

THE HIGH COURT OF SWAZILAND

METRACLARK (A Division Of Carrier South Africa (Pty) Limited

Plaintiff

And

YVONNE NISSIOTIS

Defendant

Civil Case No. 221/2002

Coram

S.B. MAPHALALA – J

For the Plaintiff

MR. B. MAGAGULA

For the Defendant

MR. P. DUNSEITH

JUDGEMENT

(04/02/2004)

The Defendant came before court on the strength of a notice in terms of Rule 45 (13)

(i) of the rules of court.

The said rule provides as follows:

(ii) Whenever a return has been made to a writ of execution, that the officer charged with the execution has been unable to find sufficient property subject to attachment to satisfy the amount of the writ or whenever a judgment debt remains wholly or in part unsatisfied after the expiration of twenty-one days from the date of the judgment, the judgment creditor may be notice call upon the judgement debtor or, where the judgment debtor is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity, to appear before the court on a day fixed by such notice, and to produce such documents as may reasonably be necessary, in order that the court may investigate the financial position of the judgement debtor.

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The Defendant was examined under oath to ascertain her financial position for purposes of the rule. She is a 50 year old lady and divorced with her husband who ran the family business. The said business was involved in electrical and industrial wholesaling and was started in 1984 but has since gone into liquidation. The principal debt in this case was that of the said company. The Defendant is being pursued as one of the shareholders of that company.

She told the court under oath that the company made between E500, 000-00 to E800, 000-00 per month in its heyday. Her husband took care of the financial aspect of the business such that she had no knowledge of where profits went except to say that during those days her family led an opulent existence. Their home was a mansion in one of the well-appointed suburbs of Mbabane with all the trappings common to such places. This unfortunately did not last as the company went into liquidation in 2001 and she subsequently divorced her husband in acrimonious circumstances.

Presently her station in life has been considerably lowered in that she now resides in a nondescript suburb at Fairview and works as a bookkeeper for a monthly salary of E2, 000-00. She outlined in

great detail how she spends the said sum to support herself. A sum of E1, 000-00 is paid towards the rental of the house she occupies at Fairview. She tabulated how the remaining amount is expended in the various expenses for her existence. She offered that she can pay a sum of E500-00 towards the debt in this matter. It emerged in her evidence that she has also been called upon to account in another family business which is also in financial doldrums, in the matter of Eberhardt Martin vs Mrs Yvonne Nissiotis Civil Case No. 3198/2001. This case was postponed to a future date for an examination in terms of Rule 45 (13) (i).

I have assessed the evidence before me and I have also considered the submissions made by Mr. Magagula for the Plaintiff and Mr. Dunseith for the Defendant. Mr. Magagula contended that a sum of E500-00 would be appropriate in this case. However, Mr. Dunseith argued that a sum of E250-00 would be in order. I am inclined to agree with Mr. Dunseith that a sum of E250-00 would be appropriate in the circumstances of the Defendant. A sum of E500-00 would be too much for the

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Defendant regard being had to the fact that she still has to answer in Case No. 3198/2001 mentioned above.

In the result, the Defendant is to pay a sum of E250-00 per month commencing from the date of this judgment.

S.B. MABHALALA

JUDGE