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SWAZILAND HIGH COURT

DLAMINI Bongani Eric
Applicant

VS

GININDZA Lawrence Tswe
1st Respondent

L B DISTRIBUTORS (PTY) LTD
2nd Respondent

SWAZI PLAZA PROPERTIES
3rd Respondent

FIRST NATIONAL BANK LIMITED
4th Respondent

Case No. 1919/2002

Coram

Sapire, CJ

For Applicant

For Respondents

JUDGMENT

(16/08/20)

This is an application which has been brought by way of urgency. The applicant and the 1st respondent are co-shareholders of a company, which is the 2nd respondent. The applicant has sought relief on motion firstly

a) directing the 1st respondent to prepare an inventory of all the items which include stock and fittings that he removed inside shop C31 at Swazi Plaza, Mbabane and restoring them back inside the shop.

b) Directing the 4th respondent to freeze account No. 57711200726 pending finalization of this matter

c) Directing 1st respondent to grant applicant access to the shop No. C31 situated at Swazi Plaza Mbabane

The form of the notice of motion was that the prayers b, c and d which I have referred to here operate with immediate effect calling upon the respondent to show cause on a date to be fixed by this court why

- i) prayers (b) (c) and (d) should not be confirmed;
- ii) 1st respondent should not be ordered to pay the costs of this application on an Attorney-Client scale.

c) Granting applicant any further and/or alternative relief.


This form of interim relief is something that must be reconsidered again and I have pointed out time and time again that it is not appropriate to in fact grant a final order before you have heard the matter. An interim order is only granted to preserve a situation. This is a defect in the application but it is not material in the present instance because of what follows:

The application is in fact an application that should be brought by the 2nd respondent. A shareholder has not got an individual action himself in these circumstances. The relief that is required relates to the property of the company. If it is impossible for the directors to get together and to get the company to seek the appropriate relief this may well be a case where there is an oppression of the minority calling for the dissolution of the company and the proper application will be for a liquidation order.

It is impossible on these papers to determine where the truth lies. There is a dispute of facts which should have been anticipated by the applicant. This is not a case where the matter can be referred to evidence.

Applicant as an individual shareholder cannot pursue the relative action on behalf of the company except in exceptional circumstances that do not apply here. This I drew to the attention of counsel early in the argument. No argument has been advanced to the contrary and there is nothing on reconsideration of the matter which leads me to feel that there is any propriety in the applicant himself taking action on behalf of the company.

For these reasons the application will be dismissed with costs.


SAPIRE, C.

