

THE HIGH COURT OF SWAZILAND

SAMUEL TSABEDZE

Applicant

And

WINILE MNGOMETULU

Respondent

Civil Case No. 4585/2005

Coram: S.B MAPHALALA - J

For the Applicant: MR. T.MLANGENI

For the Respondent: MR. K. VILAKATI

RULING

(10th February 2006)

[1] The Applicant has applied that interim custody be issued to him forthwith pending the filing of the full socio-economic report regarding the two minor children in this dispute. The main reason advanced in support thereto is that the children will then and there be enrolled for their educational needs with their father. On the other hand it was argued, *inter alia*, for the Respondent that it would be proper to leave the two children in the custody of the

Respondent their mother until the court decides the whole matter. If they were released to the Applicant and the court then finds that custody should be awarded to the Respondent, this will create an unnecessary disruption on the children.

[2] I have considered both arguments in this matter and I am of the considered view that custody of the minor children remain with their natural mother pending the filing of the full report by the Social Welfare Officer. I am saying this because of the ages of the children and that as such children at this age are more close to their mother than any other person. By doing that I am trying to avoid a situation that the children are now released to the Applicant and later the court find in favour of the Respondent. In my view, this will adversely affect the children.

[3] It is my view that the Respondent exercises custody of the children pending the finalisation of the matter. Secondly, I will urge the parties to set the matter for hearing of the matter on the merits as soon as the Socio-Economic report has been filed with the Registrar of Court.

[4] In the result, the interim custody of the two minor children is granted to the Respondent and the matter to be enrolled to the court as soon as the report from the Social Welfare Officer has been filed with the Registrar of this Court.

[5] Costs to be costs in the course.

S.B. MAPHALALA
JUDGE