

THE HIGH COURT OF SWAZILAND

SIBUSANGANI KHABA

Applicant

And

SUPREME FURNISHERS (PTY) LTD

Respondent

Civil Case No. 3681/2004

Coram S.B. MAPHALALA – J

For the Applicant MR. P. MSIBI

For the Respondent MR. NSIBANDZE

RULING

(On points of law in limine) 26/11/2004

[1] Serving before court is an application brought under a Certificate of Urgency for an order, inter alia, ordering and directing the Respondent to return the wardrobe and bedset which was unlawfully taken from Applicant's possession home at Vusweni area in the Shiselweni district; declaring the Court Order issued by the Manzini Magistrates Court on the 9th November 2004, to be null and void and rescinding and setting it aside and; ordering Respondents to pay costs at a scale between attorney and own client.

2

[2] The Applicant in her Founding affidavit advances facts in support of the application.

[3] The Respondent has raised two points of law in limine. These are the subject-matter of this ruling. They are formulated in the following terms:

1. AD URGENCY.

1.1 The Applicant has failed to set out, in the Founding affidavit the circumstances in terms of which she avers that this matter is urgent as required by Rule 6 (25) (a) and (b) and furthermore has failed to indicate why she cannot be afforded substantial relief at a hearing in the due course;

1.2 In the circumstances it is submitted that the matter is not urgent and that the Honourable Court should dismiss the Applicant's claim with costs.

[4] In support of the points raised Mr. Nsibandze for the Respondent argued that the Applicant has failed to comply with the provisions of Rule 6 (25) (a) and (b) of the Rules of the High Court. The court was referred to many judgments of this Court on this Rule including the celebrated case of Humphrey Henwood vs Maloma Colliery and another, High Court Case No. 1625/94 (unreported). He argued that paragraph 13 of the Applicant's founding affidavit which purports to prove urgency falls far too short in satisfying the rigours of the peremptory provisions of the rule.

[5] Rule 6(25) (a) and (b) provides as follows:

"25 (a) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as to the Court or Judge, as the case may be, seems fit.

- (b) In every affidavit or petition filed in support of an application under paragraph (a) of this sub-rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course".

[6] Paragraph 13 thereof of the Applicant's founding affidavit which seeks to lay the basis for urgency in this case reads as follows:

3

"I further ask that this matter be handled on an urgent basis because I use the bed for sleeping on and now I suffer great prejudice because I literally sleep on a floor mat together with my child and we are at risk of contracting of all sorts of diseases. Further, my clothes and those of my child were scattered by the Respondent's agents all over the floor and life is just unbearable without the items I was dispossessed of. I am already suffering from severe back pains because of sleeping on the floor,"

[7] Nothing more than this is said regarding the requirements of the Rule. It is clear from the above-cited paragraph that no attempt has been made to address the provisions of Rule 6 (25) (b) as there are no facts averred which clearly demonstrate that the Applicant cannot be afforded substantial redress at a hearing in due course.

[8] The proper approach in these matte/was formulated in the judgment of H.P. Enterprises (Pty) Ltd vs Nedbank (Swaziland) Ltd - Civil Case No. 788/99 (unreported), where Sapire CJ (as he then was) correctly analysed the applicable principles and reasoned as follows at pages 2 — 3:

"A litigant seeking to invoke the urgency procedures must make specific allegations of fact which demonstrate the observance of the normal procedures and time limits prescribed by the Rules will result in irreparable loss or irreversible deterioration to his prejudice in the situation giving rise to the litigation. The facts alleged must not be contrived or fanciful but give rise to a reasonable fear that if immediate relief is not afforded, irreparable harm will follow".

[9] Clearly in casu such allegations mentioned by Sapire CJ above are not there. The Applicant wants the court to make some finding on urgency without supplying any relevant allegation. The court is expected to make such finding based on surrounding circumstances not alleged in the Founding affidavit.

[10] When Mr. Msibi was pressed on the absence of allegations per Sub-Rule (b) viz that Applicant could not be afforded substantial redress at a hearing in due course he cited a Court of Appeal judgement to the proposition that Rules of Court, which constitute the procedural machinery of courts, are intended to expedite the business of the Court. In this instance though, I agree in toto with the submissions made by Mr. Nsibandze that the rule which is presently being examined is mandatory.

4

[10] For afore-going reasons I find that the point of law in limine succeeds and consequently the application falls to be dismissed. Costs to follow the event.

S. B MAPHALALA

JUDGE