

HELD AT MBABANE

CASE NO. 159/2007

In the matter between:

THULI NGWENYA

APPLICANT

and

MATHEWS NGWENYA

RESPONDENT

CORAM
FOR THE APPLICANT
FOR THE RESPONDENT

Q.M. MABUZA -J
MR. MKHWANAZI
MR. N. MABUZA

JUDGMENT 12/6/07

- [1] Before me is an application of rescission of judgment. On the 24th January 2007 the Respondents moved an **exparte** application in which the following order was sought:
- (a) Dispensing with the Rules of Court as to time limits and procedure and treating the matter with urgency.
 - (b) Directing or ordering Respondent to move out of

the Government house situate at St. Marks, Nukwase Street, House No. 1.

- (c) Directing or ordering Respondent to desist from assaulting or threatening or abusing Applicant
 - (d) Directing or ordering Respondent to keep away from Applicant and her children.
 - (e) That the above orders operate with immediate effect as interim orders pending a rule nisi returnable on a date to be issued by the above Honourable Court wherein the Respondent should show cause why the above orders should not be made final.
- [2] The Court granted the order as prayed and a rule nisi was issued returnable on the 26/1/2007.
- [3] The Applicant and Respondent were present in Court on the 26/1/2007 when the rule was extended to the 2/2/07 to allow the Applicant to instruct Counsel to assist him in filing an answering affidavit. Instead of seeking Counsel he threatened the Respondent on the very evening of having appeared in court. Respondent out of fear for her life and that of her children called the police who arrested him. The Applicant is a dangerous man who must be kept away from the Respondent otherwise he is likely to endanger her and their childrens lives
- [4] In as much as he says he was not in willful default, I disagree. He was the author of his own misfortune. By being contemptuous of the Court order issued that very morning he set into motion events that landed him in jail by failing to control his violent habits. On the 2nd February 2007 the Sidwashini Correctional Services granted him permission to attend court but alas he found that the rule had been confirmed. It is this final

order that he now wishes to rescind.

- [5] This is not the usual run of the mill case that is normally the subject matter of rescission. This is a matrimonial matter where the marriage has irretrievably broken down. The Applicant has exhibited violent tendencies towards the Respondent and their children. Unfortunately for him he has no home of his own and used to live with the Respondent before the Court order was issued by which he was ejected. The Respondent is a Government employee and lives in a Government house allocated to her.
- [6] The Respondent has raised **points in limine** namely that the Applicant has failed to indicate which portion of Rule 42 the Applicant is relying on. The Respondent is correct. The Respondent has not identified in his application under what Rule the application is brought and more specifically if it is brought under Rule 42 which of the three subsections is relied upon.
- [7] The Applicant has failed to identify in its notice of motion which of the three subsection it relies on.
- [8] The Applicant has also failed to comply with Rule 31 (3) (b) in that he has not furnished to the Respondent security for the payment of the costs of the default judgment and of such application to a maximum of E200.00
- [9] The Applicant has also failed to allege any of the requirements for an interdict in support of prayer 2 of his notice of motion.
- [10] In the event I uphold the points **in limine** and dismiss the application for rescission with costs.

Q.M. MABUZA -J