



IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 256/2000

In the matter between

MFANAFUTHI SIMELANE & 3 OTHERS

APPLICANTS

And

VIRGINIA SIMELANE (BORN SIMAKUHLE)

1ST RESPONDENT

THE MASTER OF THE HIGH COURT

2ND RESPONDENT

Coram

For Applicants

For Respondents

S.B. MAPHALALA – J

MR. NTIWANE

MR. MKHWANAZI

RULING (05/05/2000)

Maphalala J:

The matter came on the contested motion of the 31st March 2000 for arguments. Mr. Mkhwanazi for the respondents raised what purports to be a point *in limine* contending that the application before court is marred with disputes of fact and thus cannot be decided on the papers as they stand. Mr. Mkhwanazi has not filed Heads of Arguments in terms of the Chief Justice circular pinpointing the points of disputes in question. He cited a case I decided that of *Civil Case No. 426/99 Lawrence Pops Jacobs & another vs Nicholas Baleni Vilane* where I ruled that there were numerous disputes of facts to be decided on the papers and directed that the matter go to oral evidence. He urged the court to do the same in this case.

Mr. Ntiwane on the other hand hold the view that the court can only come to that conclusion after it had heard the arguments like it did in the case of *Lawrence Pops (supra)*. I am inclined to agree with Mr. Ntiwane on the reasons he advanced that this was the correct approach in the circumstances. It would also appear to me that if the respondents had filed Heads of Arguments pinpointing the various points in dispute perhaps the matter would have proceeded in that direction.

I thus rule that the application be heard on the merits and the court will make up its mind as to which direction to take in the event disputes of fact are revealed.

Costs to be costs in the course.



S.B. MAPHALALA
JUDGE