457
- Herbstein at el The Civil Practice of the Supreme Court of South Africa (4thED) page 719.
- Simons vs Gilbert Harmear 1962 (2) S.A. 487 at 497.

The attitude adopted by Mr. Simelane is that the 1st respondent did not act reasonable in the circumstances.

In turn, Miss Zwane for the 1st respondent argued at great length in opposition taking the court through the circumstances leading to the present dispute. The version advanced by the 1st respondent is that they cannot be held liable for costs in this matter as they were acting as legal agents for the plaintiff in the main action. They instituted action against Bheki Dlamini in Case No. 292/98 and the cause of action was for the recovery of damages as a result of a motor car accident.

This motor vehicle was the one, which had been attached. It was a kombi and it is the same kombi that was involved in the accident. When the accident occurred the owner of the kombi was one Bheki Dlamini. There were settlement negotiations which took place between the 1st respondent and the said Bheki Dlamini. At no point did the name of Nonhlanhla Dlamini feature as this accident occurred on the 19th September 1998. Miss Zwane conceded that annexure 2 was sent to their offices dated the 10th May 1999, which attached the blue book. The effect of the latter is that the motor vehicle was registered in the name of Nonhlanhla Dlamini. On the 28th May 1999. Prior to that the motor vehicle was registered in the name of Nicholas Dlamini.

There was a rule that was issued in this matter and it lapsed. After the lapse of the rule there was no reason to show cause on the part of their client.

These then are the facts in this dispute. I have perused through the papers and considered the arguments advanced. I agree entirely with Miss Zwane that there is no

way 1st respondent can be visited by costs at attorney and own client scale in view of the circumstances of the case. 1st respondent was at all material times acting as legal agents for the plaintiff in the main action. It has not been proved that they acted unreasonably in carrying out of their mandate.

In sum, I refuse the application for cost at attorney and own client scale or any other costs for that matter.

S.B. MAPHALALA

JUDGE