

THE HIGH COURT OF SWAZILAND

NONHLANHLA NDLANGAMANDLA

Applicant

And

MOTOR VEHICLE ACCIDENT FUND

1st Respondent

SOPHIE D. SHONGWE

2nd Respondent

Civil Case No. 1949/2005

Coram: S.B. MAPHALALA-J

For the Applicant: MR. J. MASEKO

For the Respondent: MR. W. MKHATSHWA

RULING

(On points of law *in limine*)

(9th February 2006)

[1] This application is similar to the one involving Gelane Ntombizile Gamedze (*nee* Dlamini) against the Motor Vehicle Accident Fund and Sophie D. Shongwe under Case No. 1948/2005 where I heard arguments at the same time. Also in the present case the Applicant is applying for a declaratory order that the following minor children, Nikiwe Ncobile Shongwe, Njabulo Clement Shongwe and Sabelo Khaya Shongwe, being illegitimate minor children of the late Mkwapela Shongwe. Two points of law *in limine* have been raised by the Respondent. Firstly, that Applicant does not have the necessary *locus standi* to launch this application. Secondly, that there are disputes of facts in this matter.

[2] On the first issue I held in the other case that Applicant had *locus standi* to make the application and also in the present case the reasons I gave in this respect apply in the present case. On the second issue that of the dispute of facts the reasons given in *Gelane Ntombizile Gamedze (supra)* also apply on the facts of the present case. It is trite that, where a declaratory order is sought, if a dispute of fact is foreseeable, a declaration should be sought by way of action (see *Electrical Contractor's Association of S.A. vs Building Industries Federation S.A. 1980 (2) S.A. 516 (T)*). Further, for ease of reference the ruling in *Gelane Ntombizile Gamedze (supra)* forms part of the present ruling.

[3] In the result, the application is dismissed with costs.

S.B. MAPHALALA
JUDGE