

THE HIGH COURT OF SWAZILAND

RUTH MABUZA

Applicant

And

MAVIS HAZEL INSKIP N.O. AND OTHERS

Respondents

Civil Case No. 3100/2005

Coram: S.B. MAPHALALA - J

For the Applicant : MR. L. MAMBA

For the Respondents: MR. DLAMINI

RULING

(25<sup>th</sup> October 2005)

[1] The matter appeared before me in the contested motion of the 21<sup>st</sup> October 2005, where Counsel for the Applicant applied that I issue an order in terms of the prayers in the Notice of Motion, as Respondents have not opposed the application. The argument in this regard is that the order which has been granted in favour of the Respondents in the morning in their interlocutory application does not help them as the dies for filing Answering affidavit has already expired that of 14 days, even of 28 days. Therefore, the court is now non fuctus officio in

respect of this matter and that it can only grant the order as sought in the Notice of Motion, in the main application. The orders that are sought in the latter application are, inter alia, the dismissal of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as co-executors in the estate of the late Mary Queeneth Mayintombi Inskip and that of one John Earl Henwood of the firm Cloete Corporate be appointed in their stead.

[2] As I have mentioned above the Respondents have earlier on in the contested motion obtained an order in terms of Rule 27 of the High Court Rules extending the time prescribed by the rules of this court for filing of Answering affidavit by 14 days. This order was not opposed by the Applicant who also did not consent to it. My understanding of the order and this is also shared by Mr. Dlamini for the Respondents is that the Respondents' time for filing of Answering affidavits was extended by 14 days from the issuance of the said Order.

[3] I have considered what was argued on Friday and I am of the considered view that the Respondents are entitled to file their Answering affidavit as ordered in the interlocutory application and therefore I cannot accede to what Mr. Mamba submitted that Applicant is entitled to an order in the main application as the averments therein are not contravened by the Respondents. I find that in the present case the requirements of Rule 27 of the rules were satisfied.

[4] In the result, no order is made in the main application, the matter to take its normal course. Costs to be costs in the main application.

S.B. MAPHALALA

JUDGE