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SWAZILAND HIGH COURT

MUSA MAGONGO

Applicant

vs

SWAZILAND DEVELOPMENT & SAVINGS BANK

1st Respondent

REGISTRAR OF DEEDS

2nd Respondent

Civ. Case No. 2638/97

Coram

SAPIRE, CJ

For Applicant

Mr. S. Simelane

For Respondent

Mr. L. Khumalo

JUDGMENT

(7/7/2000)

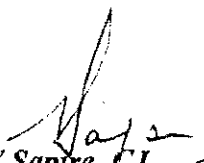
The applicant seeks an order requiring the Registrar of Deeds (2nd Respondent) cancel a mortgage bond presently registered over Lot 29 in Pigg's Peak, (the Property). The bond is registered in favour of 1st Respondent, to secure a debt which is still extant and owing.

The founding affidavit attested to by the Applicant discloses

1. In July 1996 the Applicant obtained an order from this court requiring the Registrar to register transfer of the property to him.
2. The registered owner from whom Applicant had acquired the property had passed a Mortgage bond in favour of the 1st Respondent.
3. The applicant had purchased the property on an auction sale. Whether this was a sale in execution at the instance of the 1st Respondent is not clear. The applicant relies on this fact alone to support his further allegation that he "reasonably expected the 1st Respondent to cancel the said bond". No other information is given of the transaction particularly as to the amount of the purchase price, payment thereof, and why the purchase price has not been applied to extinguish the debt secured by the mortgage bond.

These facts alleged in the founding affidavit are insufficient on which to entitle the Applicant to the relief claimed. The 1st Respondent cannot be compelled to consent to cancel the mortgage bond until its claim, secured thereby, has been extinguished.

The application is dismissed with costs


S W Sapire CJ