

**IN THE HIGH COURT OF SWAZILAND**

**FIRST NATIONAL BANK OF SWAZILAND LIMITED t/a WESBANK**

Applicant

And

**NKOSINGIPHILE MATTIAS MSIBI**

Respondent

Civil Case No. 4394/2005

Coram	S.B. MAPHALALA - J
For the Applicant	MR. M.J. MANZINI
For the Respondent	MR T. MASEKO

JUDGEMENT 13<sup>th</sup> July 2007

[1] Applicant has launched an urgent application wherein it sought *inter alia*:

- (a) Declaring the lease agreement with the Respondent cancelled;
- (b) Directing the Respondent to deliver to the Applicant forthwith the motor vehicle in question;

[2] A rule *nisi* was issued by this court for attachment of the motor vehicle and for summons to be issued within seven (7) days of the order.

[3] It appears on the facts that when the Deputy Sheriff attempted to attach and remove the motor vehicle, certain relatives of Thembi Dlamini (in her presence) forcefully removed the motor vehicle and to date its whereabouts are not known. The matter then came before Mamba J for arguments and it was ordered that the motor vehicle was to remain with the said Thembi Dlamini and further that she should apply for joinder as she was not a party to the proceedings.

[4] It was further ordered that the Applicant should make a new application for setting aside the attachment and subsequent sale in execution of the motor vehicle in question to the said Thembi Dlamini under Case No. 3432/2004 and that the two matters under Case No. 4394/2005 be consolidated under Case No. 4394/2005 as one had a direct bearing on the outcome of the other.

[5] The matter was subsequently set down for hearing before Mamba J and the attorneys for Thembi Dlamini were not present in court and the matter was postponed to another date wherein it was removed by the court for purposes of finding a date suitable for both parties on the 8.30 roll before Mamba J. In the last appearances the rule was extended indefinitely. After the hearing of the matter the said Thembi Dlamini was granted leave to file an application to intervene as a party to the proceedings and that application was filed.

[6] In arguments before me Counsel filed very comprehensive Heads of arguments which I have considered and has taken the position that the position adopted by the

Applicant is correct in the circumstances of this case. I say so because Respondent has not complied with the peremptory provisions of Rule 12 and as such cannot be regarded as a party to the present proceedings.

[7] In the result, for the afore-going reasons the application by Thembi Dlamini is dismissed with costs.

**S.B. MAPHALALA**

**JUDGE**