

HIGH COURT OF SWAZILAND

In the matter between:

CIVIL CASE NO. 1209/05

RAYMOND SIBANDZE                      APPLICANT

VS

BONGANI MAKHUBU                      1<sup>st</sup> RESPONDENT

SIKELELA DLAMINI                      2<sup>nd</sup> RESPONDENT

CORAM:MATSEBULA J

FOR THE APPLICANT:MR. MALINGA

FOR THE RESPONDENTS:MR. J.W. MASEKO

RULING

ON POINTS RAISED IN LIMINE 1<sup>st</sup> SEPTEMBER 2005

Applicant filed a notice of motion for the following relief:

1. Dispensing with the normal forms of service and time limits prescribed by the rules of this Honourable Court and hearing this matter as one of urgency.
2. That the default judgment granted by the above Honourable Court on Friday the 6th day of May 2005 be reviewed set aside and declared null and void and of no force or effect.
3. That the Writ of Execution issued by the Registrar of the above Honourable Court on the 18<sup>th</sup> day of May 2005 be stayed pending the finalization of this application.
4. That the Bill of Costs set for taxation on the 26<sup>th</sup> day of May 2005 be and is hereby set aside and declared null and void.
5. That the Applicant be and is hereby allowed to file his plea to the summons within a period as this Honourable Court shall direct.
6. That the 1<sup>st</sup> Respondent pays the costs of this application.
7. That the above Honourable Court grants such further and/or alternative relief as this Court shall deem meet.

The notice of motion is accompanied by applicant's founding affidavit, whose contents I will deal with below. For now I should state that counsel for respondents filed a notice to oppose the notice of motion that was filed by applicant; and in support of the opposition 1<sup>st</sup> respondent has filed an opposing affidavit in which it attacks applicant's papers on the basis that they are fatally defective in that they do not comply with the requirements as set out in terms of Rule 6 (2)(b) of the Rules of this Court which states "shall set forth explicitly the circumstances which render the matter urgent."

The applicant must in his founding affidavit set out explicitly the circumstances on which he relies to render the matter urgent and the reason why he claims that he cannot be afforded substantial relief at a hearing in due course.

Respondents also aver that applicant has failed to indicate under what rule the intended rescission of judgment obtained by respondent is being instituted. This, say the respondents, is important if respondents are not to be embarrassed in their defence.

Mr. Malinga counsel for applicant omitted to file an affidavit by himself stating that in his opinion the matter is indeed urgent. Last mentioned is the usual format in these matters. To overcome this hurdle Mr. Malinga argues that the Court must read applicant's founding affidavit to ascertain that the matter is in fact urgent. This is not the court's function and it is not in accordance with the provisions of Rule 6 (25)(b).

In the result, the points in limine are upheld with costs and applicant, if so minded can pursue the matter in a hearing in due course.

J. M. MATSEBULA

JUDGE