

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.3337/05

In the matter between:

NATIONAL AGRICULTURAL MARKETING

PLAINTIFF

VS

MINO OILS (PTY) LTD

DEFENDANT

CORAM: MATSEBULA J

FOR THE PLAINTIFF: MS. DA SELVA

FOR THE DEFENDANT: MR. MNGOMEZULU

RULING ON POINTS IN LIMINE

15th MARCH 2005

The applicant - respondent in the main application moved an application on a notice of motion for following relief:-

1. Dispensing with time limits, forms and service prescribed by the Rules of this Honourable Court and hearing this matter urgently.
2. Directing the first and second respondents to cancel the sale by public auction of applicant's goods scheduled for the 15th March 2005.
3. Directing the second respondent to furnish the applicant and/or its attorneys with the inventory of all applicant's attached goods.
4. Directing the second respondent to furnish applicant and/or its attorneys with the warrant of attachment and court order issued in respect of the application for summary judgment.
5. Directing that prayers 2, 3 and 4 operate with immediate effect pending the return date.
6. Directing that a rule nisi do issue calling upon the first and second respondents to show cause, if any, why prayer 2, 3 and 4 should be made final.
7. Directing the first respondent to pay costs of suit.
8. Directing further and/or alternative relief.

The application is opposed by first and second respondents. First and second respondents have not filed any papers. However, this being an application brought under a certificate of urgency, litigants are permitted to argue their matter without filing any affidavits.

The litigants are represented by M/s Da Silva for applicant and Mr. Mngomezulu for first and second respondents M/s Da Silva right from the onset stated that she had been asked by Mr. Maphalala to stand in for

him as he had to go to the Republic of South Africa to brief counsel on another matter. Courts have no problem if attorneys make such arrangements. However, the person asked to stand in for another must make herself au fait with the matter in order to assist the court. This was clearly not the position with M/s Da Silva. I shall not say she was misleading the court but it was abundantly clear that she had not acquainted herself with the facts of the case.

Mr. Mngomezulu took the court through the paces of the case as it unfolded right from the start. These are the following:

(a) There were negotiations between Mr. Mngomezulu and Mr. Maphalala on behalf of the litigants. When these negotiations failed to yield the desired results, Mr. Mngomezulu opted to apply for summary judgment.

Summary judgment was obtained on 4th February 2005. Further consultations followed and it turned out that applicant was financially disadvantaged.

(b) Mr. Mngomezulu proceeded to issue out a writ of execution. Second respondent followed all the steps necessary. Applicant admits that he became aware of this on 7th February 2005.

In the meantime applicant instructed his legal representative to move an application for a rescission of the order for summary judgment and papers were served on first and second respondents' attorneys.

This was not opposed by first and second respondents. At the instance of applicant's attorneys the matter was removed from the roll.

Applicant's attorney again resurfaced with the present application under a certificate of urgency. I have gone through applicant's papers and listened to both Mr. Mngomezulu and M/s Da Silva and have formed the opinion

that the present application is not urgent. The court dismisses the application with costs.

The costs to include the wasted costs for the 14th March 2005.

J.M. MATSEBULA
JUDGE