

IN THE HIGH COURT OF SWAZILAND

civil case no.468/05

In the matter between:

Phepsile Maziya Plaintiff

vs

Thamsanqa Goodwill Tsabedze Respondent

and Two Others

Coram:Matsebula J

For the Plaintiff

For First Respondent: Mr. Magongo

Judgment

13th March 2005

By notice of motion dated the 11th February 2005, applicant prays for the following relief :

1.1 Dispensing with the Rules, the Honourable Court has the service forms in time limits in allowing this matter to be heard as one of urgency;

1.2 Setting aside the court order issued by second respondent against the applicant on the 5th February

2005;

1.3 Authorising the applicant to remove her personal belongings in the flat currently locked pursuant to second respondent's order aforementioned;

1.4 That a rule nisi do issue returnable on a date determined by this Honourable Court why paragraphs 1.1, 1.2, 1.3 should not be made final.

2. That the respondent be made to pay costs for this application at an attorney/client scale jointly and severally the one paying the other to be absolved.

3. Granting the applicant such further and/or alternative relief.

During argument it transpired that some if not all, the prayers had been overtaken by events. First respondent did whatever he did on the basis that he had been authorised by his brother who is the former boyfriend of applicant and father to her child born out of that union between applicant and the respondent (respondent's brother). Respondent was compounded by the second respondent who is a Magistrate and in his capacity purported to create an exhibit "A" and called it "Court Order". One of the applicant's prayers is to set aside exhibit "A", exhibit "A" is referred to as "Court Order" and in order to eliminate any further confusion it must be set aside and be declared to be of no force and effect.

First respondent has filed an answering affidavit in its answering affidavit. First respondent has also raised preliminary points and the notice of application was served at the offices of Mr. Magongo. Mr. Magongo, in his preliminary points states that service at his office is no service as he is not a party to the proceedings.

With the greatest of all respects to Mr. Magongo it is difficult to come across such a traversivity of justice pronounced by a legal practitioner.

The court does not wish to dwell on the further preliminary points raised by Mr. Magongo. They do not make sense at all. As I have said above the crux of the matter centres around annexure "A". Second respondent has chosen not to file any affidavit to throw some light on the contents of annexure "A". Applicant has prayed in (2) for costs on attorney and own client's scale. Second respondent has been cited in these proceedings and he has chosen not to file any papers. I am not sure if he has ever considered consulting the Attorney General for a legal advice. As far as I am aware, second respondent is protected from a liability arising from civil ability, civil litigation where he has done any act or granted any order in the discharge of his official judicial duty but for the provision of this Section, I would have considered to order punitive costs against the first and second respondent jointly and severally of the one paying the other to be absolved. Costs on the punitive scale is not granted by the court's lightly, mere errors of judgment will not be sufficient. A judicial officer entertains the application brought to him partly unprocedural in an unprocedural fashion. This led to the grant, of, a= totally improper order i.e. annexure "A". Considering all the factors outlined above, I am of the view that the proper order as to costs is one, of course in the ordinary scale and this will be against the first respondent not the Magistrate.

In the result, the court grants the following prayers: prayers 1.2 and 2 but the costs will be on the ordinary- scale.

J. M. MATSEBULA

JUDGE