

THE HIGH COURT OF SWAZILAND

BABBY ERNESTINE DLAMINI

Applicant

And

MBUSO E. SIMELANE N.O.

1st Respondent

THE MASTER OF THE HIGH COURT

2nd Respondent

Civil Case No 593/2005

Coram: S. B. MAPHALALA -J

For the Applicant : MR M. MABILA

For the Respondent: MR D. MAZIBUKO

RULING

(On application for joinder) (04/03/2005)

[1] Before me presently is an application for the joinder of Respondents. It is opposed by the Applicant on the basis that it does not conform to Rule 6 (7) of the High Court Rules. A notice in terms of Rule 30 has been filed towards this end.

[2] The application is for an order in the following terms:

"a) That the persons listed below namely; Sipiwe Dlamini Mary Dlamini Letsy Dlamini be joined in the proceedings before court as Respondents

b) Any other or alternative relief

The potential Respondents have a direct and substantial interest in the matter before court in their capacity as interstate heirs in the estate of the late Abel Jabu Dlamini".

[3] Mr. Mdbila appearing for the Applicant argued that the said Application is not supported by an affidavit setting forth the nature of such interest and the grounds upon which they desire to be heard. He relies on Rule 6 (7) of the High Court Rules.

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[4] The said Rule reads as follows:

"Any person having an interest which may be affected by a decision on an application being brought ex parte, may deliver notice of an application by him for leave to oppose, supported by an affidavit setting forth the nature of such interest and the ground upon which he desires to be heard, whereupon the Registrar shall set such application down for hearing at the same time as the application brought ex parte".

[5] With the greatest respect to Mr. Mabila the rule he has cited has no application in the present application but is concerned with ex parte applications. It is therefore, not relevant in the case in casu. The present application is not an ex parte application.

[6] Mr. Mazibuko who argued for the joinder of the Respondents contended that the rules of this court are silent as to how such applications should be proceeded with viz, Rule 10 and 6 thereof. He further directed the court to what is said by the authors Herbstein and Van Winsen, *The Civil Practice of the Supreme Court of South Africa*, 4th Edition at page 353 as follows:

"It is not essential to file affidavits in support of an interlocutory application since Rule 6 (11) provides that such an application may be "supported by such affidavits as the case may require". It has been held that if an interlocutory matter can be decided without Affidavit is an appropriate course and one sensibly concerning costs" (see also the cases cited thereat).

[7] The nub of Mazibuko's argument therefore is that since the application for joinder of the Respondents is in the nature of an interlocutory application the matter can be decided without affidavits following what is said by the authors Herbstein et al (supra). He contended that the notice of application for joinder in casu speaks for itself in that the Respondents seek to be joined therein in their capacity as interstate heirs. I agree in toto with these submissions that the notice for joinder ex facie shows that the Respondents have a direct and substantial interest in the matter by virtue of being interstate heirs, in the estate of the late Abel Jabu Dlamini. The argument advanced by Mr. Mabila that the monies that are the subject matter of the main application are not part of the estate cannot be answered at this stage before full arguments for and against that aspect of the matter are brought forth in the main application. However, for now it appears to me that the Respondents have a direct and substantial interest in the matter and ought to be joined.

[8] For the afore-going reasons application for joinder of the Respondents is granted and costs to be costs in the cause.

S.B. MAPHALALA

JUDGE