

THE HIGH COURT OF SWAZILAND TONY HATTON

ZANELE HATTON

Vs

HANNA FRIELINGSDORF

Civil Case No. 630/2005

Coram

For the Applicants For the Respondent

SB. MAPHALALA - J MR. P. DUNSEITH MR. M. SIBANDZE

JUDGMENT

(02/12/2005)

[1] The Defendant is before court on the strength of a Notice in terms of Rule 45 (13) (i) of the Rules of this court. The rule provides as follows:

I) 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.

[2] According to the Notice afore-mentioned the Applicants did in terms of an order dated 28th February 2005, obtain judgment against the Respondent for payment of the sum of E6, 000-00 for rental and E5, 176-46 for electricity charges and costs. Further, in the said notice the Respondent was called upon to appear before this court on Friday the 8th July 2005 at 9.30 am or so soon thereafter as the matter may be necessary in order that the court may investigate the financial position of the Respondent.

[3] The Respondent was examined under oath to ascertain her financial position for purposes of the Rule. She also filed a confirmatory affidavit where she avers therein that she is a major female resident of Pine Valley and placed it on record that she did not possess any assets whether be it in Swaziland and/or Germany other than those attached by the Deputy Sheriff. In the said affidavit she has annexed various bank statements and a bill from the Swaziland Electricity Board. She further enclosed a break down of her income and expenditure as follows:

ITEM	INCOME	EXPENDITURE
Animal Welfare	E4,500 - 00*	
Pension	E3, 270-00	E1 800-00
Rent		E100-00
SEB		E200 - 00
Other bills		E1, 100-00

Food, Transport, Airtime	E7,770 - 00	E3, 200 - 00
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income and expenditure as follows:

*Amount differs. Depends on the currency exchange rate from Germany from month to month.

[4] The Respondent deposed that she is a Medical Practitioner. That this year she has earned a sum of E200-00 and is expected to be paid by certain patient which she is presently treating. It emerged also in evidence that she resides with her daughter and that they are involved in the welfare of dogs being funded by a German organization which sends a sum of E4, 500-00 every month to that end. It is the daughter who is responsible for this money coming from Germany. She stated that presently she can afford a sum of between E200-00 to E300-00 towards the liquidation of her debt with the Applicant.

[5] She was cross-examined searchingly by Mr. Dunseith for the Applicant suggesting that Respondent had not been candid with the court in that she has other sources of income other than her pension which is reflected to be the sum of E3, 270-00 per month. She was adamant and unwavering that was all her income as reflected in her "income and expenditure" breakdown. It was also put to her that the amount used in keeping her 12 dogs was highly exaggerated. Again she was firm in her reply that this was not so.

[6] I have assessed the evidence before me and I have also considered the submissions made by Mr. Dunseith for the Applicant and Mr. Sibandze for the Respondent. Mr. Dunseith contended that Applicant has not divulged to the court her other sources of income. Further that the amount expended on the welfare of the 12 dogs should be adjusted to pay other expenses for the Respondent i.e the

payment of the present debt. Mr. Sibandze argued that the court ought to accept the evidence adduced by the Respondent, as there is no other evidence gainsaying her evidence. The Respondent can afford to pay E200-00 to E300-00 per month towards this debt.

[7] It appears to me that in the absence of any evidence contradicting that of the Respondent I cannot say on the facts that she has other sources of income other than what she has stated on oath. Therefore, I would order that her offer to the court to pay between E200-00 to E300-00 should be made an order of court.

[8] In the result, for the afore-going reasons Respondent is ordered to pay a sum of E3 00-00 per month towards the liquidation of her debt of E6, 000-00 for rental and E5, 176-46 for electricity charges and costs. First payment to commence from the date of this judgment.

S.B. MAPHALALA

JUDGE