

IN THE HIGH COURT OF SWAZILAND

**SABELO MASUKU N.O For and behalf of
TAKITSI CONTRACT CATERERS (PTY)
LIMITED (In Liquidation)**

Applicant

And

SIPHO MATSE ATTORNEYS

Respondent Civil Case No.

3123/2007

S.B. MAPHALALA-J

MR. S. SIBANDZE MR.

M. MABILA

Coram

For the Applicant For the Respondent

JUDGMENT 23rd August 2007

[1] The Applicant who is the liquidator of Takitsi Contract Caterers (Pty) Limited (in liquidation) has filed an urgent application before this court to retain part of a *concursum creditorium* being a cheque to the sum of E 186, 000-00 paid by the said company in liquidation to the attorneys to one of the company's creditors. The order sought is for the following relief:

1. That the Applicant's non-compliance with the Rules of court and more particularly those rules relating to time periods be condoned and that the application be heard as one of urgency in terms of Rule 6 (25);
2. That the Respondent be ordered to immediately hand over to Applicant a Government cheque in the sum of E186, 000-00 (One Hundred and Eighty Six Thousand Emalangeni) made out to Takitsi Contract Caterers (Pty) Limited and/or in the event of the cheque being cashed, Respondent be and is hereby ordered to pay the amount of the cheque in full to the Applicant;
3. That the Respondent be and is hereby interdicted and restrained from cashing and/or depositing the cheque in the sum of E186, 000-00 (One Hundred and Eighty Six Emalangeni) or so, drawn by the Swaziland Government in favour of Takitsi Contract Caterers (Pty) Ltd;

4. That prayers 3 operate in the interim pending the finalization of this application;

That the costs of this application be paid by the Respondent;

5. Such further and/or alternative relief as the above Honourable court deems appropriate.

[2] The application is founded on the affidavit of the liquidator himself who is also an attorney of this court. Two letters of correspondence are filed in support of the averments in the Founding Affidavit.

[3] The Respondent has filed a Notice of intention to oppose and when the matter came for arguments Counsel for the Respondent first put certain facts into the record before advancing a number of points *in limine*. The point that he has placed into the record is that the cheque which is the subject-matter of this case is no longer in the possession of

attorneys Siphon Matse. However, he opposed that the court gives an order there and there in view of this but pressed that they are a number of points of law *in limine* that Respondent seeks to advance.

[4] The first point *in limine* is that of non-joinder that Applicant has failed to join other interested parties in this case being companies involved in the transaction between the company in liquidation. The second point is that the Applicant in his papers has not proved the requirements of Rule 6 (25) (a) and (b) that of urgency. That the averments in the founding affidavit fall far too short in satisfying the peremptory requirements of the Rule governing urgency. The third point *in limine* is that Applicant has failed to prove the requirements of an interim interdict and in this regard he cited a number of authorities including the legal author *C.B. Prest, On Interlocutory Interdicts, Juta (1993) at page 46.*

[5] Counsel for the Applicant opposed the points of law *in limine* and advanced formidable arguments in this regard.

[6] I have assessed the arguments of the parties in this matter and I have come to the considered view that in order to protect the *concursum creditorium* of the company in liquidation an interim order ought to be granted. I find that on the papers the Applicant has proved urgency as required by the Rules of this court. On the issue of non-joinder I find that the joinder of the companies mentioned by Respondent is no essential in that

Applicant is concerned only with a cheque which is in the possession of the Respondent in order to secure the *concurus creditorium*. On the issue of the requirement of an interdict I find that a reading of all the papers by Applicant the requirements of an interim interdict have been proved on the facts of this case.

[7] In the result, for the afore-going reasons I find that the points of law *in limine* raised have no substance and are dismissed forthwith. The interim order is thus put in place. Costs to be costs in the main application.