



SWAZILAND HIGH COURT

DLAMINI, Gilbert Velaphi
Applicant

Vs

Dorbyl Vehicle Trading and Finance Company (Pty) Ltd
Respondent

Civ. Case No. 2309/2000

Coram

Sapire, CJ

For Applicant

MR. S. SIMELANE

For Defendant

MR. P. FLYNN

JUDGMENT

(16/03/2001)

The applicant approached the court for urgent relief, seeking an order to this effect that

1. the matter be heard as a matter of urgency;
2. the execution of a writ dated 27 March, 2000 and effected on the 24th July 2000 be set aside and declared null and void and of no force and effect;
3. a bus registration number SD 473 YM be returned to the applicant
4. the respondent's attorneys be required to account to the applicant in respect of the attachment of the said bus;
5. Directing respondent to pay the costs of this application on an Attorney and his own client scale.

There was a further prayer that the above relief which was to have been in a form of a rule operate with immediate effect.

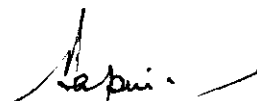
The papers were served and the respondent was brought to court on the 1st August, 2000. The respondent filed an answering affidavit in which all material allegations made by the applicant in his founding affidavit were dealt with and refuted. The matter was eventually to be argued on the 4th August but before that date the applicant discovered his errors and served a notice of withdrawal of the application. This notice was filed on the 4th August.

The respondent was justifiably incensed at the institution of these proceedings. It is quite clear that there was no factual basis for it and that it can rightly be said that if not both frivolous and vexatious, the application was vexatious. To me it seems to be both.

I was addressed at length on the question of the scale upon which the costs are to be taxed. The respondent counsel contended for an order against the respondent that the costs be taxed on a scale appropriate to attorney and own client. It should be noted that in making an application, the applicant itself seems to have considered that such an order in its favour was appropriate if it succeeded.

This is a case which calls for special treatment. It is quite clear that the applicant without knowing or understanding the facts and history of the matter, made an application which had no prospects of success. The applicant may have done so on the advice of an attorney. If so the applicant may well look to the attorney to compensate him for additional costs to which he has been put.

I am satisfied that this is a proper case for the attorney and client costs and accordingly I order that consequent upon the withdrawal of the application the applicant is to pay all the respondent's costs including counsel fees which may be taxed on the scale appropriate to attorney and own client. Such costs are to include all the costs incurred on the 11th August.


SAPIRE, CJ

queries