

IN THE HIGH COURT OF SWAZILAND

WORLD COURIER SERVICES

Applicant

And

THE COMMISSIONER OF CUSTOMS AND EXCISE

1st Respondent

THE ATTORNEY GENERAL

2nd Respondent

Civil Case No. 2631/2007

Coram	S.B. MAPHALALA - J
For the Applicant	MR. T. MOFOKENG
For the Respondent	MR. S. MDLULI

JUDGMENT 20th July 2007

[1] In this matter the Applicant has moved an urgent application in the following terms:

1. **Dispensing with the forms and services prescribe by the Rules of this Honourable Court and directing that the matter be heard as one of urgency;**
2. **Condoning Applicant's non-compliance with the Rules of Court;**
3. **That a rule nisi do hereby be issued returnable on a date to be appointed by this Honourable court calling upon the Respondent to show cause why an order in the terms set out hereunder should not made final;**
- 3.1 **The 1st respondent be hereby ordered and directed to release motor vehicle Peugeot Boxer SD 395 NS and its contents to the Applicant forthwith pending finalization of this matter;**
4. **That prayer 3.1 above operate with interim and immediate effect;**
5. **Costs in the event that the application is opposed;**
6. **Further and/or alternative relief.**

[2] The application is founded on the affidavit of one Albert Mavuso who is a Director of the

Applicant which is engaged in the business involving the distribution of parcels to and from South Africa and other countries in the Southern African Region. The parcels and packages in question do not belong to the Applicant but to its customers and include a variety of items some of which are fragile and some perishable.

[3] On or about the 3rd July 2007, the Applicant's employees namely Bheki Dlamini and Mduzuzi Mavuso were engaged in their work of transporting goods to South Africa into Swaziland when they were apprehended at the Ngwenya Border Post by Customs and Excise officials acting on behalf of the 1st Respondent. These employees were then charged with contravening Section 81 of the Customs and Excise Act No. 21 of 1971. The Director was also subsequently charged with the act and a Peugeot Boxer SD 395 NS conveying goods into the country from South Africa was thereafter impounded by the Customs and Excise officials.

[4] The Applicant related in the affidavit of its director the history of the matter at some length covering paragraphs 14 to 20 of the said affidavit. From paragraph 21 to 24 averments are made to support the urgency in which the matter has been brought.

[5] In view of the fact that Respondent was served with the application yesterday Respondent has not filed any opposing affidavits to the application save for a Notice of Intention to Oppose of even date. However, Counsel for the Respondent advanced a point of law *in limine* from the bar contending that Applicant has not shown urgency as required by the Rules of court. This is the only argument advanced by the Swaziland Government.

[6] The Applicant tried to resolve the matter through the procedures provided for by the Act to no avail where the Respondent failed to assist the Applicant as shown by a letter written by Applicant's attorneys on the 11th July 2007. This is shown by paragraph 6 of the said letter where it is stated:

"We therefore on behalf of client apply for a hearing before yourselves so that you may accordingly adjudicate on this issue and you attend to same summarily. Client is prepared to abide by your decision ..."

[7] The court therefore has to assess the arguments of the parties and also the Founding affidavit to establish whether urgency has been proved to satisfy the provisions of Rule 6 (25) (a) and (b) of the Rules of court. It appears to me that the Applicant has proved the peremptory requirements of the Rule of court stated above. The Founding affidavit succinctly outlines the points in support of urgency and I have no doubt at all in my mind that urgency has been proved to dispel the argument by the Respondent. It appears to me that Applicant on the arguments and Founding affidavit is entitled to the interim rule being sought.

[8] It also appears to me that Respondent needs these items for evidence in the pending criminal case but Respondent can make proper identification of the items which can be recorded in the form of photographs and such like, for purposes of giving evidence in the oncoming criminal case. Records can be made of the various items for future use in the criminal case.

[9] It appears to me further that the balance of convenience favour the Applicant on the facts of the matter.

[10] In the result, a rule *nisi* is to issue in terms of prayers 1, 2, 3 and 4 of the Notice of Motion returnable on the 27th July 2007. In the meantime the respondents to file opposing affidavits and thereafter the Applicant to file a replying affidavit to join issue with the respondents.

S.B. MAPHALALA

JUDGE