

THE HIGH COURT OF SWAZILAND

CORNILIUS VAN NIEKERK N.O

Applicant

And

JAMESON VILAKATI

1st Respondent

INTERSTATE KOMBI ASSOCIATION

2nd Respondent

Civil Case No. 255/2006

Coram: S.B. MAPHALALA-J

For the Applicant MR. SHABANGU

For the Respondent MR. MDLADLA

JUDGMENT

(24th March 2006)

[1] On the 27 January 2006, the Applicant was granted an interim order to the effect, *inter alia*, that the Respondents and those acting at their behest be interdicted and restrained from interfering in any manner whatsoever with the bus fully described in the papers or any other bus ferrying the children described in "CLV2" to the application or any of its passengers. Further prayers are made in paragraphs 2, 3, 4 and 5 thereof.

[2] The Respondents have filed an opposing affidavit in this matter. When the matter appeared before me in the uncontested motion of the 17th March 2006, Counsel for the Respondent argued that the Respondent have anticipated the order of the 27th January 2006, and therefore sought to be heard on this point. The matter was then postponed to the 20th March 2006, at 2.15pm to hear submissions on the Respondent's anticipation of the order of the 27th January 2006. Indeed, on this date I heard submissions from both Counsel on the anticipation of the rule.

[3] Rule 6 (22) provides that any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than twenty-four hours notice.

[4] According to *Erasmus, Superior Court Practice at BJ - 52* the provisions of this rule only apply where an order has been granted against a person *ex parte* and where a return day has been fixed. The rule does not provide substantively for the granting of a rule *nisi* by the court. The practice of doing so is nevertheless, firmly embedded in our procedural law. The procedure of a rule *nisi* is usually resorted to in matter of urgency and where the Applicant seeks interim relief in order adequately to protect his immediate interests (see *Safcor Forwarding (Johannesburg (Pty) Ltd National Transport Commission 1982 (3) S.A. 654 (A)* and also the case of *Regular -Investments (Pty) Ltd vs Du Plessis 1972 (2) S.A. 493 (O)*).

[5] in the present case after hearing all the arguments on this point I am of the considered view that the Respondent have not followed the full stricture of the Rule by making a formal application supported by reasons for such an application, as contended by Counsel for the Applicant. The Respondents have advanced a roughshod application outside the Rule and for this reason I would dismiss the application to anticipate the Rule, and so it is ordered.

[6] In the result, for the afore-going reasons the matter to be postponed to a date to be agreed upon by the parties for full arguments in this matter and the rule *nisi* extended to that date. 'Costs to be costs in

the cause.

S.B. MAPHALALA

JUDGE